

NLWJC - KAGAN

EMAILS CREATED

ARMS - BOX 011 - FOLDER 005

[10/4/1996 - 11/26/1996]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Debra A. Schiff. Subject: opera house box. (1 page)	10/28/1996	P6/b(6)
002. email	Elena Kagan to Cheryl Mills. Subject kramerbooks letter. (1 page)	11/04/1996	Personal Misfile
003. email	Elena Kagan to WALLMAN_KM and John M. Quinn. Subject: frey compensation. (1 page)	11/25/1996	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[10/04/1996 - 11/26/1996]

2009-1006-F
ab819

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 (ALL-IN-1 MAIL)

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-OCT-1996 11:11:24.63

SUBJECT: RE: Schedule Request

TO: Brian Scott

(SCOTT_B) (WHO)

READ: 7-OCT-1996 11:12:19.09

TEXT:

sure. anytime that day.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-OCT-1996 11:27:27.38

SUBJECT: gte brief

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

READ: 8-OCT-1996 14:09:06.76

TEXT:

Could you get me p. 7 of the GTE brief from whomever you got the last set of missing pages from? Many thanks. (It seems like an important page.)

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 8-OCT-1996 16:11:57.75

SUBJECT: coast guard

TO: James J. Jukes

(JUKES_J) (OMB)

READ: 8-OCT-1996 16:19:49.65

TEXT:

The deal is absolutely fine with us.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 9-OCT-1996 11:12:46.55

SUBJECT: fcc order

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

READ: 9-OCT-1996 15:41:53.96

TEXT:

do you know whether the 8th circuit has ruled on the stay application?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 9-OCT-1996 10:28:14.50

SUBJECT: RE: meeting

TO: Stephen C. Warnath (WARNATH_S) (OPD)

READ: 9-OCT-1996 10:29:31.42

TEXT:

friday (anytime) would be much much better.

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 9-OCT-1996 14:35:00.00

SUBJECT: Receipt Notification

TO: WARNATH_S (OPD)

READ: 9-OCT-1996 14:41:02.44

TEXT:

This is a Read Receipt Notification for:

Message Title: meeting
Addressee: KAGAN_E
Date Sent: 09-Oct-1996 11:53am
Date Read: 09-Oct-1996 02:35pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:10-OCT-1996 11:28:57.66

SUBJECT: RE: Schedule Request

TO: Brian Scott

(SCOTT_B) (WHO)

READ:10-OCT-1996 12:43:56.50

TEXT:

Do you know who the faculty members are (if there are any)? Can you send me whatever letter or other information they sent you? Thanks much.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:10-OCT-1996 11:14:15.28

SUBJECT: RE: On call - Monday, October 14

TO: Odetta S. Walker (WALKER_O) (WHO)
READ:10-OCT-1996 12:33:28.26

CC: Cheryl D. Mills (MILLS_C) (WHO)
READ:10-OCT-1996 11:40:25.73

TEXT:
No problem.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:10-OCT-1996 16:17:17.46

SUBJECT: RE: HHS's State Plan

TO: Dorothy K. Craft

(CRAFT_D) (OPD)

READ:10-OCT-1996 16:33:12.73

TEXT:

I'll be there.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:10-OCT-1996 17:14:39.79

SUBJECT: RE: Tuesday at 11

TO: Diana M. Fortuna

(FORTUNA_D) (OPD)

READ:10-OCT-1996 17:38:50.92

TEXT:

ok with me.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:14-OCT-1996 14:28:44.52

SUBJECT: schlein's fax

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

READ:15-OCT-1996 09:12:30.41

TEXT:

Call me re the fax Michael Schlein sent to us. Thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:14-OCT-1996 14:03:48.84

SUBJECT: RE: Calif. and TANF issue

TO: Diana M. Fortuna (FORTUNA_D) (OPD)
READ:15-OCT-1996 09:16:44.64

CC: Jeremy D. Benami (BENAMI_J) (WHO)
READ:15-OCT-1996 11:13:16.94

CC: Bruce N. Reed (REED_B) (WHO)
READ:18-OCT-1996 11:09:31.79

CC: Emily Bromberg (BROMBERG_E) (WHO)
READ:15-OCT-1996 08:57:07.23

TEXT:

I'll defer to others as to whether we should get involved.
But if we do, I'd like to know the theory (whether CA's or HHS's) that would permit deferral of the work requirements. As I read the relevant section of the statute, this seems pretty dicey.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:15-OCT-1996 16:28:04.25

SUBJECT: RE: ca

TO: Emily Bromberg (BROMBERG_E) (WHO)

READ:15-OCT-1996 17:19:31.24

CC: Diana M. Fortuna (FORTUNA_D) (OPD)

READ:15-OCT-1996 17:16:41.13

TEXT:

will do. they have nerve, don't they?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:15-OCT-1996 14:51:37.40

SUBJECT: RE: Is the Coast Guard (S. 1004) signing statement O.K.?

TO: James A. Brown (BROWN_JA) (OMB)

READ:15-OCT-1996 14:52:11.67

TEXT:

yes

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:16-OCT-1996 18:01:49.42

SUBJECT: proposed septa arbitrators

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:18-OCT-1996 10:35:36.57

TEXT:

Are they OK with you?

Certification Pending Verification Procedures For Legal Immigrants

The following procedures are for legal immigrants who believe that they have a work history that meets the forty quarters exemption in the law. These procedures need not be followed for those legal immigrants who qualify for other exemptions in the law (refugees, asylees, deportees, or applicants with a claim to eligibility based on military service.)

Second para -- In order to determine eligibility based on social security coverage, the state should ascertain the applicant's understanding as to the following:

1. How many years has the applicant, the applicant's spouse, or the applicant's parents (before the applicant turned 18) lived in this county.

(If the answer to question 1 is less than 10 years, the State agency does not need to ask question 2).

2. In how many of the years reported in answer to question 1, did the applicant, the applicant's spouse, or the applicant's parent earn money through work.

(To determine whether the applicant's earnings were sufficient to establish "quarters of coverage" in those years, the State agency may wish to refer to the attached chart.)

If the answer to the question 2 is 10 years or more, the State agency shall verify, from INS documents, the date of entry into the country of the applicant, spouse and/or parent. If the dates are consistent with having 10 or more years of work, no further documentation is required at this time; the State agency shall include the immigrant in the household pending verification from SSA. The State agency shall inform these recipients that a claim will be established for any benefits to which they were not entitled. The State agency shall keep a record of each individual certified pending verification from SSA.

If the dates of entry are inconsistent with having 10 or more years of work, the State agency shall determine the applicant ineligible. The State agency shall then inform the applicant of his or her fair hearing rights.

The applicant shall also provide, for purposes of future verification, the full name, Social Security Number, date of birth, and sex of each individual (self, parent or spouse) whose work history is relevant to the determination of eligibility. In addition, the applicant shall provide a release form signed by each such individual (copy attached) giving SSA permission to release information on that individual to the state agency and/or the applicant. This form shall be retained in the case file to document the individual's consent.

SSA is drafting an addendum to the current Computer Matching and Privacy Protection Act agreement between SSA and each state agency. In accordance with that revised agreement, and within three months after the month in which the SSA verification system becomes operational, the state agency will send the identifying information provided by the applicant to SSA for overnight processing. In its response, SSA will provide information about qualifying quarters of work. If the immigrant believes the information from SSA is inaccurate or incomplete, the State agency shall refer the applicant to SSA for review. SSA will give the individual a document indicating that the number of quarters is under review. An immigrant who provides the state agency with this document can continue to receive benefits for six months from the date of SSA's initial response or until SSA has completed its review, whichever is earlier.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:17-OCT-1996 08:52:16.23

SUBJECT: RE: Waivers/Budget Neutrality

TO: Deborah F. Kramer

(Deborah F. Kramer@EOP@LNGETWY@EOPMRX)

READ:NOT READ

TEXT:

I can.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:17-OCT-1996 16:37:27.59

SUBJECT: RE: 40 quarters and 10-year income estimates

TO: Diana M. Fortuna (FORTUNA_D) (OPD)

READ:17-OCT-1996 16:41:30.37

CC: Stephen C. Warnath (WARNATH_S) (OPD)

READ:18-OCT-1996 09:52:34.03

CC: Jeremy D. Benami (BENAMI_J) (WHO)

READ:17-OCT-1996 18:23:17.93

TEXT:

I resolved it, but only by agreeing to change one sentence. I've been trying to get in touch with Jeremy to find the newest version of the document so I can do so. Do you have it?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:17-OCT-1996 11:59:44.36

SUBJECT: RE: 40 Qs letter

TO: Jeremy D. Benami

(BENAMI_J) (WHO)

READ:17-OCT-1996 12:13:58.46

TEXT:

I don't have the 18-50 guidelines.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:18-OCT-1996 13:04:34.10

SUBJECT: RE: Calif. and TANF issue

TO: Diana M. Fortuna (FORTUNA_D) (OPD)
READ:18-OCT-1996 13:46:03.08

CC: Bruce N. Reed (REED_B) (WHO)
READ:18-OCT-1996 13:04:54.94

CC: Jeremy D. Benami (BENAMI_J) (WHO)
READ:18-OCT-1996 14:51:48.24

CC: Emily Bromberg (BROMBERG_E) (WHO)
READ:18-OCT-1996 14:27:25.40

TEXT:

Do you know if Harriet or Anna will be there? I'd like to understand the legal theory that would allow this to be done.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:18-OCT-1996 17:46:42.21

SUBJECT: RE: Blessing v. Freestone

TO: Jeanine D. Smartt

(SMARTT_J) (OPD)

READ:18-OCT-1996 17:48:03.32

TEXT:

sounds great

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:18-OCT-1996 17:50:51.50

SUBJECT: aguilar brief

TO: Jack M. Quinn

(QUINN_J) Autoforward to: Cheryl L Sweitzer

READ:18-OCT-1996 18:52:09.97

TO: Kathleen M. Wallman

(WALLMAN_KM) (WHO)

READ:21-OCT-1996 17:19:19.92

TEXT:

I just got a call from Mike Small, who tells me that all of DOJ made a mistake and that the Aguilar brief is really due on October 29 (not November 8). In addition, while talking with David Ogden this morning, I put in a request to see an advance copy of this brief. Now that the due date is so near, I think we should press this request ASAP. Agree?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:19-OCT-1996 13:13:56.35

SUBJECT: fbi files civil suit

TO: Jack M. Quinn

(QUINN_J) Autoforward to: Cheryl L Sweitzer

READ:21-OCT-1996 09:27:37.42

TO: Kathleen M. Wallman

(WALLMAN_KM) (WHO)

READ:21-OCT-1996 17:21:14.92

TEXT:

FYI: DOJ signed the waiver of service form for the First Lady (just as it did for EOP and the FBI). The plaintiffs' attorney had no problem at all with this, and the question of representation did not come up.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:21-OCT-1996 18:00:38.26

SUBJECT: RE: Interns from Chicago

TO: Kathleen M. Whalen

(WHALEN_K) (WHO)

READ:21-OCT-1996 18:15:09.89

TEXT:

I'll check tomorrow.

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME:21-OCT-1996 18:40:00.00

SUBJECT: Receipt Notification

TO: SEIDMAN_E (OPD)

READ:21-OCT-1996 18:49:19.49

TEXT:

This is a Read Receipt Notification for:

Message Title: Small business Q&A for WSJ
Addressee: KAGAN_E
Date Sent: 21-Oct-1996 04:07pm
Date Read: 21-Oct-1996 06:40pm

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:21-OCT-1996 18:42:07.86

SUBJECT: RE: ca

TO: Emily Bromberg

(BROMBERG_E) (WHO)

READ:22-OCT-1996 10:52:38.70

TEXT:

I did get the letter and will send it to you. The last time I talked with Randy, they were still discussing how to respond. I told them to be sure to give me a draft before they sent anything.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:22-OCT-1996 14:58:44.44

SUBJECT: For road memo

TO: Brooks Scoville (SCOVILLE_B) (WHO)

READ:22-OCT-1996 15:00:07.01

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE:22-OCT-1996 14:58:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

PRINTER FONT 12_POINT_COURIER

The Supreme Court yesterday declined to review the first constitutional challenge to the "don't ask, don't tell" policy to reach the Court. The Court's action, taken without comment, left standing the decision of the en banc Court of Appeals for the Fourth Circuit sustaining the discharge of a Navy pilot. The pilot, Paul Thomasson, had sent letters to four admirals announcing "I am gay." After receiving an honorable discharge, Thomasson brought suit, principally under the First Amendment, challenging the part of the policy establishing a rebuttable presumption that a person who makes such statements has engaged or will engage in homosexual acts. Thomasson did not challenge the part of the policy making a service member who has engaged in homosexual acts subject to discharge. The Solicitor General's Office filed a brief in the Supreme Court urging it to decline review of Thomasson's case.

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:22-OCT-1996 14:22:28.24

SUBJECT: RE: I have never heard from University of Chicago

TO: Jennifer D. Dudley (DUDLEY_J) (WHO)

READ:22-OCT-1996 14:34:54.70

TEXT:

I'll call today. Thanks for reminding me. Have you gottten any bites elsewhere?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:22-OCT-1996 11:00:23.00

SUBJECT: RE: Sr. Staff Meetings

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

READ:22-OCT-1996 12:44:50.43

TEXT:

You bet.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:23-OCT-1996 14:50:34.23

SUBJECT: chicago students

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

READ:24-OCT-1996 09:18:07.67

TEXT:

I've told the Chicago placement office folks, and they'll get the word out.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 23-OCT-1996 15:30:00.46

SUBJECT: RE: Meeting Notice

TO: Deborah F. Kramer

(Deborah F. Kramer@EOP@LNGTWY@EOPMRX)

READ: NOT READ

TEXT:

would you send me another copy too? thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 23-OCT-1996 17:00:32.36

SUBJECT: RE: Meeting Notice

TO: Deborah F. Kramer

(Deborah F. Kramer@EOP@LNGTWY@EOPMRX)

READ: NOT READ

TEXT:

61647. thanks

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:24-OCT-1996 16:27:07.67

SUBJECT: RE: Only 61 more shopping days 'til...

TO: Catherine A. Bohn (BOHN_C) (WHO)

READ:24-OCT-1996 16:27:37.85

TEXT:

7. Thanks.

Withdrawal/Redaction Marker Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Debra A. Schiff. Subject: opera house box. (1 page)	10/28/1996	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[10/04/1996 - 11/26/1996]

2009-1006-F
ab819

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- 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]

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:28-OCT-1996 12:08:54.98

SUBJECT: religion matters

TO: Jack M. Quinn (QUINN_J) Autoforward to: Cheryl L Sweitzer
READ:28-OCT-1996 18:07:24.96

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:28-OCT-1996 13:05:12.89

TEXT:

1. I've talked with Seth about reworking the Aguilar brief to make it more supportive -- at the very least in tone -- of the Secretary's position on the merits. I suspect they will make some changes along these lines, though not to the extent we would like. I also urged Seth to change the language in the brief's conclusion. Right now it says the Court should grant cert "if the Court agrees that this is an appropriate case" to reconsider Aguilar. I asked that the conclusion state that the Court should grant cert "because this is an appropriate case" to reconsider Aguilar, which is a phrase used elsewhere in the brief. We shall see.

2. I spent some time Friday afternoon talking with lawyers from the AFT and NEA whom Jen O'Connor referred to me. These groups don't care much about the Aguilar decision itself; I think they recognize the inanity of that decision. But they are very concerned that we not articulate a theory that sweeps so broadly as to suggest the constitutionality of voucher programs. I was able to assure these groups that the brief as currently written does not pose this danger (given that it states no theory at all as to why Aguilar is wrongly decided). But they still would prefer that the Administration not make a big deal about this issue, because of what it might suggest about voucher programs. Jen, I am sure, will have passed this sentiment on to Harold.

3. Relatedly, John Hart thinks there's no need for a big public statement on Aguilar in order for our position to be helpful within the Catholic community. He thinks it is more important that we be in a position to make calls to Catholic groups and leaders, pointing out what we have said in the case. Along those lines, he urged that we try to strengthen the SG's brief as much as possible; he thinks that the groups will be quite attuned to the level of enthusiasm expressed in the brief regarding the Secretary's position.

4. Finally, on the workplace EO, I am waiting for Mark Stern to get me comments from the other members of the drafting committee on the draft he authored. He says he expects to get me those comments by Wednesday; if that's so, I'll have a draft ready by Friday at the latest. I've told DOJ people that we have no problem giving our draft to them before giving it to the religious groups, but that we would expect them to get back to us quickly and not to nickel-and-dime us to death. I've also talked to Ellen Vargas, the counsel for the EEOC, about a meeting between Jack and Gil Casellas. Does it make sense to do that meeting this week (before my draft is ready) or should we put it off until next week?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-OCT-1996 10:29:36.92

SUBJECT: women's issues memo

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

READ:29-OCT-1996 13:50:40.77

TEXT:

I've looked over the memo you sent me on cases presenting issues of concern to women. It doesn't look as if there are many decisions left to be made. Are there any other cases coming down the pike that we should be aware of? Let me know when you want to talk.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-OCT-1996 11:45:39.97

SUBJECT: RE: Election Night - Little Rock

TO: Cheryl L Sweitzer (SWEITZER_C) (WHO)

READ:29-OCT-1996 13:23:11.60

TEXT:

I think I've decided not to go, so take me off the list. Thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:29-OCT-1996 08:58:39.74

SUBJECT: RE: Calif response

TO: Diana M. Fortuna (FORTUNA_D) (OPD)

READ:29-OCT-1996 09:27:57.09

CC: Emily Bromberg (BROMBERG_E) (WHO)

READ:29-OCT-1996 11:27:38.77

TEXT:

I talked with Randy yesterday after speaking with Emily. As Emily recommended, I asked him to make a couple of changes in the last paragraph, which he agreed to do. He's going to recirculate the letter around the Justice Department so that interested people can review the new draft. I assume the timing is sometime next week.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-OCT-1996 14:00:43.81

SUBJECT: RE: Means Tested Benefits

TO: Paul_A._Leonard (Paul_A._Leonard@hud.gov@INET@EOPMRX)
READ:NOT READ

CC: benami__ja1.eop.gov_at_Internet (benami__ja1.eop.gov_at_Internet@hud.gov@INET@EO
READ:NOT READ

CC: ben-ami_j (ben-ami_j@A1@CD)
READ:NOT READ

CC: benami_j (benami_j@A1@CD) (WHO)
READ:NOT READ

TEXT:

As far as I know, agency consultations, leading to submission of a proposal to DOJ, are ongoing.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-OCT-1996 14:12:07.28

SUBJECT: bucket issue

TO: Emily Bromberg (BROMBERG_E) (WHO)
READ:30-OCT-1996 15:11:14.86

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ:30-OCT-1996 17:20:11.04

TO: Diana M. Fortuna (FORTUNA_D) (OPD)
READ:30-OCT-1996 14:45:30.93

TEXT:

I spoke with Anna about the bucket issue yesterday. She and the other HHS lawyers still think it's undoable, but they are having a last meeting with Cindy Mann etc. to discuss the idea. I asked to attend that meeting. I assume it will be sometime next week.

RECORD TYPE: PRESIDENTIAL (EXTERNAL MAIL)

CREATOR: KAGAN_E@A1@CD

CREATION DATE/TIME: 30-OCT-1996 14:00:00.00

SUBJECT: RE: Means Tested Benefits

TO: Paul_A_Leonard (Paul_A_Leonard@hud.gov@INET@EOPMRX)
READ: NOT READ

CC: benami__ja1.eop.gov_at_Internet (benami__ja1.eop.gov_at_Internet@hud.gov@INET@EO
READ: NOT READ

CC: ben-ami_j (ben-ami_j@A1@CD)
READ: NOT READ

CC: benami_j (benami_j@A1@CD) (WHO)
READ: 30-OCT-1996 17:19:16.93

TEXT:

As far as I know, agency consultations, leading to submission of a proposal to DOJ, are ongoing.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 30-OCT-1996 14:50:36.38

SUBJECT: RE: bucket issue

TO: Diana M. Fortuna

(FORTUNA_D) (OPD)

READ: 30-OCT-1996 15:07:48.54

TEXT:

I don't see why not.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:30-OCT-1996 14:12:07.28

SUBJECT: bucket issue

TO: Emily Bromberg (BROMBERG_E) (WHO)
READ:30-OCT-1996 15:11:14.86

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ:30-OCT-1996 17:20:11.04

TO: Diana M. Fortuna (FORTUNA_D) (OPD)
READ:30-OCT-1996 14:45:30.93

TEXT:

I spoke with Anna about the bucket issue yesterday. She and the other HHS lawyers still think it's undoable, but they are having a last meeting with Cindy Mann etc. to discuss the idea. I asked to attend that meeting. I assume it will be sometime next week.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:31-OCT-1996 17:31:11.94

SUBJECT: RE: Calif food stamp suits

TO: Diana M. Fortuna (FORTUNA_D) (OPD)

READ: 1-NOV-1996 09:42:46.66

TEXT:

Interesting. Am I supposed to have the HHS letters?

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:31-OCT-1996 15:38:06.47

SUBJECT: q&a

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:31-OCT-1996 15:39:52.36

TEXT:
see attached.

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE:31-OCT-1996 15:37:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

PRINTER FONT 12_POINT_COURIER

QUESTION: Doesn't a ban on contributions from non

-citizens raise
constitutional difficulties?

RESPONSE: It is unfortunately true that almost any meaningful
campaign finance reform proposal raises constitutional issues.
This is a result of the Supreme Court's view -- which I believe
to be mistaken in many cases -- that money is speech and that
attempts to limit the influence of money on our political system
therefore raise First Amendment problems. I think that even on
this view, the Court could and should approve this measure
because of the compelling governmental interest in preventing
corruption. But I also think the Court should reexamine its
premise that the freedom of speech guaranteed by the First
Amendment entails a right to throw money at the political system.

QUESTION: How does the Supreme Court's decision in Colorado
Republican Campaign Committee v. FEC affect the McCain

-Feingold
bill?

RESPONSE: The Court's recent decision in Colorado Republican
Campaign Committee v. FEC, which disapproved non

-voluntary limits
on uncoordinated expenditures by political parties, has little or
nothing to do with the key elements of the McCain

-Feingold bill,
including voluntary campaign spending limits, restrictions on
PACs, and broadcast and postage discounts. It is possible that
the decision will require amendment of certain less crucial
provisions of the bill, but even this is a complicated legal
question needing close scrutiny.

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

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME:31-OCT-1996 08:38:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN_P (OPD)

READ:31-OCT-1996 10:48:26.86

TEXT:

This is a Read Receipt Notification for:

Message Title: finance reform q&a
Addressee: KAGAN_E
Date Sent: 30-Oct-1996 08:31pm
Date Read: 31-Oct-1996 08:38am

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME:31-OCT-1996 08:37:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN_P (OPD)

READ:31-OCT-1996 10:48:29.48

TEXT:

This is a Read Receipt Notification for:

Message Title: q&as
Addressee: KAGAN_E
Date Sent: 30-Oct-1996 06:32pm
Date Read: 31-Oct-1996 08:37am

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

CREATOR: KAGAN_E (WHO)

CREATION DATE/TIME: 1-NOV-1996 09:52:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN_P (OPD)

READ: 1-NOV-1996 12:03:27.18

TEXT:

This is a Read Receipt Notification for:

Message Title: final campaign finance reform documents

Addressee: KAGAN_E

Date Sent: 31-Oct-1996 07:51pm

Date Read: 01-Nov-1996 09:52am

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 1-NOV-1996 10:12:00.89

SUBJECT: 211 letter

TO: Tracy F. Sisser (SISSER_T) (WHO)

READ: 1-NOV-1996 10:14:41.61

TEXT:

The fax came out badly, and I can't read it. Can you send me another copy?
Thanks.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Elena Kagan to Cheryl Mills. Subject kramerbooks letter. (1 page)	11/04/1996	Personal Misfile

COLLECTION:

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

FOLDER TITLE:

[10/04/1996 - 11/26/1996]

2009-1006-F
ab819

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 (ALL-IN-1 MAIL)

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 5-NOV-1996 12:16:48.54

SUBJECT: by the way

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

READ: 5-NOV-1996 12:18:10.71

TEXT:

as I'm sure you've guessed, there are no meetings tomorrow

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-NOV-1996 14:36:22.20

SUBJECT: RE: Just double checking

TO: Diana M. Fortuna

(FORTUNA_D) (OPD)

READ: 7-NOV-1996 14:36:45.58

TEXT:

yes

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 7-NOV-1996 14:16:51.63

SUBJECT: RE: 4 TANF plan approvals

TO: Diana M. Fortuna (FORTUNA_D) (OPD)
READ: 7-NOV-1996 14:34:21.64

CC: Jeremy D. Benami (BENAMI_J) (WHO)
READ: 7-NOV-1996 16:23:38.48

CC: Emily Bromberg (BROMBERG_E) Autoforward to: Remote Addressee
READ: NOT READ

CC: Richard E. Green (GREEN_R) (OMB)
READ: 7-NOV-1996 17:05:50.53

TEXT:

Looks fine to me. On another subject, HHS held its bucket meeting today. I thought the groups made a very strong presentation. Anna and I have been trading calls this afternoon, so I don't yet know what HHS thought about it.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 9-NOV-1996 19:20:51.83

SUBJECT: home drug testing

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:11-NOV-1996 13:17:59.67

TEXT:

One of these days, we'll have to respond to Congressman Bliley re home drug testing. Could I talk to you sometime today about what we should do? Thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:12-NOV-1996 12:25:36.86

SUBJECT: prop 211 letter

TO: Tracy F. Sisser (SISSER_T) Autoforward to: Remote Addressee
READ:NOT READ

TEXT:

how is the attached draft?

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

ATT CREATION TIME/DATE:12-NOV-1996 12:23:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

PRINTER FONT 12_POINT_COURIER

Thank you very much for writing to me about Proposition 211, the California ballot initiative regarding securities lawsuits. I opposed this Proposition, and I applaud the voters of California for rejecting it, because it would have increased the number of frivolous lawsuits and undermined the ability of investors to receive full and accurate corporate information. I believe strongly in the need to protect the rights of defrauded investors, as my veto of last year's Securities Reform Act attests. But Proposition 211's creation of a novel cause of action, broader than any now recognized, would have gone much too far in the other direction, deterring companies from providing useful information and thereby harming American investors. Thank you again for giving me your views.

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

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:12-NOV-1996 18:06:46.26

SUBJECT: RE: means tested definition

TO: Kenneth S. Apfel

(Kenneth S. Apfel@EOP@LNGTWY@EOPMRX)

READ:NOT READ

TEXT:

I really don't think so. I think the ball's in their court.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:12-NOV-1996 16:43:59.32

SUBJECT: RE: means tested definition

TO: Kenneth S. Apfel (Kenneth S. Apfel@EOP@LNWTWY@EOPMRX)
READ:NOT READ

CC: E S. Swain (E S. Swain@EOP@LNWTWY@EOPMRX)
READ:NOT READ

TEXT:

I don't think so. I think HHS is still engaged in discussions with other agencies. At least that's what HHS reported at today's welfare implementation subgroup issue.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:13-NOV-1996 17:24:59.39

SUBJECT: RE: I.U.P.A letter

TO: Leanne I. Johnson
READ:NOT READ

(Leanne I. Johnson@EOP@LNGTWY@EOPMRX)

TEXT:
OK.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:13-NOV-1996 17:25:47.86

SUBJECT: RE: Continuation of EPA Briefing on Ozone NAAQS

TO: Phyllis Kaiser-Dark

(Phyllis Kaiser-Dark@EOP@LNGTWY@EOPMRX)

READ:NOT READ

TEXT:

yes, I can attend.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:13-NOV-1996 11:05:56.56

SUBJECT: RE: HHS Meeting

TO: Dorothy K. Craft

(CRAFT_D) (OPD)

READ:13-NOV-1996 11:14:27.43

TEXT:

I'm free all afternoon

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:14-NOV-1996 18:46:56.29

SUBJECT: jones oral argument

TO: Jack M. Quinn (QUINN_J) Autoforward to: Cheryl L Sweitzer
READ:14-NOV-1996 19:01:59.21

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ:15-NOV-1996 13:00:41.04

TO: Kathleen M. Wallman (WALLMAN_KM) Autoforward to: Remote Addressee
READ:NOT READ

TEXT:
The jones oral argument has been set for January 13.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:18-NOV-1996 10:52:49.63

SUBJECT: labor issue

TO: Jack M. Quinn

(QUINN_J) Autoforward to: Cheryl L Sweitzer

READ:18-NOV-1996 12:13:30.53

TO: Kathleen M. Wallman

(WALLMAN_KM) Autoforward to: Remote Addressee

READ:NOT READ

TEXT:

FYI: I haven't forgotten about the question of whether contractors can charge the government for the cost of engaging in anti-union activity. Marvin asked for some more time to do research before meeting with me and Steve Kelman. He's not quite ready yet, but I'll push a bit, and let you know as soon as there's anything to report.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:19-NOV-1996 13:15:43.32

SUBJECT: RE: Proposition 211

TO: Tracy F. Sisser (Tracy F. Sisser@EOP@LNGTWY@EOPMRX)
READ:NOT READ

TEXT:

The "after careful consideration" language is fine. I think JOC should be fine with the letter now. Just run a new version by her, and let me know.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:19-NOV-1996 10:24:29.07

SUBJECT: RE: INTERVIEW WITH NEIL KINKOPF

TO: Cheryl L Sweitzer (SWEITZER_C) (WHO)

READ:19-NOV-1996 10:34:09.29

TEXT:
sure.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:19-NOV-1996 18:21:16.17

SUBJECT: RE: Proposition 211-NEW DRAFT

TO: Tracy F. Sisser

(Tracy F. Sisser@EOP@LNGETWY@EOPMRX)

READ:NOT READ

TEXT:

I talked to Jen and she's OK with the most recent draft (including the "after careful consideration" language). thanks.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:19-NOV-1996 16:55:15.20

SUBJECT: RE: 11/20/96 Meeting on Welfare Reform Technical Amendments

TO: Melinda D. Haskins

(Melinda D. Haskins@EOP@LNGTWY@EOPMRX)

READ:NOT READ

TEXT:

You mean Wednesday, yes? I can't do it at 2:00, and would very much like to be there.

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:20-NOV-1996 08:45:05.47

SUBJECT: test

TO: Elena Kagan
READ:NOT READ

(KAGAN_E) Autoforward to: Remote Addressee

TEXT:
test

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

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

CREATION DATE/TIME:20-NOV-1996 10:57:57.00

SUBJECT: RECEIVED: Comments on LRM 5762 -- Welfare Reform Technical Amendments-- Are Due a

TO: Melinda D. Haskins (CN=Melinda D. Haskins/OU=OMB/O=EOP [OMB])

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

Comments on LRM 5762 -- Welfare Reform Technical Amendments-- Are Due at Noon
was successfully received by:

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

at:

11/20/96 10:52:43 AM

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME:20-NOV-1996 10:00:43.97

SUBJECT: a1 to notes

TO: Elena Kagan
READ:NOT READ

(KAGAN_E) Autoforward to: Remote Addressee

TEXT:
test22222222222222222222222222222222

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

CREATOR: Elena Kagan (KAGAN_E) (WHO)

CREATION DATE/TIME: 20-NOV-1996 10:45:32.49

SUBJECT: test af

TO: Elena Kagan
READ: NOT READ

(KAGAN_E) Autoforward to: Remote Addressee

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-NOV-1996 19:01:24.00

SUBJECT: Re.: Welfare Reform Technical Amendments Meeting

TO: Deborah F. Kramer (CN=Deborah F. Kramer/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TEXT:

I won't be able to come. I have a meeting with Leon at 4.

November 22, 1996

MEMORANDUM FOR ERSKINE BOWLES

FROM: JACK QUINN

SUBJECT: MISSION STATEMENT -- COUNSEL'S OFFICE

The mission of the Counsel's Office is to provide legal advice to the President and other members of the Executive Office with respect to their official duties. As part of this mission, the Counsel's Office deals with investigations of Administration actions by Congressional committees and independent counsels; responds to document requests and subpoenas; provides advice concerning the ethics laws to the entire White House staff; ensures the appropriateness of contacts between the White House and the agencies; oversees the vetting of executive branch nominees; coordinates the selection of judicial nominees; reviews pardon recommendations; works with the Justice Department in determining the litigation position of the United States in important or controversial cases; advises the President on proposed Constitutional amendments, criminal justice policy, and law reform proposals; and provides legal analysis on a wide range of legislative and policy initiatives, such as campaign finance regulation, abortion law, and welfare reform. In performing all of these functions, the Counsel's Office attempts to combine rigorous legal advocacy and analysis with finely-tuned political judgment.

I. Structure, Functions, and Needs of the Counsel's Office

The Counsel's Office currently has 16 attorneys: the Counsel to the President, two Deputy Counsels, one special counsel, 11 associate counsels, and one special assistant. The Counsel and one deputy counsel (Wallman) have overall supervisory responsibility. The other deputy counsel (Lindsey) plays the senior counseling role with respect to a number of issues (for example, law reform proposals), in addition to undertaking certain responsibilities, particularly with respect to presidential travel, not specifically related to the counsel's office.

The special counsel and several associate counsels working with her have had primary responsibility for handling certain major investigations -- in particular, the Whitewater and Travel Office matters. This group of lawyers, in addition to performing standard legal functions, has a substantial role in dealing with Congress and the press on investigative matters.

One associate counsel has responsibility for the process of selecting judicial nominees and guiding them through the confirmation process. The other associate counsels have responsibility for a wide range of other counseling and policy matters, but generally fall within one of two categories. The first group enforces the many ethics standards applicable to the White House, including rules relating to financial disclosures, conflicts of interest, contacts with

agencies, and the appropriate use of official resources; because of the close relation between many of these rules and personnel decisions, it also vets executive branch nominees. The second group provides the President and a variety of White House offices with substantive analysis and advice, whether regarding litigation positions (for example, on physician-assisted suicide), proposals to reform the civil and criminal justice systems (for example, on tort reform), or legal issues involved in other legislative and administrative initiatives (for example, in implementation of the welfare law).

The nature of the Counsel's Office work necessitates coordination with other offices in the White House. In addition to the 16 lawyers actually assigned to the Counsel's Office, a number of lawyers from other White House offices regularly attend Counsel's Office meetings. These include two lawyers on the staff of the National Security Council, who report to the Counsel on legal matters arising from the conduct of foreign relations; the Counsel to the Vice President; the Counsel to the Office of Administration, who has become involved in certain investigative matters; and a member of the Legislative Affairs Office with special responsibility for congressional investigations. Conversely, two lawyers from the Counsel's Office involved in handling investigative matters -- Fabiani/Davis and Yarowsky -- share functions with, and have close relations to, the Press Office and Legislative Affairs Office, respectively.

In addition, all attorneys in the Counsel's Office have a substantial amount of work-related interaction with other White House offices. The ethicists have extensive dealings with the Office of Management and Administration and Presidential Personnel, but they also deal with inquiries from every corner of the White House. The attorneys who primarily work on policy issues have regular relations with individuals in the Chief of Staff's Office, the Domestic Policy Council, National Economic Council, Council on Environmental Quality, Legislative Affairs Office, and Office of Management and Budget. In addition, almost all attorneys, at one time or another, work with the Press Office.

The Counsel's Office holds meetings three times each week for all attorneys. At these meetings, attorneys raise issues arising from their work for general office discussion and update the Counsel and Deputy Counsels on ongoing projects. In addition, the Counsel and one Deputy Counsel hold a weekly meeting with officials of the Justice Department (the Deputy Attorney General, Associate Attorney General and Assistant Attorney General for the Office of Legal Counsel) to discuss policy matters pending in that Department of interest to the White House. Finally, the Counsel, Deputy Counsels, and associate counsel in charge of judicial selection hold a meeting each week Congress is in session, with representation from the First Lady's Office, Vice President's Office, Legislative Affairs Office, and Office of Policy Development of the Justice Department, to discuss pending and potential judicial nominations. In addition to these three meetings, the Counsel's Office plans to regularize its contacts with the General Counsels of the Cabinet departments by instituting a once-a-month meeting with that group of lawyers.

The Counsel's Office currently needs one or two more attorneys, and appropriate support for these attorneys, in order to handle the investigations arising from contributions to the 1996 campaign. One additional attorney slot would be sufficient if the Legislative Affairs Office can hire another person to do congressional relations on this matter; two would be necessary -- one to

do legal work and one to work with Congress -- in the absence of an additional hire in Legislative Affairs. The Counsel's Office also needs continued flexibility to bring over detailees from other agencies in order to respond to short-term increases in workload. For example, the Counsel's Office is now using more than 15 detailees to vet nominees for executive branch positions. Similarly, the Office may need to use detailees to respond to future bumps in investigative work. In the past, the Office has had a productive relationship with Jodie Torkelson, who has understood and accommodated the Office's need for flexibility. It is extremely important to the Counsel's Office that this pattern of flexibility and accommodation continue in the future.

II. Contribution of the Counsel's Office to Administration Goals

A critical challenge for the Administration is to advance the President's policy agenda -- through legislation, executive action, and when appropriate, litigation. The Counsel's Office can play an important role in achieving this objective and should be part of the policy loop on a very wide range of matters. The Counsel's Office of course should pilot White House consideration of litigation positions, as the Office recently did on briefs concerning physician-assisted suicide and remedial education assistance for parochial schools. The Counsel's Office also should take the lead role on law reform issues, such as proposals (sure to be taken up in the next Congress) limiting product liability or securities lawsuits. And even when another White House office has primary responsibility for advancing a policy objective, the Counsel's Office should play an integral part in every stage of the policy process -- becoming in essence, the lawyer for the NEC, DPC, or other White House office. This kind of continuing participation has contributed significantly to such efforts as the enactment and implementation of welfare reform. When it does not occur -- as, for example, in certain work on ethics reform -- there is a substantial chance (1) that legal issues will come to the surface only at the twelfth hour, when they can wholly derail the policy process or (2) that the courts will strike down what the Administration accomplishes.

A second challenge for the Administration is to establish and maintain a useful working relationship with the Republican Congress while resisting that body's efforts to invade necessary Presidential powers and prerogatives. The handling of congressional investigations by the Counsel's Office can advance these twin goals. In approaching these investigations, the Office should seek to promote the President's interest in effective governance by making all reasonable accommodations to congressional demands for information. At the same time, the Counsel's Office must ensure that its accommodations leave intact the core powers of the President, so that he can continue to perform his constitutional functions. Striking this balance -- knowing when to bend to congressional will and when to assert appropriate presidential prerogatives -- is a difficult but absolutely essential task, which requires toughness, realism, and political judgment.

Finally, though most importantly, the Administration must maintain its commitment to the highest ethical standards. The Counsel's Office can and does promote this goal by ensuring full compliance with ethical laws, whether regarding conflicts of interest, financial disclosures, or the appropriate use of official resources. More generally, the Office promotes this goal by acting, and encouraging others to act, in accordance with the values of candor and integrity. The fortunes of this Administration will ride in large measure on its reputation for honest dealing, and the Counsel's Office can take the lead in enhancing and protecting that reputation.

Withdrawal/Redaction Marker Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Elena Kagan to WALLMAN_KM and John M. Quinn. Subject: frey compensation. (1 page)	11/25/1996	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[10/04/1996 - 11/26/1996]

2009-1006-F
ab819

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=WHO/O=EOP [WHO])

CREATION DATE/TIME:25-NOV-1996 14:10:32.00

SUBJECT: Meetings with defense lawyers

TO: Bruce R. Lindsey (CN=Bruce R. Lindsey/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: WALLMAN_KM (WALLMAN_KM @ A1 @ CD @ LNGTWY [EOP]) (WHO)
READ:UNKNOWN

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

TEXT:

1. Victor Schwartz called to tell me he was sending us another memo on products reform -- this one dealing more with politics, and less with substance. During our conversation, he proposed that Jack convene a meeting that both he (Schwartz) and the new President of ATLA would attend -- presumably to see if there is any common ground. I don't see any reason to do this right now, but it is something to keep in mind.

2. Per your note, Jack, I told Mark Gittenstein that you would be happy to meet -- after the transition -- with him and a bunch of high-tech types interested in securities reform.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-NOV-1996 13:53:11.00

SUBJECT: nea case

TO: WALLMAN_KM (WALLMAN_KM @ A1 @ CD @ LNGTWY [EOP]) (WHO)
READ:UNKNOWN

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

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

TEXT:

As I told Jack on Friday, DOJ definitely wants to seek cert in this case. The SG's Office says that it always seeks cert when lower courts have held a statute unconstitutional; in essence, the Office uses the same standard in determining whether to seek cert as it does in deciding whether to defend the statute initially. The NEA is obviously unhappy with proceeding any further; it is worried that the decision to seek cert will deeply offend the arts community, which then will refuse to support the agency in future congressional battles over funding. But given the SG's general policy, combined with the broader politics of this issue, I don't see any way to support the NEA in its effort to stop DOJ from going further. If anyone disagrees, let me know.

There are obviously going to be real battles (both within DOJ and between DOJ and the NEA) over what arguments to make in this brief and how to make them. We should stay close to this case, so we can weigh in on those questions.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:25-NOV-1996 14:11:10.00

SUBJECT: Re: technicals meeting

TO: Deborah F. Kramer (CN=Deborah F. Kramer/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TEXT:
time???

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-NOV-1996 18:38:25.00

SUBJECT: securities preemption

TO: John M. Quinn (CN=John M. Quinn/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Mark Gittenstein wanted me to let you know that Joe Kennedy's AA (whose name I didn't catch) might be calling you about securities preemption. Apparently Kennedy wants to do something on the subject preparatory to a run at the Governor's seat. Gittenstein didn't tell the AA to call, but thinks he might do so and wanted to give you a heads-up.