

NLWJC - KAGAN

EMAILS CREATED

ARMS - BOX 012 - FOLDER 002

[3/26/1997 - 4/14/1997]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Ann Walker. Subject: Re: WH conf. on Early Childhood. (1 page)	03/26/1997	P6/b(6)
002. email	Elena Kagan to Laura Emmett. Subject: Re: First E-mail Ever. [partial] (1 page)	04/02/1997	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[03/26/1997 - 04/14/1997]

2009-1006-F

ab828

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-MAR-1997 15:37:58.00

SUBJECT: here is a draft memo to Pres. Steve Silverman is circulating on summit events fy

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

READ:UNKNOWN

TEXT:

would you print this for me? thanks.

----- Forwarded by Elena Kagan/OPD/EOP on 03/26/97 03:39 PM -----

Diana Fortuna
03/26/97 02:04:49 PM
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Christa Robinson/OPD/EOP, Cynthia A. Rice/OPD/EOP
Subject: here is a draft memo to Pres. Steve Silverman is circulating on summit events fyi

It looks basically OK to me but needs a bit of work; it will certainly go through several iterations with us, Don, before it gets sent to the President.

FYI, you will note that the VP /Elaine is interested in doing something the week of April 14th on Texas Comptroller John Sharp's commitment, which is to pair volunteers to 1,000 families trying to leave welfare. Sharp's commitment has already been announced. But we might use such an event to announce a federal commitment on welfare -- either something on afterschool programs, which a lot of community groups are interested in, or maybe something modeled on Sharp. I am talking to HHS and to Cynthia about options here.

----- Forwarded by Diana Fortuna/OPD/EOP on 03/26/97 01:54 PM -----

Stephen B. Silverman
03/26/97 01:49:48 PM
Record Type: Record

To: Diana Fortuna/OPD/EOP, Eli G. Attie/WHO/EOP
cc:
Subject: Draft for Your Thoughts

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

Draft-Draft-Draft
March 26, 1997

Progress in the planning for the Summit for America's Future is being made. In order to ensure that you and the Administration are positioned properly a when you arrive in Philadelphia, we have developed an aggressive communications/scheduling strategy to be implemented in the weeks leading up to Summit. You, Mrs. Clinton, the Vice President and Mrs. Gore, along with Members of your Cabinet, Harris Wofford, Henry Cisernos and Mark Gearan will play a vital role communicating your vision of service and the commitment you have made towards ensuring that service is a central part of a young person's development. Prof. Benjamin Barber, who we have met with, has played an important role in the development our thinking as we prepared this strategy.

March 25: McCurry announced Clintons and Gores will participate in Germantown Road clean-up event and Summit.

March 29: Radio Address (POTUS). Announce Service Week. Announce Adopt-a-Schools from federal agencies. Announce other commitments (federal or private).

April 2: Teleconference with 140 Summit Communities. (FLOTUS Proposed). Live Video Conference. Powell, Wofford will participate in the conference. It is open to press.

April 4 or April 17: Second Bowles-Powell meeting to discuss Summit preparation. (VPOTUS drop-by proposed). Release photo.

April 4: Net Day kickoff. Vice President participates. Highlight service aspect.

Week of April 7: Mrs. Clinton participates in Learn and Serve program event in D.C. VPOTUS event to announce commitments at good local service project.

April 12: POTUS kicks off National Service and Volunteer week with Oval office radio address and meeting with current AmeriCorps participants and alumni, as well as Peace Corps alums. Harris Wofford and Mark Gearan participate. Announce Service scholarships. Thoughtful discussion of the importance of the "ethic" of service.

April 14-April 18: National Service and Volunteer week. Hundreds of service projects/events around the country. Mrs. Clinton visits Philadelphia to highlight literacy program in which 11th graders read to third graders. Philadelphia media. Vice President announces Texas Pathfinders program. Cabinet roll-out to excellent service sights around country. Regional media from Washington. Wofford and Gearan travel to large number of states.

April 15: Youth Service Day. Meet with AmeriCorps volunteers on tarmac in New York.

- April 19: Net Day. Volunteers throughout nation to wire schools.
- April 22: Earth Day. Service highlighted by principals.
- April 26: Radio Address on Service/Summit.
- April 26: Christmas in April. Four principals help rebuild home in D.C. White House staff helps on another project.
- April 27: Arrive Philadelphia. Germantown Road Clean-up kick-off event with Powell begins at 10:30 and 1:30. Four principals. Families have been requested.
- April 27: Award Presidential Service awards in private ceremony before Gala. Four principals (7pm). Service Gala (7:30). 2500 people at Music Hall. Live television, possible, not likely.
- April 28: Summit opens 9:00 a.m., chaired by General Powell. Seeking Vice Presidential speech in 9-10 slot. From 10-11, President Ford, President Carter (video), Mrs. Reagan, President Bush each speak for 10 minutes on heroes. POTUS gives main address for 12 minutes. All Presidents sign "Declaration of Commitments."
- April 28: CEO/Constituency Luncheon (12-2). Four Principals.
- April 29: Closing Ceremony. Powell signs "Declaration of Commitments" at conclusion, after charging the group to move forward with service implementation for the next 3 years. Mrs. Clinton should speak and sign.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:26-MAR-1997 12:32:22.00

SUBJECT: Re: atached

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

TEXT:

great. just let me know.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Ann Walker. Subject: Re: WH conf. on Early Childhood. (1 page)	03/26/1997	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[03/26/1997 - 04/14/1997]

2009-1006-F
ab828

RESTRICTION CODES

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

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 27-MAR-1997 10:12:31.00

SUBJECT: Re: legal immigrants

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

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

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

TEXT:

we're with you, as i said at the meeting this morning.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:28-MAR-1997 13:51:36.00

SUBJECT: liquor letter

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 03/28/97 01:54
PM -----

Kathleen M. Wallman
03/18/97 10:22:00 AM

Record Type: Record

To: Elena Kagan
cc:
Subject: liquor letter

Message Creation Date was at 18-MAR-1997 10:22:00

Here is the letter. Elena, Jon Kaplan can work with you and the Vice President's office on the release. Here is what has changed since the last time it was circulated. I leave it to your discretion and Jon's as to whether anyone needs to have a final poke at the letter in view of the changes and the passage of time.

1. I eliminated a sentence saying that if the FCC finds a link between the ads and children's attitudes about liquor that the FCC should consider time restrictions on the advertising. Dan Tate thought that was too strong. We don't really need to say it, so I struck it. I alerted Rahm to this change, but don't know if he focused on it at the time. I don't know whether this would be viewed by others as subtracting from the oomph of what we're doing, but I think the change Dan suggested is an improvement.

2. Kahlua is supposedly on the brink of a big advertising campaign. I don't know whether what they are planning, which may have a strong subliminal appeal to children that is obvious to adults, may tip the balance at the FCC and cause them to act regardless of whatever we say or don't say.

3. Interest in this issue seems to have quieted on the Hill. I can't tell whether this is an enduring or temporary phenomenon.

The previous version was circulated to Podesta, Echaveste, Hilley, Klain, Sperling, Reed, Ruff, Simon and Kalil.

The Honorable Reed E. Hundt
Chairman, Federal Communications Commission
1919 M Street, N.W., Suite 814
Washington, D.C. 20554

Dear Chairman Hundt:

I write to ask your assistance in addressing a new and emerging challenge to parents struggling to raise safe, healthy children: the decision by manufacturers of hard liquor to advertise on television.

For half a century, these companies voluntarily refrained from such advertising. They understood that advertising over the uniquely powerful and pervasive medium of broadcasting could reach children inappropriately, encouraging them to drink before it is even legal for them to do so. Until now, these companies have shown appropriate restraint. For as long as there has been television, they have known that a voluntary ban was right and they lived by it.

Now, some companies have broken ranks and started placing hard liquor ads on TV. I was greatly disappointed by their decision. I have previously expressed my dismay at this action and called on the industry to urge all its members to return to their long-standing policy and stand by the ban. I am gratified to learn that, according to one survey, the vast majority of television stations are declining to air these advertisements. I applaud that stand.

I firmly believe that we have a national obligation to act strongly to protect our children from threats to their health and safety. That's why I have fought so strongly to impose appropriate regulations on the sale and distribution of cigarettes and smokeless tobacco and tobacco advertising that appeals to adolescents, to ensure that our schools and children are safe and drug-free, and to combat gangs and violence afflicting our youth.

I applaud your public remarks calling on the industry and broadcasters to reactivate the voluntary ban. I also commend your comments that the Federal Communications Commission has an obligation to consider any and all actions that would protect the public interest in the use of the public airwaves.

I urge the Commission to take all appropriate actions to explore what effects might ensue in light of the decision by manufacturers of hard liquor to abandon their long-standing voluntary ban on television advertising, specifically the impact on underage drinking.

We have made tremendous progress in recent years reducing the incidence of deaths due to drunk driving among our youth. We have taken important steps including the increase in the 1980s in the drinking age to 21 and the passage of zero tolerance legislation for underage

drinking and driving. But there is more to be done. Too many of our young people are dying in car crashes, and too many young people are starting to drink at an early age, leading to alcohol and other substance abuse problems.

I would appreciate your help and the help of the Commission in exploring the possible actions you could take to support our parents and children in response to the manufacturers' decision to break with the long and honorable tradition of not advertising on the broadcast medium.

Sincerely,

April 15, 2009

MEMORANDUM FOR THE CHIEFS OF STAFF

FROM: *Elena Kagan*

Kathleen Wallman

Katie McGinty

SUBJECT: *Children's Health Executive Order*

We are providing for your review a revised version of the proposed executive order on children's health. This version reflects a consensus among White House offices about how best to balance the goals of the initiative and the concerns about implementation that have been raised among federal agencies.

In order to identify any remaining agency concerns that should be considered in deciding whether to move forward with this version of the executive order, CEQ, DPC and NEC will convene a deputies meeting on Wednesday, April 2, at 4:00 p.m. Please contact Laura Emett at 456-5584 to arrange clearance into the meeting.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1997 13:48:44.00

SUBJECT: FCC Liquor Letter

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

TEXT:

could you make sure they get a copy of the letter? thanks.

----- Forwarded by Elena Kagan/OPD/EOP on 03/29/97 01:51
PM -----

Marjorie Tarmey
03/29/97 12:36:26 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Barbara D. Woolley/WHO/EOP, Jay K. Footlik/WHO/EOP
cc: Robert B. Johnson/WHO/EOP, Marjorie Tarmey/WHO/EOP, Cheryl M.
Carter/WHO/EOP
Subject: FCC Liquor Letter

This is from Maria (because my computer is under plastic because of painting) --Elena-- If someone on your staff would please provide a copy of the FCC liquor letter to Marjorie/Ben Johnson ASAP--so our folks in OPL can give the appropriate heads up, before the event on Tuesday. For example, Edgar Bronfman (Seagram's) is a very important leader in the Jewish community--other business leaders may also appreciate a heads up. Jay, Barbara, Cheri and Ben--I don't know who else has constituencies that need to be touched right before the event on Tuesday. Please handle and please advise me of results of outreach.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1997 13:43:21.00

SUBJECT: Re: HHS

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TEXT:

she's something else. we'll swap stories next time we see ach other.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:29-MAR-1997 13:48:22.00

SUBJECT: Re: FCC Liquor Letter

TO: Marjorie Tarmey (CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

I think we did send the letter, but I'll ask my assistant to send another. But NO ONE can be contacted because the President hasn't given the final sign-off yet. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-MAR-1997 20:50:44.00

SUBJECT: Meeting Tommorrow: Early Childhood Dev./Regional Conferences

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

TEXT:

find out from nicole or pauline whether it's ok that i'm missing this meeting. thanks.

----- Forwarded by Elena Kagan/OPD/EOP on 03/31/97 08:52 PM -----

Suzanne Dale 03/31/97 04:41:19 PM

Record Type: Record

To: Emily Bromberg/WHO/EOP, Kris M Balderston/WHO/EOP, Nicole R. Rabner/WHO/EOP, Laura D. Schwartz/WHO/EOP
cc: Elena Kagan/OPD/EOP, Anne E. McGuire/WHO/EOP, Alice J. Pushkar/WHO/EOP
Subject: Meeting Tommorrow: Early Childhood Dev./Regional Conferences

The meeting regarding the regional conferences on early childhood development will be held tomorrow, April 1, at 1:00 pm in OEOB Room 100.

Please let me know if you will not be able to attend. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-MAR-1997 20:52:33.00

SUBJECT: Re: satellite conferences

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TEXT:

actually, i promised no such thing -- but what else is new?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:31-MAR-1997 20:55:47.00

SUBJECT: Re: mtg tomorrow

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TEXT:

yes -- make sure this is on the schedule; it's different from the rice meeting. thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-APR-1997 19:19:07.00

SUBJECT: Re: Letter from Mary Francis Berry

TO: Robert B. Johnson (CN=Robert B. Johnson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Kyle M. Baker (CN=Kyle M. Baker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:
sounds good to me.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-APR-1997 15:32:59.00

SUBJECT: crime meeting

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/01/97 03:35
PM -----

Leanne A. Shimabukuro 04/01/97 12:19:06 PM

Record Type: Record

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

CC:

Subject: crime meeting

MEMORANDUM TO DISTRIBUTION LIST

FROM: Bruce Reed

Assistant to the President for Domestic Policy

SUBJECT: APRIL 2 CRIME MEETING

On Wednesday, April 2 at 10:00 a.m. in Room 211 of the Old
Executive Office Building, we will hold the weekly crime meeting.

Thank you.

Message Sent

To:

Bruce N. Reed/OPD/EOP
Rahm I. Emanuel/WHO/EOP
Dennis K. Burke/OPD/EOP
Tracey E. Thornton/WHO/EOP
Leanne A. Shimabukuro/OPD/EOP
Elena Kagan/OPD/EOP
Christa Robinson/OPD/EOP
Cathy R. Mays/OPD/EOP
Cheryl D. Mills/WHO/EOP
Alison E. Bracewell/WHO/EOP
James Boden/OMB/EOP
Teresa L. Collins/OMB/EOP
David J. Haun/OMB/EOP
Marcia L. Hale/WHO/EOP
Peter G. Jacoby/WHO/EOP
Michelle Crisci/WHO/EOP
Anne E. McGuire/WHO/EOP
Karen A. Popp/WHO/EOP
Odetta S. Walker/WHO/EOP
BROWN_J @ A1 @ CD @ LNGTWY
ATKIN_T @ A1 @ CD @ LNGTWY
VERVILLE_E @ A1 @ CD @ LNGTWY
Elizabeth A. Hyman/OVP @ OVP

NELSON_J @ A1 @ CD @ LNGTWY
Stefanie Sanford/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-APR-1997 15:36:52.00

SUBJECT: Reconciliation/Unity Meeting

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/01/97 03:39
PM -----

June G. Turner

04/01/97 02:04:35 PM

Record Type: Record

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

CC:

Subject: Reconciliation/Unity Meeting

REMINDER: Tomorrow's (Wednesday) Reconciliation/Unity meeting will be in the Roosevelt Room. Attendees should be limited to the list below - - no substitutes please. THANKS.

Attendees

Don Baer
Beverly Barnes
Dawn Chirwa
Carolyn Curiel
Michael Deich
Maria Echaveste
Terry Edmonds
Rahm Emanuel
Richard Hayes
Alexis Herman
John Hilley
Ben Johnson
Elena Kagan
Ann Lewis
Susan Liss
Ellen Lovell
Sylvia Mathews
Doris Matsui
Andrew Mayock
Cheryl Mills
Minyon Moore
Janet Murguia
Bob Nash
John Podesta
Vicki Radd
Frank Raines
Bruce Reed
Chuck Ruff
Richard Socarides

Doug Sosnik
Tracey Thornton
Melanne Verveer
Michael Waldman
Ann Walker
Kathy Wallman
Rob Weiner
Kitty Higgins
Marcia Hale
Stephanie Streett
Flo McAfee

Message Sent

To: _____
Donald A. Baer/WHO/EOP
Kevin S. Moran/WHO/EOP
Dawn M. Chirwa/WHO/EOP
Maria Echaveste/WHO/EOP
Marjorie Tarmey/WHO/EOP
Rahm I. Emanuel/WHO/EOP
Michelle Crisci/WHO/EOP
Richard L. Hayes/WHO/EOP
Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP
Ann F. Lewis/WHO/EOP
Cheryl D. Mills/WHO/EOP
Bob J. Nash/WHO/EOP
Laura K. Demeo/WHO/EOP
Janet Murguia/WHO/EOP
John Podesta/WHO/EOP
Sara M. Latham/WHO/EOP
Bruce N. Reed/OPD/EOP
Cathy R. Mays/OPD/EOP
Richard Socarides/WHO/EOP
Tracey E. Thornton/WHO/EOP
MOORE_M @ A1 @ CD @ LNGTWY
Robert N. Weiner/WHO/EOP
Robert B. Johnson/WHO/EOP
Andrew J. Mayock/WHO/EOP
Ruby G. Moy/WHO/EOP
John L. Hilley/WHO/EOP
Doris O. Matsui/WHO/EOP
Elisa Millsap/WHO/EOP
Douglas B. Sosnik/WHO/EOP
John O. Sutton/WHO/EOP
Carolyn Curiel/WHO/EOP
James T. Edmonds/WHO/EOP
Patricia E. Romani/OMB/EOP
Ann F. Walker/WHO/EOP
Michael Waldman/WHO/EOP
Franklin D. Raines/OMB/EOP
Rebecca R. Culberson/OMB/EOP
Charles F. Ruff/WHO/EOP
Ora Theard/WHO/EOP
Katharine Button/WHO/EOP
Beverly J. Barnes/WHO/EOP
Susan M. Liss/OVP @ OVP
Elizabeth R. Newman/WHO/EOP
Ellen M. Lovell/WHO/EOP

Virginia N. Rustique/WHO/EOP
Elizabeth M. Toohey/WHO/EOP
Mary Morrison/WHO/EOP
Brian A. Reich/WHO/EOP
Floydetta McAfee/WHO/EOP
Alison E. Bracewell/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-APR-1997 15:38:34.00

SUBJECT:

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

TEXT:
if i can.

----- Forwarded by Elena Kagan/OPD/EOP on 04/01/97 03:41
PM -----

Richard Socarides
04/01/97 02:48:40 PM
Record Type: Record

To: Peter G. Jacoby/WHO/EOP, Elena Kagan/OPD/EOP, Dawn M. Chirwa/WHO/EOP,
William P. Marshall/WHO/EOP
cc: Tracey E. Thornton/WHO/EOP
Subject:

On Thursday afternoon, April 3 at 3:00pm (room 472) we are having a meeting with a group of gay and lesbian anti-violence (hate crimes) advocates from around the country. They will also be meeting with the Acting Assistant Attorney General for Civil Rights and the AAG for Policy at DOJ earlier in the day. These meetings come at their request to discuss the recent rise in hate crimes directed at gay and lesbian Americans. I'd appreciate it if you were able to attend. Please let me know. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 1-APR-1997 19:19:46.00

SUBJECT: Cabinet Affairs/Policy Council Coordination Meeting

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/01/97 07:22
PM -----

Stefanie Sanford
04/01/97 04:42:25 PM
Record Type: Record

To: Shelley N. Fidler/CEQ/EOP, Elena Kagan/OPD/EOP; Kathy_Wallman @
oa.eop.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: Cabinet Affairs/Policy Council Coordination Meeting

To follow up last week's meeting and memo, we would like to schedule the
first coordination meeting for Thursday at 4:30pm in OEOB 160 to discuss
upcoming events. Please RSVP. Thanks. ss

Message Copied

To: _____
Stephen B. Silverman/WHO/EOP
Anne E. McGuire/WHO/EOP
Kris M Balderston/WHO/EOP
Elizabeth M. Toohy/WHO/EOP
Kathryn O. Higgins/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-APR-1997 14:25:06.00

SUBJECT: Late Term Meeting

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/02/97 02:28
PM -----

Elisa Millsap
04/02/97 11:06:17 AM

Record Type: Record

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

cc:

Subject: Late Term Meeting

There will be a Late Term meeting on Friday, April 4, at 1pm in John Hilley's office. Please let me know if you will be unable to attend. Thanks!

Message Sent

To:

Pauline M. Abernathy/OPD/EOP
Peter G. Jacoby/WHO/EOP
Elena Kagan/OPD/EOP
John P. Hart/WHO/EOP
FOLEY_M @ A1 @ CD @ LNGTWY
Ann F. Lewis/WHO/EOP
Janet Murguia/WHO/EOP
William P. Marshall/WHO/EOP
Elizabeth A. Myers/WHO/EOP
Sylvia M. Mathews/WHO/EOP
Nicole R. Rabner/WHO/EOP
Virginia N. Rustique/WHO/EOP
Todd Stern/WHO/EOP
Tracey E. Thornton/WHO/EOP
June G. Turner/WHO/EOP
Barbara D. Woolley/WHO/EOP
Ora Theard/WHO/EOP
Michael B. Feldman/OVP @ OVP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-APR-1997 14:23:16.00

SUBJECT: 3:30 Thu -- CAS/Policy Council coordination.

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/02/97 02:26
PM -----

Stefanie Sanford
04/02/97 01:57:55 PM
Record Type: Record

To: Kathleen M. Wallman/WHO/EOP, Elena Kagan/OPD/EOP, Shelley N.
Fidler/CEQ/EOP, Jonathan Foster/OSTP/EOP
cc: See the distribution list at the bottom of this message
Subject: 3:30 Thu. -- CAS/Policy Council coordination.

After RSVP's -- it seems that people could do the meeting from 3:30 - 4pm
tomorrow. OEOB 160. Is that ok with everyone? Thanks. ss.

Message Copied

To: _____
Kathryn O. Higgins/WHO/EOP
Elizabeth M. Toohey/WHO/EOP
Kris M Balderston/WHO/EOP
Stephen B. Silverman/WHO/EOP
Anne E. McGuire/WHO/EOP

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Elena Kagan to Laura Emmett. Subject: Re: First E-mail Ever. [partial] (1 page)	04/02/1997	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

[03/26/1997 - 04/14/1997]

2009-1006-F
ab828

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 2-APR-1997 14:24:34.00

SUBJECT: Re: First E-Mail Ever

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

READ:UNKNOWN

TEXT:

please make sure I can do this meeting.

----- Forwarded by Elena Kagan/OPD/EOP on 04/02/97 02:27 PM -----

Bruce N. Reed
04/02/97 01:53:56 PM
Record Type: Record

To: Thomas L. Freedman/OPD/EOP
cc: Elena Kagan/OPD/EOP
Subject: Re: First E-Mail Ever

Excellent first e-mail. You're a natural.

I'm happy to meet with you Friday. Ask Cathy to set it up. Down the road, we should have those mtgs. earlier, so that we can put new ideas into the weekly which is due Friday.

P6/(b)(6) Thanks for being so understanding.

You're doing a great job.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 3-APR-1997 19:12:08.00

SUBJECT: Gerry Terrozi

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])
 READ:UNKNOWN

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

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/03/97 07:15
 PM -----

Carol_Rasco @ ed.gov
 04/02/97 07:12:00 PM

Record Type: Record

To: Elena Kagan
 cc:
 Subject: Gerry Terrozi

In checking here I am told he would probably be glad to go if asked
 to
 a regional meeting but folks here feel it is more appropriate that he
 be invited to the White House. Let me know if we need to talk about
 it further. Many thanks!

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

TEXT:

RFC-822-headers:

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 id <01IH8ORZTVF40177LH@PMDF.EOP.GOV> for kagan_e@a1.eop.gov; Wed,
 02 Apr 1997 19:18:48 -0500 (EST)

Received: from storm.eop.gov (storm.eop.gov)
 by PMDF.EOP.GOV (PMDF V5.0-4 #6879) id <01IH8ORX106800H8P1@PMDF.EOP.GOV> for
 kagan_e@a1.eop.gov; Wed, 02 Apr 1997 19:18:44 -0500 (EST)

Received: from r2d2.ed.gov by STORM.EOP.GOV (PMDF V5.1-7 #6879)
 with ESMTTP id <01IH8ORUAK3A002E36@STORM.EOP.GOV> for kagan_e@a1.eop.gov; Wed,

02 Apr 1997 19:18:40 -0500 (EST)

Received: from smtpgw1.ed.gov (smtpgw1.ed.gov [165.224.217.37])
 by r2d2.ed.gov (8.8.5/8.8.4) with SMTP id TAA07399 for <kagan_e@a1.eop.gov>;
 Wed, 02 Apr 1997 19:18:36 -0500 (EST)

Received: from ccMail by smtpgw1.ed.gov (IMA Internet Exchange 1.04b)
 id 342f6e70; Wed, 02 Apr 1997 19:16:39 -0500

Content-description: cc:Mail note part

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

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1997 16:07:33.00

SUBJECT: Brain conf

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TEXT:

I'm not sure I have the most current version. Could you do this? thanks.
----- Forwarded by Elena Kagan/OPD/EOP on 04/06/97 04:10
PM -----

Bruce N. Reed
04/04/97 10:11:31 AM
Record Type: Record

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

As part of our effort to court OSTP, could you send Jack Gibbons a draft agenda for the brain conf? Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 6-APR-1997 16:10:13.00

SUBJECT: Re: draft of Berry letter

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

TEXT:
looks fine to me.

You have asked whether the so-called partial-birth procedure is ever necessary to save the life of a woman or avert serious harm to her health. Considerable medical uncertainty surrounds this question. The doctors of the women you met with believed the procedure was necessary to prevent serious injury, and other doctors have said that the procedure, in certain circumstances, is or may be the safest one to use. Still other doctors have disputed that health considerations ever demand use of the procedure.

Perhaps the most reliable opinion is from the American College of Obstetricians and Gynecologists (ACOG), which issued a statement in January addressing the procedure. (ACOG, like most other medical groups, calls the procedure an intact dilatation and extraction or intact D&X.) According to the statement, "A select panel convened by ACOG could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the woman." (Emphasis in original.) The statement then went on: "An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision." In sum, doctors have other options, but those other options may be more risky or otherwise more undesirable from a medical standpoint.

Other groups of doctors, with a greater stake in the abortion controversy, have taken more definitive positions. The Society of Physicians for Reproductive Choice and Health issued a statement last month saying that "in complex obstetrical situations, dilatation and extraction is the safest procedure to use. It carries the least risk of bleeding, perforation, infection or trauma to the birth canal." On the other hand, a group of mostly pro-life physicians called PHACT has written that "there are absolutely no obstetrical situations requiring the destruction of a partially delivered fetus," and indeed that the procedure involves serious risks of maternal hemorrhage, uterine rupture, and infection.

A recent article in the New York Times noted that the partial-birth procedure is only one of three procedures (all of them "pretty gruesome," as one doctor quoted in the article said) that can be used to end pregnancies after 20 weeks. The article reported that three of the twelve abortion specialists interviewed generally prefer the procedure on the ground that it poses less risk of uterine perforation. The article also noted that one doctor who does not usually use the procedure has done so on particular occasions because "the woman's anatomy or the fetus's size demanded it."

Given the state of medical evidence on this subject, you can and should continue to demand that any legislation contain an exception for women who need the procedure to prevent serious harm. Such an exception would enable the attending doctor -- surely the person with the most relevant knowledge -- to make the complex decision whether the procedure is in fact medically necessary in a given set of circumstances. The uncertainties surrounding this issue, however, caution against your making any estimates of the number of women whose health, without this procedure, would be at risk of serious harm. Any such estimates would be difficult to support.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-APR-1997 10:11:47.00

SUBJECT: Fact Check Meeting

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/07/97 10:14 AM -----

Brian A. Reich
04/07/97 09:11:18 AM
Record Type: Record

To: Russell W. Horwitz/OPD/EOP, Peter R. Orszag/OPD/EOP, Elena Kagan/OPD/EOP, Melissa Green/OPD/EOP
cc:
Subject: Fact Check Meeting

Waldman would like to have a fact check meeting on Tuesday afternoon.

What time works best -- 2pm. 3pm or 4pm???

Please respond as soon as possible - thanks

Brian Reich
6-2593

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-APR-1997 19:33:27.00

SUBJECT: Re: product liability

TO: Kathleen M. Wallman (Kathleen M. Wallman @ EOP @ LNGTWY [WHO])
READ:UNKNOWN

TEXT:
just sent.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-APR-1997 16:43:28.00

SUBJECT: attached memo

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

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

TEXT:
Attached is a DRAFT memo on products liability issues to give to the President.

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

TEXT:
Unable to convert ARMS_EXT:[ATTACH.D14]MAIL46230669T.016 to ASCII,
The following is a HEX DUMP:

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April 7, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE LINDSEY

SUBJECT: PRODUCTS LIABILITY LEGISLATION

Congress may turn its attention to product liability legislation within the next month, and we need to know how to respond. As you recall, your veto message last year detailed a number of specific objections to the products bill. (The veto message is attached to this memo.) We presume that if Congress were to give you the same bill again, you would veto it for the same reasons. It is possible, however, that Congress will work to pass a bill that responds in part to your objections. This memo reviews those objections, outlines possible congressional responses to them, and solicits your views on how to proceed. We believe that we need to send strong signals now about the kind of bill we would accept and the kind we would veto.

One-way preemption. Prior to enumerating your objections to specific provisions in the bill, your veto message noted the “general problem of displacing State authority in an unbalanced manner.” You explained that problem as follows: “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.”

If you hold fast to this position, you will have to veto another product liability bill. Congress will not pass a bill that preempts, in identical fashion, both anti-consumer and pro-consumer state law. For its strongest supporters, this bill is not so much about achieving uniformity as about reducing liability burdens on manufacturers. Because a two-way preemption bill will not clearly achieve this goal, your insistence on a two-way bill will signal strongly that no compromise is possible.

The objection to one-way preemption, however, is strong on the merits. If the problem with the current tort system is a simple lack of uniformity, then two-way preemption is obviously desirable. If the problem is instead that state law often fails to balance appropriately the interests of manufacturers and consumers, then federal law should step in to strike that balance, negating laws that tilt too much in either direction. One-way preemption is justified only if the goal is to reduce product actions to the greatest extent possible, by enabling states to “pile on” to federal limits.

Because this issue is not amenable to compromise, we need to know soon where you stand on it. We cannot develop sensible strategy unless we know whether you could sign a bill

containing one-way preemption.

Eliminating joint liability for non-economic damages. Your veto message objected strongly to the provision of the bill that wholly eliminated joint liability for non-economic damages such as pain and suffering. You stated generally, in support of joint liability, that “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.” You also expressed doubt about distinguishing economic from non-economic damages, noting that a provision limiting only non-economic damages falls most heavily on non-working women, the elderly, the poor, and children.

This issue, unlike the last, is amenable to compromise. The most likely compromise would be a proposal to eliminate joint liability for non-economic damages when, but only when, the wrongdoer is responsible for less than some specified percentage of the total judgment. Congress could say, for example, that joint liability for non-economic damages will not apply when a defendant’s actions have caused less than 25% of the total harm suffered. Congress might try to compensate for this weakening of the joint liability provision by applying it to both economic and non-economic damages (perhaps using your veto statement’s equation of the two kinds of damages to justify doing so), so that a “minor” wrongdoer would never have to shoulder any costs not his own.

A compromise of this kind has the apparent benefit of relieving small-scale wrongdoers (how small depends on the percentage specified) of the obligation to pay the entirety of potentially mammoth judgments. But by virtue of doing so, this compromise leaves innocent victims to bear the damage themselves when primary wrongdoers have gone bankrupt or are otherwise unable to satisfy judgments. You should consider whether you are comfortable with this kind of compromise and, if so, approximately where (10 percent?; 25 percent?; 50 percent?) you would draw the line.

Capping punitive damages. You also objected in your veto statement to imposing caps on punitive damage awards, on the ground that caps undermine the ability of punitive awards to deter and punish egregious misconduct. You noted the provision of the bill allowing judges to exceed the caps in specified circumstances, but stated that this protection was insufficient “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.”

A compromise on this issue is also possible; indeed, it may be hard to avoid given the Administration’s prior statements on the subject. The judicial override provision is essentially the brainchild of the Justice Department, which offered it as a way to alleviate our concerns about caps on punitives. If Congress deletes the legislative history to which you objected -- and especially if it also softens some of the language in the override provision -- you will have little basis for continuing to object to the bill’s punitive damage ceilings.

Limiting liability of biomaterials suppliers. You expressed a “concern” in your veto statement about a provision in the bill limiting actions against suppliers of materials used in devices implanted in the body. You generally recognized this provision to be a “laudable attempt to ensure the supply of materials needed to make lifesaving medical devices.” But you said that this limitation should apply only to non-negligent suppliers -- and not to suppliers who know or should know that the materials they make, when implanted in the human body, will cause injury.

The current version of the biomaterials provision contains an exception for manufacturers of the silicone gel used in breast implants, but not an exception (of the kind you requested) for all negligent suppliers. Industry engaged in good-faith negotiations with Rep. Berman last year to develop such an exception, but could not find a way to exempt negligent suppliers, while adequately protecting non-negligent suppliers from the high litigation costs associated with disproving negligence. Industry is currently looking into other ways to satisfy our concern -- for example, by limiting liability for biomaterials suppliers only when the FDA has reviewed and approved the implanted device -- and may well succeed in doing so. Indeed, we may wish to send a signal that Congress should remove this provision from the products bill, so that we can sign it separately.

Other provisions. Your veto statement contained a number of objections to more minor provisions of the bill relating to the statute of repose, statutes of limitations, and negligent entrustment actions. With the possible exception of the statute of repose provision, compromise on these issues should be easy; members of Congress already have indicated a willingness to delete the offending language. On the statute of repose, the current bill precludes any suit alleging a defect in a product that is more than 15 years old; we could urge an 18-year statute of repose, as we accepted in the aviation liability bill you signed; alternatively, we could press for some kind of exception from the statute of repose for products, such as farm equipment, intended to have a useful life of longer than 15 years.

Other legislation. In the event you choose to reiterate your concerns and veto another products liability bill, you may have other opportunities to signal support for appropriate reform of the legal system. In particular, Sens. Lieberman, Moynihan, and McConnell have proposed a so-called “auto-choice” bill, which would allow a driver to select a no-frills auto policy that would reimburse him for all economic costs, but eliminate his option to sue for non-economic losses such as pain and suffering. Trial lawyers are certain to oppose this proposal, but unlike the products liability bill, it probably would benefit consumers. Some experts say that the savings for low-income drivers could reach 45 percent of their current insurance premiums -- and that the nationwide savings over two years could exceed \$80 billion.

QUESTION AND ANSWER ON NEEDLE EXCHANGE

Question: Will you work to lift the ban on federal funding of needle exchange programs?

Answer: Not at this time. As you know, the congressional ban remains in effect until the Secretary of HHS can certify that needle programs reduce the transmission of AIDS and that such programs do not encourage illicit drug use. The scientific studies done so far provide strong evidence that needle exchange programs reduce HIV transmission, but they don't offer sufficient evidence of the effect of these programs on illicit drug use. We strongly support continued study of this question so we can know whether needle exchange programs in fact encourage drug use. In the meantime, local communities remain free, as they should, to establish and support needle exchange programs if they choose to do so.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-APR-1997 19:33:05.00

SUBJECT: attached memo

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

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Attached is a draft memo on products. In addition to giving this draft to the two Bruce's, I also gave a copy to Erskine (because he was clamoring for it). I told Erskine that the draft is very much a work-in-progress and that you guys and Bruce L have not yet reviewed it.

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

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D94]MAIL47340769D.016 to ASCII,
The following is a HEX DUMP:.

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April 7, 1997

MEMORANDUM FOR THE PRESIDENT

FROM:

SUBJECT: PRODUCTS LIABILITY LEGISLATION

Congress may turn its attention to product liability legislation within the next month, and we need to know how to respond. As you recall, your veto message last year detailed a number of specific objections to the products bill. (The veto message is attached to this memo.) We presume that if Congress were to give you the same bill again, you would veto it for the same reasons. It is possible, however, that Congress will work to pass a bill that responds in part to your objections. This memo reviews those objections, outlines possible congressional responses to them, and solicits your views on how to proceed. We believe that we should send strong signals now about the kind of bill you would accept and the kind you would veto. We also think that knowing early where you stand on the products bill will enable the Administration to position itself correctly on other emerging law reform issues.

One-way preemption. Prior to enumerating your objections to specific provisions in the bill, your veto message noted the "general problem of displacing State authority in an unbalanced manner." You explained that problem as follows: "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."

If you hold fast to this position, you will have to veto another product liability bill. Congress will not pass a bill that preempts, in identical fashion, both anti-consumer and pro-consumer state law. For its strongest supporters, this bill is not so much about achieving uniformity as about reducing liability burdens on manufacturers. Because a two-way preemption bill will not clearly achieve this goal, your insistence on a two-way bill will signal strongly that no compromise is possible.

The objection to one-way preemption, however, is strong on the merits. If the problem with the current tort system is a simple lack of uniformity, then two-way preemption is obviously desirable. If the problem is instead that state law often fails to balance appropriately the interests of manufacturers and consumers, then federal law should step in to strike that balance, negating laws that tilt too much in either direction. One-way preemption is justified only if the goal is to reduce product actions to the greatest extent possible, by enabling states to "pile on" to federal limits.

Because this issue is not amenable to compromise, we need to know soon where you stand on it. We cannot develop a sound strategy before we know whether you could sign a bill containing one-way preemption. If you could sign such a bill, we will deemphasize the one-way preemption concern and focus on the specific provisions of the statute discussed in the rest of this memo.

Eliminating joint liability for non-economic damages. Your veto message objected strongly to the provision of the bill that wholly eliminated joint liability for non-economic damages such as pain and suffering. You stated generally, in support of joint liability, that “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.” You also expressed doubt about distinguishing economic from non-economic damages, noting that a provision limiting only non-economic damages falls most heavily on non-working women, the elderly, the poor, and children.

This issue, unlike the last, is amenable to compromise. The most likely compromise would be a proposal to eliminate joint liability for non-economic damages when, but only when, the wrongdoer is responsible for less than some specified percentage of the total judgment. Congress could say, for example, that joint liability for non-economic damages will not apply when a defendant’s actions have caused less than 25% of the total harm suffered. Congress might try to compensate for this weakening of the joint liability provision by applying it to both economic and non-economic damages (perhaps using your veto statement’s equation of the two kinds of damages to justify doing so), so that a “minor” wrongdoer would never have to shoulder any costs not his own.

A compromise of this kind has the apparent benefit of relieving small-scale wrongdoers (how small depends on the percentage specified) of the obligation to pay the entirety of potentially mammoth judgments. But by virtue of doing so, this compromise leaves innocent victims to bear the damage themselves when primary wrongdoers have gone bankrupt or are otherwise unable to satisfy judgments. You should consider whether you are comfortable with this kind of compromise and, if so, approximately where (10 percent?; 25 percent?; 50 percent?) you would draw the line.

Capping punitive damages. You also objected in your veto statement to imposing caps on punitive damage awards, on the ground that caps undermine the ability of punitive awards to deter and punish egregious misconduct. You noted the provision of the bill allowing judges to exceed the caps in specified circumstances, but stated that this protection was insufficient “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.”

A compromise on this issue is also possible; indeed, it may be hard to avoid given the Administration’s prior statements on the subject. The judicial override provision is essentially the brainchild of the Justice Department, which offered it as a way to alleviate our concerns

about caps on punitives. If Congress deletes the legislative history to which you objected -- and especially if it also softens some of the language in the override provision -- you will have little basis for continuing to object to the bill's punitive damage ceilings.

Limiting liability of biomaterials suppliers. You expressed a "concern" in your veto statement about a provision in the bill limiting actions against suppliers of materials used in devices implanted in the body. You generally recognized this provision to be a "laudable attempt to ensure the supply of materials needed to make lifesaving medical devices." But you said that this limitation should apply only to non-negligent suppliers -- and not to suppliers who know or should know that the materials they make, when implanted in the human body, will cause injury.

The current version of the biomaterials provision contains an exception for manufacturers of the silicone gel used in breast implants, but not an exception (of the kind you requested) for all negligent suppliers. Industry engaged in good-faith negotiations with Rep. Berman last year to develop such an exception, but could not find a way to exempt negligent suppliers, while adequately protecting non-negligent suppliers from the high litigation costs associated with disproving negligence. Industry is currently looking into other ways to satisfy our concern -- for example, by limiting liability for biomaterials suppliers only when the FDA has reviewed and approved the implanted device -- and may well succeed in doing so. Indeed, we may wish to send a signal that Congress should remove this provision from the products bill, so that we can sign it separately.

Other provisions. Your veto statement contained a number of objections to more minor provisions of the bill relating to the statute of repose, statutes of limitations, and negligent entrustment actions. With the possible exception of the statute of repose provision, compromise on these issues should be easy; members of Congress already have indicated a willingness to delete the offending language. On the statute of repose, the current bill precludes any suit alleging a defect in a product that is more than 15 years old; we could urge an 18-year statute of repose, as we accepted in the aviation liability bill you signed; alternatively, we could press for some kind of exception from the statute of repose for products, such as farm equipment, intended to have a useful life of longer than 15 years.

Other legislation. In the event you choose to reiterate your concerns and veto another products liability bill, you may have other opportunities to signal support for appropriate reform of the legal system. In particular, Sens. Lieberman, Moynihan, and McConnell have proposed a so-called "auto-choice" bill, which would allow a driver to select a no-frills auto policy that would reimburse him for all economic costs, but eliminate his option to sue for non-economic losses such as pain and suffering. Trial lawyers are certain to oppose this proposal, but unlike the products liability bill, it probably would benefit consumers. Some experts say that the savings for low-income drivers could reach 45 percent of their current insurance premiums -- and that the nationwide savings over two years could exceed \$80 billion.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-APR-1997 10:54:18.00

SUBJECT: Meeting Schedule for Reconciliation Working Group (RWG)

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/07/97 10:57
AM -----

June G. Turner

04/07/97 10:52:21 AM

Record Type: Record

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

CC:

Subject: Meeting Schedule for Reconciliation Working Group (RWG)

There will be RWG Meetings at 11:00am Tuesday-Friday of this week. Below is the room schedule. If you have any questions please let me know (6-1960)

Tuesday - 231 OEOB (NEC Conf Room)

Wednesday - Roosevelt Room

Thursday - Room 476 OEOB

Friday - Roosevelt Room

Attendees

Don Baer

Beverly Barnes

Dawn Chirwa

Carolyn Curiel

Betty Currie

Michael Deich

Maria Echaveste

Terry Edmonds

Rahm Emanuel

Richard Hayes

Alexis Herman

John Hilley

Ben Johnson

Elena Kagan

Ann Lewis

Susan Liss

Ellen Lovell

Sylvia Mathews

Doris Matsui

Andrew Mayock

Cheryl Mills

Minyon Moore

Janet Murguia

Bob Nash
John Podesta
Vicki Radd
Frank Raines
Bruce Reed
Chuck Ruff
Richard Socarides
Doug Sosnik
Tracey Thornton
Melanne Verveer
Michael Waldman
Ann Walker
Kathy Wallman
Rob Weiner
Kitty Higgins
Marcia Hale
Flo McAfee

Message Sent

To:

Betty W. Currie/WHO/EOP
Donald A. Baer/WHO/EOP
Kevin S. Moran/WHO/EOP
Dawn M. Chirwa/WHO/EOP
Maria Echaveste/WHO/EOP
Marjorie Tarmey/WHO/EOP
Rahm I. Emanuel/WHO/EOP
Michelle Crisci/WHO/EOP
Richard L. Hayes/WHO/EOP
Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP
Ann F. Lewis/WHO/EOP
Cheryl D. Mills/WHO/EOP
Bob J. Nash/WHO/EOP
Laura K. Demeo/WHO/EOP
Janet Murguia/WHO/EOP
John Podesta/WHO/EOP
Sara M. Latham/WHO/EOP
Bruce N. Reed/OPD/EOP
Cathy R. Mays/OPD/EOP
Richard Socarides/WHO/EOP
Tracey E. Thornton/WHO/EOP
MOORE_M @ A1 @ CD @ LNGTWY
Robert N. Weiner/WHO/EOP
Robert B. Johnson/WHO/EOP
Andrew J. Mayock/WHO/EOP
Ruby G. Moy/WHO/EOP
John L. Hilley/WHO/EOP
Doris O. Matsui/WHO/EOP
Elisa Millsap/WHO/EOP
Douglas B. Sosnik/WHO/EOP
John O. Sutton/WHO/EOP
Carolyn Curiel/WHO/EOP
James T. Edmonds/WHO/EOP
Patricia E. Romani/OMB/EOP
Ann F. Walker/WHO/EOP
Michael Waldman/WHO/EOP
Franklin D. Raines/OMB/EOP
Rebecca R. Culberson/OMB/EOP

Ora Theard/WHO/EOP
Katharine Button/WHO/EOP
Beverly J. Barnes/WHO/EOP
Susan M. Liss/OVP @ OVP
Elizabeth R. Newman/WHO/EOP
Ellen M. Lovell/WHO/EOP
Virginia N. Rustique/WHO/EOP
Elizabeth M. Toohy/WHO/EOP
Brian A. Reich/WHO/EOP
Floydetta McAfee/WHO/EOP
Alison E. Bracewell/WHO/EOP
Mary Morrison/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 7-APR-1997 11:16:04.00

SUBJECT: Q&A

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

TEXT:
HERE THEY ARE.

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

TEXT:
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HEALTH CARE

Question: Are you going to submit additional Medicare savings so that your Medicare plan will contain \$100 billion in savings over five years?

Answer: Our actuaries believe that our current Medicare proposal does save \$100 billion over five years. And, over the last four years, our actuaries have been more accurate in their budget estimates than the Congressional Budget Office. Moreover, just last week we sent our detailed language over to CBO. We believe that these additional details will help eliminate some of the current discrepancies between our actuaries' scoring of our Medicare proposal and CBO scoring. If any scoring differences still remain after CBO has had a chance to review all of our statutory language, we will make a determination as to whether any revisions in our proposal are warranted.

Question: In your February budget release you said the 5-year Medicare savings were \$100 billion. There are now reports that it is \$106 billion over five years, according to your actuaries. How do you account for these differences?

Answer: As the Congressional Budget Office (CBO) was scoring our Medicare proposals, they requested that the Office of Management and Budget (OMB) provide clarifications on the intent of our savings proposals. After providing them with this information, we asked OMB to determine how these clarifications changed the scoring of our Medicare package on our baseline. When they did, OMB determined that the provisions would score about \$106 billion in savings off of our baseline. (None of the clarifications involved beneficiary savings.)

CBO continues to score our proposals to save about \$82 billion off of their baseline. We hope that further clarification of our policy will close the gap between how CBO (\$82 billion) and OMB (\$106 billion) score the very same policy.

Question: Do you plan to eliminate any of the new benefit improvements in your Medicare plan?

Answer: While everything will clearly be "on the table" in our budget discussions, we are extremely sensitive about making any changes to the important beneficiary improvements in our Medicare plan. Over three quarters of Medicare beneficiaries earn less than \$25,000 per year. Improving benefits and fixing flaws in the program which place undue costs on this vulnerable population is a high priority for this Administration. We look forward to continuing to work with both Republicans and Democrats in Congress on passing a balanced budget which will

strengthen and improve the Medicare program.

Question: **Your proposal to lower out-of-pocket costs for outpatient department (OPD) services costs almost 50 billion over ten years. How do you justify the costs of this proposal?**

Answer: **Our OPD policy simply returns the benefit to the original intent of the program.** This policy is in no way a new entitlement. Under current law, Medicare asks beneficiaries to pay 20 percent copayments for Medicare services. An anomaly in outpatient payment methodologies has allowed hospitals to indirectly cost shift to beneficiaries. As a result, beneficiary copayments are now averaging almost 50 percent. The President's proposal simply restores the copayment to 20 percent -- similar to all other Part B services.

The current 50 percent coinsurance costs are significant for Medicare beneficiaries. Over three quarters of Medicare beneficiaries earn less than \$25,000 per year. Those without Medigap insurance or other secondary insurance simply cannot afford the huge unexpected bills they receive for OPD services. Those with Medigap coverage have seen their premiums increase as a result of this anomaly. It is only fair that this benefit, like all other Part B services, have a 20 percent coinsurance.

Our OPD policies achieve savings. Reducing the coinsurance to 20 percent is only one part of our proposal to improve OPDs. The President's budget also shifts OPDs to a prospective payment system which will provide financial incentives for hospital to reduce costs and simplify payments, achieving at least \$19 billion in savings over the next ten years.

Question: **Why are the costs in your OPD proposal backended? Aren't you just playing political games to balance the budget in 2002?**

Answer: The cost of buying down the OPD copayment is split between hospitals and the Federal government. We felt that an immediate move to a 20 percent copayment might create difficult transitions for hospitals who will already be targeted for reductions in payments from other policies. Having said this, we are more than willing to discuss alternative ways to address this problem.

Question: Your Medicare proposal contains mostly cuts on providers and managed care. Don't you think we need real structural Medicare reform?

Answer: Absolutely. My budget takes important steps to modernize Medicare and bring it into the 21st century through a number of structural reforms including

- **Establishing new private plans** -- including Preferred Provider Organizations and Provider Sponsored Organizations -- available to seniors and people with disabilities.
- *Establishing market-oriented purchasing for Medicare* including the new prospective payment systems for home health care, nursing home care, and outpatient hospital services, as well as competitive bidding authority and the use of centers of excellence to improve quality and cut back on costs.
- *Adding new Medigap protections* to make it possible for beneficiaries to switch back from a managed care plan to traditional Medicare without being underwritten by insurers for private supplemental insurance coverage. This should encourage more beneficiaries to opt for managed care because it addresses the fear that such a choice would lock them in forever.

Question: Do you support the Medicare Commission proposed by Senators Roth and Moynihan?

- **First, I want to praise Chairman Roth and Ranking Member Moynihan for working together -- on a bipartisan basis -- to propose the creation of a commission to address the long-term financing issues that face Medicare. Their efforts reflect a bipartisan spirit which we believe is critical to ensure the success of any process designed to address this important issue.**
- **No one is more committed than I am to seeking a bipartisan process to find long term solutions to Medicare. But my more immediate focus is reaching a bipartisan agreement on a balanced budget that extends the life of the Medicare Trust Fund in the near term. We have an historic opportunity to balance the budget. We should not let it pass.**
- As I have repeatedly said, we will need a bipartisan process to address the long-term financing issues facing Medicare, and I look forward to working with both parties to develop the best possible process.

QUALITY COMMISSION

Question: What will this commission hope to accomplish?

Answer: The President is calling on the commission to develop a “consumer bill of rights.” He wants it to particularly focus on consumer appeals and grievance rights. He has also asked the Commission to address other issues including assuring:

First, that health care professionals are free to provide the best medical advice possible;

Second, that their providers are not subject to inappropriate financial incentives to limit care;

Third, that our sickest and most vulnerable patients (frequently the elderly and people with disabilities) are receiving the best medical care for their unique needs;

Fourth, that consumers have access to simple and fair procedures for resolving health care coverage dispute plans;

And fifth, and perhaps most important, that consumers have basic information about their rights and responsibilities, about the benefits plans offer, about how to access the care they need, and about the quality of their providers and their health plan.

Question: Will the patient bill of rights be mandated on states and private health plans?

Answer: No. The Commission will develop a model Bill of Rights that states, health care plans, health care providers, associations, and others can use to guide their own efforts. States have already been quite active in this area and the model should help them in future efforts. Many health plans and health care professionals have adopted a form of a bill of rights and this should assist them as well.

Question: Is this an “anti-managed care” commission?

Answer: Absolutely not. Quality and consumer rights are issues that transcend all models of care. We need to address those issues in a comprehensive manner so that no matter what kind of insurance plan Americans join, they will know that the care they receive is of the highest quality and their rights as

consumers are protected.

Question: Won't the commission serve to delay quality legislative initiatives including those that even the President has advocated? Isn't the commission going to compete with these initiatives?

Answer: This commission will complement, not compete with, legislation in the Congress that has broad-based support. The President will continue to support legislation in this area that has already received bipartisan support (e.g., barring gag rules, requiring 48-hour stays for women who have mastectomies). But this is just a start, we must go beyond these reforms to take a comprehensive look at the quality of care and how we can assure it. The Commission will work on building the consensus for more far-reaching reforms.

Question: Doesn't this commission just serve as a mechanism to implement more government regulation in our health care system?

Answer: Not at all. The Commission has been given the charge of examining whether our rapidly changing health care system is still providing high quality care for all Americans and to ensure that consumers themselves have adequate grievances and appeals processes. Its focus is to help create consensus among the private and public sectors in how best to proceed. As such, its recommendations may or may not suggest additional Federal oversight activities, and it is just as likely as not that it will recommend no new major Federal role.

Question: Doesn't this commission just a reward for campaign contributors and Washington-insiders who know little about what Americans in our health care system experience?

Answer: Absolutely not. By any measure, these commission members are extremely well respected experts who have broad and different experiences in the health care system. They have expertise on a range of health care issues including the unique challenges facing rural and urban communities, children, women, older Americans, minorities, people with disabilities, mental illness and AIDS, as well as issues regarding privacy rights and ethics. They come from all parts of the country and reflect the diverse population in this country.

Question: How much will this cost and who's paying for it?

Answer: The Commission will cost an estimated \$1.8 million over the next year and be paid for by the Department of Health and Human Services. The members of the Commission will not be paid.

WELFARE REFORM: FOOD STAMP WORK REQUIREMENT

Question: Under the new welfare law, states began to cut off food stamps for non-disabled adults who aren't working after three months of benefits. Why does the Administration want to soften these provisions?

Answer: I strongly support work requirements. But the welfare law's harsh and unreasonable time limit of 3 months in 36 cuts off people who want to work but can't find jobs. In my budget, I proposed an alternative: a real and tough work requirement without arbitrary cut-offs.

Under my proposal, those who refused to work or refused to take advantage of a work opportunity would face tough new penalties. We would limit food stamps to 6 months out of 12. This policy would encourage work while giving those out of work the transitory help they need to get back on their feet. We proposed new funding and a wage supplementation option to expand the number of work slots available to this group by nearly 400,000 over five years. I am looking forward to working with Congress to enact this sensible proposal.

Background:

- As of March 1, states began to cut off food stamp benefits for people who have not met the new work requirement in the welfare law.
- Under the law, able-bodied childless adults between the ages of 18-50 are not permitted to get food stamps for more than 3 months in a 3-year period, unless they are working at least 20 hours a week.
- USDA can waive the work requirement in cities or counties with high unemployment. To date, USDA has granted waivers to 36 states that exempt specified counties or cities with high unemployment.
- Despite these exemptions, approximately 500,000 individuals will lose their food stamp eligibility in FY98 due to this provision. Under the Administration's proposal, approximately 35,000 individuals would lose eligibility in FY98. Unlike

the welfare law, the Administration's proposal targets tough sanctions at those individuals who are unwilling to work and to play by the rules.

WELFARE REFORM: BENEFITS TO LEGAL IMMIGRANTS

Question: Immigrants shouldn't be coming to the U.S. to get on welfare. Why is the Administration making restoration of these benefits a priority?

Or alternative question:

Around the country, hundreds of thousands of frightened, elderly legal immigrants are scrambling to become citizens and avert a cut-off of their SSI and Medicaid benefits. What is the Administration doing about this?

Answer: I believe that legal immigrants should have the same opportunity, and bear the same responsibility, as other members of our society. The welfare law denies most legal immigrants access to fundamental safety net programs unless they become citizens -- even though they are in the U.S. legally, are working and paying taxes and are responsible members of our communities. My Administration has always supported making individuals who encourage their relatives to emigrate to the United States responsible for the immigrant's well being. However, as a nation, we should not turn our backs on anyone who has lost their ability to earn a living due to injury, disease, or illness.

Consequently, my budget proposes to make legal immigrants who become disabled after entering the United States eligible for SSI and Medicaid.

My budget would also provide poor immigrant children the same Medicaid health care coverage low-income citizen children receive.

The United States admits refugees and asylees into this country on a humanitarian basis. My budget proposes to lengthen the five-year exemption for refugees from the ban from five to seven years in order to give this group adequate time to naturalize.

Finally, the law denies food stamps to most legal immigrants. My budget would delay the cutoffs from April 1, 1997 to August, 1997 in order to give immigrants more time to naturalize.

WELFARE REFORM FIX LEGISLATIVE PROPOSALS

Question: You say you are ready to work with Congress to fix the immigrant and food stamp parts of the welfare law, but the Republican leadership says the bill is fine as it is. Even some Democrats are saying the law shouldn't be changed until we have had a chance to see how it works. Doesn't this mean your proposals have no chance of being enacted?

Answer: I think it is very significant that the nation's Governors are now on record as recognizing that the cuts in benefits to legal immigrants are too harsh and need to be addressed -- even though their final resolution was softened at the last minute at the request of the Congressional leadership.

As the new welfare law is being implemented, the Governors are gaining a new appreciation of some parts of the bill that I have had a problem with from the beginning -- those parts that are not related to putting people to work. This is particularly true of those Governors in states with large numbers of legal immigrants. They are now looking more carefully at their state budgets and the fact that many legal immigrants who are disabled, many in nursing homes, will lose their SSI and Medicaid over the summer. In addition to noting that these provisions are unfair, they can see the potential costs to their own state budgets if they make the decision to ameliorate those cuts.

I think that, over time, more and more people will come to see the harm that these provisions could do to hard-working people who came to this country and, through no fault of their own, became disabled and could no longer support their families.

WELFARE TO WORK

DISPLACEMENT

Question: *Aren't you concerned that welfare recipients will displace hardworking Americans -- people who played by the rules and never relied on welfare? Recent stories in The Washington Post and The New York Times have provided anecdotal evidence that welfare recipients are taking jobs from the working poor.*

Answer: Let me note that the welfare reform law that I signed prohibits worker displacement. Welfare reform programs cannot place welfare recipients in job openings created by company firings or layoffs (section 407(f) of the law). Welfare recipients can, however, be placed in jobs that are vacant for reasons other than firings or layoffs.

I believe that the growing economy will create enough jobs to meet my goal of putting one million welfare recipients to work by the year 2000 without displacing other workers. Remember, we've created 12 million new jobs over the last four years. Unemployment has dropped to 5.2 percent, as was announced on Friday.

I recognize that we should give some extra help to communities where it will be harder for welfare recipients to find jobs. That's why I've proposed in my budget a \$3 billion Welfare-to-Work Jobs Challenge fund which states and cities could use to create job opportunities for welfare recipients.

MINIMUM WAGE

Question: **Some say displacement will happen because welfare recipients are allowed to work without being covered by the minimum wage law and the various protections of the Fair Labor Standards Act. Is this true?**

Answer: Agency lawyers are in the course of examining to what extent the Fair Labor Standards Act applies to welfare to work programs. We expect to have an answer shortly, but do not have one at this time.

PRIVATIZING WELFARE

Question: Are you planning to let Texas privatize welfare? I understand you met with labor

Answer: No decision has been made on the Texas request. It is a complicated issue involving both Medicaid and Food Stamps. The agencies are working as hard as they can to examine all of the relevant issues, and we hope to get the State of Texas their answer soon. I can tell you this: my Administration has fought hard to preserve federal guarantees for both Food Stamps and Medicaid and we don't intend to undermine them now. Regarding the meeting I had with labor leaders on March 28th -- it was a broad discussion of budget and welfare to work issues.

Question: Governor Bush is, in effect, calling Secretary Shalala a liar for not making a decision by April 1, as she had promised.

Answer: He knows better than that. The Administration gets a lot of waiver requests from the states. The agencies conduct a routine review process for each of them. Because this is a complicated issue, the review has been lengthy, probably a little more than we expected. But the agencies are working to provide Texas with a response as soon as possible.

PRIVATE SECTOR JOBS

Question: What are you doing to encourage private companies to hire welfare recipients without displacing current workers?

Answer: The \$3 billion Welfare to Work Jobs Challenge I propose in my budget could be used by cities and states to provide subsidies and other incentives for private businesses to add welfare recipients to their workforce. Complementing this initiative is the enhanced and expanded Work Opportunity Tax Credit that I also propose in my budget. First, the WOTC would be enhanced for long-term welfare recipients. This credit would allow employers who hire welfare recipients to claim a 50 percent tax credit on the first \$10,000 of wages paid to that person for two years. Wages may include the cost of training, health insurance, and day care. **Second, the WOTC would be expanded to make a new population -- 18-50 year olds made ineligible for food stamps under the new welfare law -- eligible for the existing base credit.**

In addition to my legislative proposals, I am reaching out to employers large and small to challenge them to hire welfare recipients. I met in the White House with a group of 14 CEOs interested in helping people move from welfare to work. Then, during the State of the Union Address, I announced commitments from five of these companies -- Sprint, Monsanto, UPS, Burger King, and United Airlines. I hope to be announcing commitments from even more companies soon.

FEDERAL GOVERNMENT HIRING

Question: What has the White House done to encourage federal government hiring of welfare recipients?

Answer: Most of the jobs required to make welfare reform succeed will come from the private sector. But I believe that the Federal Government, as the Nation's largest employer, should contribute to this critical national effort. That's why on March 8th, I directed the head of each federal agency and department to use all available hiring authorities to hire people off the welfare rolls into available job positions in the Government. To underscore the importance of this issue to the White House, I appointed Vice President Gore to oversee this effort.

I have called a Cabinet meeting for this Thursday, April 10th, to meet face to face with the members of my Cabinet to discuss how each agency intends to recruit, hire, and retain qualified welfare recipients.

Question: Will the White House hire any welfare recipients?

Answer: I expect the Executive Office of the President, like any other agency, to produce a detailed plan to assist in this effort and I would fully expect them to plan to hire welfare recipients.

NEEDLE EXCHANGE

Question: Will you work to lift the ban on federal funding of needle exchange programs?

Answer: Not at this time. As you know, the congressional ban remains in effect until the Secretary of HHS can certify that needle programs reduce the transmission of AIDS and that such programs do not encourage illicit drug use. The scientific studies done so far provide strong evidence that needle exchange programs reduce HIV transmission, but they don't offer sufficient evidence of the effect of these programs on illicit drug use. We strongly support continued study of this question so we can know whether needle exchange programs in fact encourage drug use. In the meantime, local communities remain free, as they should, to establish and support needle exchange programs if they choose to do so.

PARTIAL-BIRTH ABORTION

Question: Didn't you base your veto of the partial-birth abortion bill on false information -- i.e., that this procedure is performed only on a few hundred women in desperate circumstances?

Answer: No. I based my veto on the fact that there are a small group of women in desperate circumstances who need this procedure in order to save their lives or prevent serious injury to their health. I've never said that these are the only circumstances in which the procedure is used. Indeed, I've acknowledged that there are cases where the procedure is not necessary for life or serious health reasons -- and I've made very clear that I would sign legislation banning the procedure in those cases.

Question: If Congress were to add a health exception to the partial birth bill you vetoed last year, that bill would prohibit all partial birth abortions -- including pre-viability partial birth abortions -- that aren't done for life or serious health reasons. Are you really saying that you would sign a bill of that kind -- a bill that prohibited a particular procedure (except if done for life or serious health reasons) in the pre-viability period?

Answer: I have made very clear my condition for signing the partial birth bill. I told Congress that I would sign the bill if it protected women who needed the procedure to save their lives or avert serious harm to their health. I implored Congress to send me such a bill. I continue to take that position. If Congress adds a provision to the bill that protects women who need the procedure for life or serious health reasons, I will sign that bill.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1997 19:00:46.00

SUBJECT: Commencement update

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/08/97 07:04
PM -----

Michael Cohen

04/08/97 12:18:49 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: Elena Kagan/OPD/EOP

Subject: Commencement update

I want to bring you up to speed on the commencement developments before today's 4:30 meeting.

Don has been pushing for each speech to be focused on education. Michael Waldman, among others, has been arguing for a different theme for each speech. Today's meeting will focus largely on sorting out the message issues.

There is general agreement to recommend three places to POTUS:

1. an Historically Black College or University -- probably Morgan State in Baltimore. Don has been pushing for this to be one venue for an education speech, playing off of Morgan state's role in educating teachers. An alternative under consideration is to focus the speech on health issues, such as kidney disease, where there is a particular interest among African Americans, assuming we've got a package of things to announce then.
2. Sidwell Friends, where the message would be on service, and on the obligation of the most fortunate among us to give something back to the community and the nation. There is an ongoing discussion about whether to consider and to portray the Sidwell graduation as part of the President's commencement package, or to simply acknowledge it as something special the President is doing for his daughter.
3. West Point, where the message will be on foreign policy.
4. A public high school, or a large public college or university. I have been arguing for a public high school, especially a school that has been or is being turned around from failure to success. The message would be on the importance of public education, on the standards-related agenda, and the fact that we can make public education work. This seems to be carrying the day; Don now favors this over a charter school. We are looking at DeWitt Clinton high school in the Bronx as the leading contender, though I've also been asked to find a couple of possibilities in Chicago. Craig Smith reminded us that we owe Chicago a visit, since we went to the suburbs last winter. (If Chicago doesn't work out for now,

they should have some charter schools opening the the Fall; maybe we could go back for that).

There doesn't seem to be anyone yet arguing forcefully for a public college or university yet, and, while I have gotten a new list of possibilities from ED, have not done anything to push this myself.

A final note -- I may be a bit late for the 4:30 commencement meeting this afternoon. since I will be in the middle of an ED briefing on the Voc. Ed. bill, in preparation for the Erskine memo.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1997 18:51:14.00

SUBJECT: crime meeting

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/08/97 06:55
 PM -----

From: Leanne A. Shimabukuro on 04/08/97 02:45:38 PM
 Record Type: Record

To: See the distribution list at the bottom of this message
 cc:
 Subject: crime meeting

MEMORANDUM TO DISTRIBUTION LIST

FROM: Bruce Reed
 Assistant to the President for Domestic Policy

SUBJECT: APRIL 9 CRIME MEETING

On Wednesday, April 9 at 10:00 a.m. in Room 211 of the Old
 Executive Office Building, we will hold the weekly crime meeting.

Thank you.

Message Sent

To: _____
 Bruce N. Reed/OPD/EOP
 Rahm I. Emanuel/WHO/EOP
 Dennis K. Burke/OPD/EOP
 Tracey E. Thornton/WHO/EOP
 Leanne A. Shimabukuro/OPD/EOP
 Elena Kagan/OPD/EOP
 Christa Robinson/OPD/EOP
 Cathy R. Mays/OPD/EOP
 Cheryl D. Mills/WHO/EOP
 Alison E. Bracewell/WHO/EOP
 James Boden/OMB/EOP
 Teresa L. Collins/OMB/EOP
 David J. Haun/OMB/EOP
 Marcia L. Hale/WHO/EOP
 Peter G. Jacoby/WHO/EOP
 Michelle Crisci/WHO/EOP
 Anne E. McGuire/WHO/EOP
 Karen A. Popp/WHO/EOP
 Odetta S. Walker/WHO/EOP
 BROWN_J @ A1 @ CD @ LNGTWY
 ATKIN_T @ A1 @ CD @ LNGTWY
 VERVILLE_E @ A1 @ CD @ LNGTWY
 Elizabeth A. Hyman/OVP @ OVP
 NELSON_J @ A1 @ CD @ LNGTWY

Stefanie Sanford/WHO/EOP
Suzanne Dale/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1997 19:02:44.00

SUBJECT: rollout for Attorney General's interim verification guidance

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/08/97 07:06 PM -----

Stephen C. Warnath
04/08/97 10:22:55 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Diana Fortuna/OPD/EOP, Cynthia A. Rice/OPD/EOP, Kenneth S. Apfel/OMB/EOP, Elena Kagan/OPD/EOP
Subject: rollout for Attorney General's interim verification guidance

It appears that we are actually close to being able to release the A.G.'s interim verification guidance for benefits eligibility. So there will be a meeting tomorrow, April 9th, at 3pm in rm 211 OEOB to discuss plans for the interagency rollout. DOJ has requested that the various WH offices bring to the meeting any lists of individuals and organizations that should be invited to the briefings.

I hope that you can make it. Thanks.

Message Sent

To: _____
Emily Bromberg/WHO/EOP
Janet Murguia/WHO/EOP
Tracey E. Thornton/WHO/EOP
Suzanna A. Valdez/WHO/EOP
John P. Hart/WHO/EOP
Dawn M. Chirwa/WHO/EOP
Jack A. Smalligan/OMB/EOP
Debra J. Bond/OMB/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1997 18:50:35.00

SUBJECT: Day change for Short Term

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/08/97 06:54
PM -----

Mary Morrison

04/08/97 03:45:00 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Day change for Short Term

Message Creation Date was at 8-APR-1997 15:45:00

This week we will have our Short Term Scheduling Meeting on Thursday at
2pm in
the Roosevelt Room. Thank you for attending. Any questions please call
Mary
at x62823.

Message Sent

To:

Beth A. Viola
Todd Stern
Anne M. Edwards
Shelley N. Fidler
Lori Anderson
Elizabeth M. Toohey
Angus S. King
Michelle Crisci
Julie E. Mason
Elizabeth Myers
Carolyn E. Cleveland
John O. Sutton
Evan Ryan
Lisa Tamagni
Tracy B. LaBrecque
Rebecca A. Cameron
Nancy V. Hernreich
Barry J. Toiv
Jason S. Goldberg
Gene B. Sperling
Ronda H. Jackson
Karin Kullman
Cathy R. Mays
Paul J. Weinstein Jr.
Elena Kagan
tnewell @ ostp.eop.gov@INET@LNGTWY

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1997 19:03:36.00

SUBJECT: late-term

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

READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/08/97 07:07
PM -----

Tracey E. Thornton
04/08/97 09:50:40 AM
Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: late-term

The meeting with daschle's folks is scheduled for 10am tomorrow (wed) morning to review their language. I hope you can come. if not, i'll get the language around after the meeting. txs

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 8-APR-1997 18:50:11.00

SUBJECT: Time Change

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/08/97 06:54
PM -----

Mary Morrison
04/08/97 04:03:00 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Time Change

Message Creation Date was at 8-APR-1997 16:03:00

Due to the increasing number of people that will be attending the Cabinet Meeting on Thursday. We will have our Short Term Scheduling Meeting at 3:00pm on Thursday in the Roosevelt Room.

Thanks

Message Sent

- To: _____
- Beth A. Viola
 - Todd Stern
 - Anne M. Edwards
 - Shelley N. Fidler
 - Lori Anderson
 - Elizabeth M. Toohey
 - Angus S. King
 - Michelle Crisci
 - Julie E. Mason
 - Elizabeth Myers
 - Carolyn E. Cleveland
 - John O. Sutton
 - Evan Ryan
 - Lisa Tamagni
 - Tracy B. LaBrecque
 - Rebecca A. Cameron
 - Nancy V. Hernreich
 - Barry J. Toiv
 - Jason S. Goldberg
 - Gene B. Sperling
 - Ronda H. Jackson
 - Karin Kullman
 - Cathy R. Mays
 - Paul J. Weinstein Jr.
 - Elena Kagan

tnewell @ ostp.eop.gov@INET@LNGTWY

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-APR-1997 12:23:45.00

SUBJECT: Re: OSTP Report

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

CC: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

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

CC: Pauline M. Abernathy (CN=Pauline M. Abernathy/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Would you let them know that DPC doesn't have any substantive comments, but that the question of when the report will be released (i.e., whether it should be released at the brain conf on the 17th) is still an open one? thanks.

----- Forwarded by Elena Kagan/OPD/EOP on 04/09/97 12:26 PM -----

Pauline M. Abernathy
04/08/97 08:54:10 PM
Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: Re: OSTP Report

----- Forwarded by Pauline M. Abernathy/OPD/EOP on 04/08/97 08:59 PM -----

Elizabeth Drye
04/08/97 01:26:17 PM
Record Type: Record

To: Laura Emmett/WHO/EOP
cc: Pauline M. Abernathy/OPD/EOP, Nicole R. Rabner/WHO/EOP, Jennifer L. Klein/OPD/EOP
Subject: Re: OSTP Report

OSTP is planning to release the kids research report April 17 at an "event," per a voice mail they left for me so is urgently trying to get DPC clearance. Note that the report gives DPC a specific role in research planning -- other than noting that, I haven't reviewed it either.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-APR-1997 12:24:14.00

SUBJECT: 11:00 am Meeting Thursday - Reconciliation

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

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/09/97 12:28
PM -----

June G. Turner
04/09/97 12:21:51 PM

Record Type: Record

To: See the distribution list at the bottom of this message
CC:
Subject: 11:00 am Meeting Thursday - Reconciliation

Thursday's Meeting has been cancelled (11:00 in 476 OEOB)

Message Sent

- To: _____
- Betty W. Currie/WHO/EOP
 - Donald A. Baer/WHO/EOP
 - Kevin S. Moran/WHO/EOP
 - Dawn M. Chirwa/WHO/EOP
 - Maria Echaveste/WHO/EOP
 - Marjorie Tarmey/WHO/EOP
 - Rahm I. Emanuel/WHO/EOP
 - Michelle Crisci/WHO/EOP
 - Richard L. Hayes/WHO/EOP
 - Elena Kagan/OPD/EOP
 - Laura Emmett/WHO/EOP
 - Ann F. Lewis/WHO/EOP
 - Cheryl D. Mills/WHO/EOP
 - Bob J. Nash/WHO/EOP
 - Laura K. Demeo/WHO/EOP
 - Janet Murguia/WHO/EOP
 - John Podesta/WHO/EOP
 - Sara M. Latham/WHO/EOP
 - Bruce N. Reed/OPD/EOP
 - Cathy R. Mays/OPD/EOP
 - Richard Socarides/WHO/EOP
 - Tracey E. Thornton/WHO/EOP
 - MOORE_M @ A1 @ CD @ LNGTWY
 - Robert N. Weiner/WHO/EOP
 - Robert B. Johnson/WHO/EOP
 - Andrew J. Mayock/WHO/EOP
 - Ruby G. Moy/WHO/EOP

John L. Hilley/WHO/EOP
Doris O. Matsui/WHO/EOP
Elisa Millsap/WHO/EOP
Douglas B. Sosnik/WHO/EOP
John O. Sutton/WHO/EOP
Carolyn Curiel/WHO/EOP
James T. Edmonds/WHO/EOP
Patricia E. Romani/OMB/EOP
Ann F. Walker/WHO/EOP
Michael Waldman/WHO/EOP
Franklin D. Raines/OMB/EOP
Rebecca R. Culberson/OMB/EOP
Ora Theard/WHO/EOP
Katharine Button/WHO/EOP
Beverly J. Barnes/WHO/EOP
Susan M. Liss/OVP @ OVP
Elizabeth R. Newman/WHO/EOP
Ellen M. Lovell/WHO/EOP
Virginia N. Rustique/WHO/EOP
Elizabeth M. Toohy/WHO/EOP
Brian A. Reich/WHO/EOP
Floydetta McAfee/WHO/EOP
Alison E. Bracewell/WHO/EOP
Mary Morrison/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-APR-1997 12:15:56.00

SUBJECT: Re: THE conference

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

TEXT:

Okey dokey. But unlike our welfare meetings, yhese won't be of much interest. (Trust me...)

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME: 9-APR-1997 16:03:13.00

SUBJECT: Re: 4/24 Government Reform Subcommittee Hrg

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

TEXT:

King it is. thanks.

----- Forwarded by Elena Kagan/OPD/EOP on 04/09/97 04:07
PM -----

Bruce N. Reed
04/09/97 03:20:42 PM
Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: Re: 4/24 Government Reform Subcommittee Hrg

yes, king

April 10, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Gene Sperling
Katie McGinty

SUBJECT: Executive Order to Protect Children
From Environmental Health Risks and Safety Risks

You are tentatively scheduled to announce on April 16 an Executive Order directing agencies to enhance their efforts to protect children from environmental health and safety risks. Announcement of the Executive Order would immediately precede the White House Conference on Early Childhood Learning and Development.

There is broad consensus among agencies on the policy in the proposed Executive Order, but three agencies -- Treasury, Commerce, and HHS -- have objected to the explicit requirement in the order that agencies identify risks to children in the analysis supporting their major regulations. DPC and CEQ strongly support issuing the Executive Order in its current form. In addition, all White House offices working on the Conference on Early Childhood Learning and Development would like you to issue the order, as part of a set of executive actions showing your commitment to protecting children. OMB's OIRA (Sally Katzen) weakly endorses the Order, noting that it will support the Administration's efforts to protect children, but that it also will impose additional burdens on agencies and result in more stringent regulatory standards over time. NEC [].

BACKGROUND

There is a growing body of evidence, highlighted by a 1993 study by the National Academy of Sciences (NAS) on the exposure of children to pesticides, demonstrating that children are at disproportionate risk from environmental health risks and safety risks. The report also concludes that federal regulatory standards often fail to consider these risks fully.

These disproportionate risks stem from several fundamental differences between children and adults, in terms of physiology and activity. Children are still developing, and thus are neurologically and immunologically more susceptible to certain risks. Children eat, drink and breathe more in proportion to their weight, exposing them to greater amounts of contamination and pollution for their weight. Children are less able to protect themselves by use of judgment and skill (e.g. navigating traffic, reading and following warnings). Concurrent with their recognition of these factors, scientists have

documented an alarming increase in the incidence of conditions in children that may be linked to environmental health risks and safety risks. These include childhood cancer, leukemia, and asthma, as well as childhood deaths and injuries from accidents.

In many areas, your Administration has taken bold action to respond to the challenge posed by this new science. Your initiatives resulted in explicit protection for children in the Food Quality Protection Act and Safe Drinking Water Act; development of new standards for passive restraints in cars that are more protective of children; and administrative action to protect children from tobacco, lead, and other hazards. Each of these initiatives has met with strong popular and congressional support.

Despite these successes, there is no overall, coordinated approach to children's issues that highlights their priority, coordinates federal research, and ensures that federal regulations consistently account for disproportionate risks to children. The proposed Executive Order, which has been the subject of extensive discussion with affected agencies, would fill this gap with provisions to address each of these areas.¹

Policy: The proposed Executive Order requires all agencies to make the protection of children a high priority in implementing their statutory responsibilities and fulfilling their overall missions.

Research Coordination: The proposed Executive Order would create an interagency Task Force to establish a coordinated research agenda, to identify research and other initiatives the Administration will take to advance the protection of children's environmental health and safety, and to communicate with the public regarding these efforts.

Federal Regulatory Analysis: Most notably, the proposed Executive Order would, for the first time, require agencies to analyze and explain the effects of their rules on children. The primary goal of this provision is to link policy decisions to the emerging science regarding children's environmental health and safety. This provision also ensures accountability to the public and helps agencies to identify their research needs. Not surprisingly, given that it imposes regulatory requirements, this is the part of the Order to which several agencies have objected.

ISSUE FOR DECISION

¹ This Executive Order would supercede President Reagan's Executive Order on Families, replacing it with a policy that better reflects the priorities of your Administration.

Whether the Executive Order should include provisions requiring agencies to explicitly consider risks to children when deciding on major regulations.

Section 5 of the Executive Order would impose three requirements on agencies promulgating regulations, if the regulation is economically significant and the agency has reason to believe that it may have a disproportionate impact on children. Agencies would have to: 1) evaluate the effects of the planned regulation on children; 2) similarly assess the effects of reasonably feasible alternatives to the planned regulation; and 3) explain why the planned regulatory action is preferable to these other options.

Arguments For Inclusion of Section 5

- Section 5 is the key policy component of the proposed Executive Order, and would be an enduring part of your legacy in protecting children's health. It makes concrete and gives effect to the overall policy of the Order to identify and assess risks to children.
- Both the National Academy of Sciences and the Administration's own report, *Investing in our Children*, have highlighted the need to link regulatory decisions to available data and, where there is a lack of data, to a research agenda. Section 5 is the provision of the order that best ensures that agencies will make this link.
- Section 5 provides the structure and enforcement mechanism (through OMB oversight) necessary to ensure that agencies adhere to the general policy of the Executive Order. Without Section 5, the Executive Order's terms are largely hortatory.
- There is substantial bipartisan support for requiring special regulatory analysis with respect to risks to children. The provisions in the proposed Executive Order closely track, and broaden application of, provisions in the unanimously-enacted Food Quality Protection Act and the Safe Drinking Water Act requiring heightened analysis to protect children. This provision will build on the public support for giving special consideration to children's health in developing standards.
- Health experts and outside groups, aware of the prior reports and legislation, may deride the Executive Order as merely symbolic if Section 5 is omitted.
- Your previous Executive Order on regulatory review already requires similar analysis addressing cost, small business impact, and other issues. Failure to include Section 5 may generate criticism that we effectively are subordinating children's health to these other concerns.

Arguments Against Inclusion of Section 5

- Section 5 imposes a novel requirement on major rulemakings, with unpredictable consequences. The task force created by the proposed Executive Order should consider over time and with the benefits of experience the appropriateness of regulatory standards.
- Requiring agencies to acknowledge that a proposed regulation is not the most child-protective is likely to have a distorting effect on regulatory decisions. The result will be greater pressure on agencies to “ratchet up” their regulatory standards, with a corresponding (and potentially unjustified) increase in the costs and burden of regulation. This could undermine the Administration’s program of regulatory reform.
- There is only limited experience with analyzing regulations in terms of risks to children, and this approach is not always well-received. Critics may cite costly Superfund cleanups based on the potential exposure of children to toxic waste sites, and analytical flaws in the public health data supporting EPA’s recent Clean Air Act proposals on ozone and particulate matter.
- In cases where the Section 5 analysis does not prompt agencies to strengthen the relevant regulatory standards, it will provide a basis on which to criticize the agency’s decision. (Some agencies characterize this as a “kick-me” requirement.) Requiring this analysis also may strengthen legal challenges to agency regulations, as requiring any regulatory analysis does.
- The regulatory resources of many agencies are already stretched thin, and blanket application of a new regulatory requirement could divert already tight resources and delay ongoing programs.
- Regulatory agencies have made important strides in this area and should have the opportunity to demonstrate this progress to the interagency task force before any regulatory requirements go into effect.

POSSIBLE ALTERNATIVE

The only compromise available is to retain Section 5, but include only the general requirement that agencies analyze the effects of a proposed regulation on children. This proposal would delete the explicit requirements that agencies undertake a comparative analysis and provide a justification for their decision. This option would diminish both the advantages and disadvantages of proceeding with Section 5 as currently drafted.

DECISION

- _____ Approve the Executive Order as drafted
- _____ Modify Section 5 of the Executive Order
- _____ Omit Section 5 of the Executive Order

ATTACHMENT

Proposed Executive Order

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-APR-1997 09:34:20.00

SUBJECT: Re: Alicia Munnell's office just called...

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

READ:UNKNOWN

TEXT:

get from the staff secretary a copy of the memo to the president on an executive order on environmental risks to children. (the copy you had yesterday is not the most recent). that's what munnell wants.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-APR-1997 09:38:42.00

SUBJECT: products memo

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

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

TEXT:

Do you have any comments on the products memo? It seems to me we should try to get it to the staff secretary soon. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:11-APR-1997 16:20:18.00

SUBJECT: COURT DECISION ON TOBACCO RULE WON'T BE BEFORE APRIL 21

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

TEXT:

You're right. You were a few hours ahead of me.

----- Forwarded by Elena Kagan/OPD/EOP on 04/11/97 04:22
PM -----

Elizabeth Drye
04/11/97 01:16:46 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: COURT DECISION ON TOBACCO RULE WON'T BE BEFORE APRIL 21

per the Judge Osteen's recording.

Message Sent

- To: _____
- Bruce R. Lindsey/WHO/EOP
 - Bruce N. Reed/OPD/EOP
 - Elena Kagan/OPD/EOP
 - Rahm I. Emanuel/WHO/EOP
 - Jim Kohlenberger/OVP @ OVP
 - Toby Donenfeld/OVP @ OVP
 - Barbara D. Woolley/WHO/EOP
 - Michael Waldman/WHO/EOP
 - Ann F. Lewis/WHO/EOP
 - Michelle Crisci/WHO/EOP
 - Jennifer D. Dudley/WHO/EOP

April 11, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Melanne Verveer
Elena Kagan

SUBJECT: White House Conference on Early Childhood Development and Learning

As you know, on Thursday, April 17, you and the First Lady will host the *White House Conference on Early Childhood Development and Learning: What New Research on the Brain Tells Us About Our Youngest Children*. This memorandum provides an overview of the Conference, as well as summarizing recommended policy announcements.

Conference Overview

The Conference will spotlight new scientific findings about how children develop, and explore how we can make the most of this information to give children what they need to thrive. The Conference will provide an opportunity to showcase what your Administration already has accomplished in this area, such as increasing investments in scientific research and creating or improving programs like Early Head Start and WIC.

The Conference will consist of two roundtable discussions, one in the morning and one in the afternoon, with a luncheon in the State Dining Room (optional for you) in between the two.

Morning session: You and the First Lady will make remarks to open the Conference. Yours will discuss the importance of the issue, note past Administration accomplishments, and discuss proposals for improving child care and children's health (detailed below).

A panel of experts will then present an overview of the emerging knowledge, gained from neuroscience and behavioral science, on early childhood development. Dr. David Hamburg, President of the Carnegie Corporation, will moderate brief presentations by:

- Dr. Donald Cohen, Director of the Yale Child Study Center, who will discuss what the behavior of children shows about their cognitive, emotional, and social development;
- Dr. Carla Shatz, a neuroscientist at the University of California, Berkeley, who will explain how children's brains develop in the earliest years of life; and
- Dr. Patricia Kuhl, Chair of the Department of Speech and Hearing Sciences at the

University of Washington, who will discuss how children learn language.

Following these presentations, three more experts will join the panel to discuss what the scientific research suggests about protecting children's health and providing good child care:

- Dr. Ezra Davidson, Drew University of Medicine, who can address the importance of prenatal and perinatal services;
- Dr. T. Berry Brazelton, Harvard University, who can discuss the pediatrician's role in early childhood development; and
- Dr. Deborah Phillips, Institute of Medicine, who can address how child care can affect early development.

These experts also will respond to a series of questions posed by the First Lady and Mrs. Gore. Some of these questions will come from a poll conducted by Hart Research for Zero to Three (an early development advocacy group) that tried to discover what parents most want to know about early childhood development. Other questions will tackle the tough issues raised by the new research -- for example, "does this research mean that women should not work?" or "does this research suggest that adopting an older child is a bad idea?"

Afternoon Session: The purpose of the afternoon session is to highlight model efforts that communities are undertaking to support parents and enhance early childhood development. This panel will be action-oriented and will give you an opportunity to highlight Administration accomplishments and new initiatives. Participants in the discussion will include:

- Dr. Gloria Rodriguez, Avance Family Support Program, San Antonio, TX.
Avance is a widely acclaimed family support and education program serving predominantly Hispanic communities.
- Harriet Meyer, Ounce of Prevention, Chicago, IL.
Ounce of Prevention is a statewide program in Illinois that develops innovative early childhood programs and runs model Early Head Start and child care programs.
- Melvin Wearing, Chief of Police, New Haven, CT.
Wearing will discuss a pioneering initiative that trains community police officers to use child development principles in their work.
- Arnold Langbo, The Kellogg Company CEO, Battle Creek, MI.
Kellogg launched a community-wide effort last fall to provide practical early brain development information to every Battle Creek parent and caregiver.

- Rob Reiner, CastleRock Entertainment, Los Angeles, CA.
Reiner will discuss the "I Am Your Child" campaign launched this month and the media's role in making early childhood development information available.
- **Governor Bob Miller, Nevada, Co-chair of the NGA Children's Task Force.**
Miller will discuss what States are doing to enhance early childhood development.

Satellite Sites: The morning session of the Conference will be transmitted to 53 satellite sites -- mostly universities and hospitals -- in about 30 states and all 10 federal regions. (Fifty-three is only the current number; there will probably be more.) In almost all of these sites, local organizers will put on programs of their own to follow the morning session and will report back to you on their proceedings and recommendations. Cabinet Affairs is encouraging subcabinet officials to attend and speak at these satellite conferences. In addition, regional administrators from HHS, USDA, EPA, Education, and GSA are taking an active role in the satellite sessions.

Report of Proceedings: We are currently making arrangements for an official conference report. This report, in addition to providing a summary of the conference proceedings, will serve as a resource guide and learning tool for parents and child care providers. We expect to print 250,000 copies and distribute them through departmental programs, such as Head Start and Even Start, and to those who request information about the Conference.

Pre-Conference Policy Initiatives

We would like to make three announcements prior to the Conference, in order to lay the groundwork for the Conference's discussion of ways to enhance early childhood development.

FMLA Expansion for Federal Employees: In your April 12 radio address, you will introduce the themes of the Conference and then direct heads of executive departments and agencies to expand family and medical leave for federal employees in the ways proposed in your legislation. This action would allow federal employees 24 hours of unpaid leave each year to participate in activities relating to school and child care, children's health care, and (unrelated to the Conference) elderly relatives' health needs. You will stress in your radio address how such family-friendly policies can support parents with young children.

Prescription for Reading: On April 16, the First Lady (and perhaps you, depending on the status of budget negotiations) will announce an initiative to encourage pediatricians to "prescribe" that parents read to their children. As part of this initiative, the American Academy of Pediatrics will announce that prescribing reading to infants and toddlers should be part of standard pediatric care. In addition, several book companies have committed to donating hundreds of thousands of books for distribution to children through community health centers and other medical offices across the nation. This initiative reinforces the Parents as First Teachers portion of the America Reads program.

Executive Order on Environmental Health and Safety Risks: You currently have under consideration a proposed Executive Order that would require agencies to consider and explain the effects of certain major rules on children. This order, if you decide to approve it, would serve as an excellent lead-in to the Conference, and we recommend issuing it on April 16. The order gives meaning and effect to your Administration's commitment to protect children in making regulatory decisions.

Conference Policy Announcements

Your principal opportunity to discuss policy initiatives at the Conference will come during your opening remarks. We recommend that these remarks focus on child care and children's health care and that you make the announcements discussed below. In addition, you will have an opportunity to make some announcements -- for example, on Head Start and community policing -- during the afternoon session of the Conference, when you respond to participants on the panel.

Child care: Child care experts believe the Defense Department's child care system is now the best in the country and possibly the world (in large part because of legislation enacted in the late 1980s). DoD child care is characterized by: high standards, including a high percentage of accredited centers; a strong enforcement system with four unannounced annual inspections and a 1-800 hot line for parents to report concerns; a wage structure that is tied to training and an "up or out" personnel policy requiring completion of training requirements; relatively generous wages and benefits, which reduce staff turnover; a system of linking up individual home care providers; and sufficient funding to make quality child care affordable (though there still are waiting lists).

We recommend you hold up the DoD child care system as a model for the nation and issue an executive memorandum directing the Secretary of Defense to use the Department's resources and expertise to improve child care across the nation. In particular, you would direct that (1) each military child development center "adopt" a civilian child care center and work with it to improve quality; (2) DoD establish regional "Child Care Masters Programs" that civilian child care managers could attend for two weeks to learn best practices; (3) military bases partner with state and county governments to provide on-the-job training in child care to welfare recipients; (4) DoD publicize its model designs for child care facilities and playgrounds; and (5) that DoD issue benchmarks in the areas of standards, enforcement, compensation, and cost against which civilian child care programs could evaluate themselves. Most civilian child care systems will come up short against DoD's benchmarks, particularly in terms of compensation and affordability, but such a comparison might help build public support for greater investment in child care.

You also might want to float some trial balloons on more ambitious -- and costly -- proposals. For example, some have suggested making the Child and Dependent Tax Care

Credit refundable (at a cost of \$2-4 billion), so that families with little or no income can benefit from it. The Blue Dog budget makes the credit refundable, but pays for it by eliminating the tax benefit for families with incomes over \$100,000. Another legislative proposal would provide a tax credit to private companies and institutions to encourage them to build quality child-care centers on-site. Given our budget, you cannot endorse any of these proposals, but you might want to use this opportunity to suggest your openness to further discussion of such legislation.

Children's Health Initiative: We also recommend that you discuss in your opening remarks the importance of insurance coverage for children's health and development, highlighting the Children's Health Initiative in your 1998 budget proposal. Your proposal will extend coverage to up to 5 million uninsured children by the year 2000. You can announce at the Conference that the deans of academic medical centers -- important legitimators within the medical community -- have endorsed your proposal.

We are also planning a follow-up children's health event, where you will release a study showing the links between insurance coverage, health status and development and learning for children from 0 to 18 years old and talk in more detail about your health proposal. Either at the follow-up event or at the Conference itself, you can announce a project by Kaiser Permanente to spend \$100 million over the next 5 years to provide health insurance to uninsured children.

Child Victims of Violence Initiative. You can announce that the Department of Justice will establish, with FY 97 discretionary funding, a Child Victims of Violence Initiative through the Yale, New Haven Child Development-Community Policing Program. This program, which Chief Waring will speak about, trains police officers in child development, so that they can better respond to situations arising in the field. The new initiative will extend the program to other sites and also broaden it to include people other than police officers -- such as prosecutors, probation and parole officers, and mental health professionals -- whose work would benefit from knowing about early child development.

Head Start Funding: You can announce, perhaps in response to Harriet Meyer's comments during the afternoon session, the launch of a new competition for Head Start (including Early Head Start) grants.

America Reads Challenge Early Childhood Kits: You will announce the release of the America Reads Challenge Early Childhood Kits for Families and Caregivers. The kits suggest developmentally appropriate activities for children ages 0 to 5, a calendar listing ideas for daily activities, and a developmental growth chart. Everyone who looks at these kits loves them. The kits will be distributed to early childhood programs across the nation and through requests by callers to the Department of Education's 1-800 phone line.

CEO Summit: You can announce that Kaiser Permanente and other companies will convene a CEO Summit in the fall of 1997 to discuss what businesses can do to enhance early

childhood development -- for their own employees, for the communities in which they have a presence, and even for their customers. In making this announcement, you can challenge the CEOs to address at the Summit certain issues raised at the White House Conference.

April 7, 1997

MEMORANDUM FOR THE PRESIDENT

FROM:

SUBJECT: PRODUCTS LIABILITY LEGISLATION

Congress may turn its attention to product liability legislation within the next month, and we need to know how to respond. As you recall, your veto message last year detailed a number of specific objections to the products bill. (The veto message is attached to this memo.) We presume that if Congress were to give you the same bill again, you would veto it for the same reasons. It is possible, however, that Congress will work to pass a bill that responds in part to your objections. This memo reviews those objections, outlines possible congressional responses to them, and solicits your views on how to proceed. We believe that we should send strong signals now about the kind of bill you would accept and the kind you would veto. We also think that knowing early where you stand on the products bill will enable the Administration to position itself correctly on other emerging law reform issues.

One-way preemption. Prior to enumerating your objections to specific provisions in the bill, your veto message noted the "general problem of displacing State authority in an unbalanced manner." You explained that problem as follows: "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." Under the bill, for example, the "national" 15-year statute of repose would have overridden the laws of states with longer or no statutes of repose, but would have left in place all shorter statutes of repose; similarly, the bill would have limited punitive damages in states that now allow unlimited punitive damages, but would not have imposed punitive damages on states that do not now have them. Your veto statement continued: "I cannot accept, absent compelling reasons, such a one-way street of federalism."

If you hold fast to this position, you probably will have to veto another product liability bill because Congress is unlikely to pass a bill that preempts, in identical fashion, both anti-consumer and pro-consumer state law. For its strongest supporters, this bill is not so much about achieving uniformity as about reducing liability burdens on manufacturers. Because a two-way preemption bill will not clearly achieve this goal, your insistence on a two-way bill will signal strongly that no compromise is possible.

The objection to one-way preemption, however, is strong on the merits. If the problem with the current tort system is a simple lack of uniformity, then two-way preemption is obviously desirable. If the problem is instead that state law often fails to balance appropriately the interests of manufacturers and consumers, then federal law should step in to strike that balance, negating

laws that tilt too much in either direction. One-way preemption is justified only if the goal is to reduce product actions to the greatest extent possible, by enabling states to “pile on” to federal limits.

Because this issue is not amenable to compromise, we need to know soon where you stand on it. We cannot develop a sound strategy before we know whether you could sign a bill containing one-way preemption. If you could sign such a bill, we will de-emphasize the one-way preemption concern and focus on the specific provisions of the statute discussed in the rest of this memo.

Eliminating joint liability for non-economic damages. Your veto message objected strongly to the provision of the bill that wholly eliminated joint liability for non-economic damages such as pain and suffering. You stated generally, in support of joint liability, that “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.” You also expressed doubt about distinguishing economic from non-economic damages, noting that a provision limiting only non-economic damages falls most heavily on non-working women, the elderly, the poor, and children.

This issue, unlike the last, is amenable to compromise. The most likely compromise would be a proposal to eliminate joint liability for non-economic damages when, but only when, the wrongdoer is responsible for less than some specified percentage of the total judgment. Congress could say, for example, that joint liability for non-economic damages will not apply when a defendant’s actions have caused less than 25% of the total harm suffered. Congress might try to compensate for this weakening of the joint liability provision by applying it to both economic and non-economic damages (perhaps using your veto statement’s equation of the two kinds of damages to justify doing so), so that a “minor” wrongdoer would never have to shoulder any costs not his own.

A compromise of this kind has the apparent benefit of relieving small-scale wrongdoers (how small depends on the percentage specified) of the obligation to pay the entirety of potentially mammoth judgments. But by virtue of doing so, this compromise leaves innocent victims to bear the damage themselves when primary wrongdoers have gone bankrupt or are otherwise unable to satisfy judgments. You should consider whether you are comfortable with this kind of compromise and, if so, approximately where (10 percent?; 25 percent?; 50 percent?) you would draw the line.

Capping punitive damages. You also objected in your veto statement to imposing caps on punitive damage awards, on the ground that caps undermine the ability of punitive awards to deter and punish egregious misconduct. You noted the provision of the bill allowing judges to exceed the caps in specified circumstances, but stated that this protection was insufficient “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.”

A compromise on this issue is also possible; indeed, it may be hard to avoid given the Administration's prior statements on the subject. The judicial override provision is essentially the brainchild of the Justice Department, which offered it as a way to alleviate our concerns about caps on punitives. If Congress deletes the legislative history to which you objected -- and especially if it also softens some of the language in the override provision -- you will have little basis for continuing to object to the bill's punitive damage ceilings.

Limiting liability of biomaterials suppliers. You expressed a "concern" in your veto statement about a provision in the bill limiting actions against suppliers of materials used in devices implanted in the body. You generally recognized this provision to be a "laudable attempt to ensure the supply of materials needed to make lifesaving medical devices." But you said that this limitation should apply only to non-negligent suppliers -- and not to suppliers who know or should know that the materials they make, when implanted in the human body, will cause injury.

The current version of the biomaterials provision contains an exception for manufacturers of the silicone gel used in breast implants, but not an exception (of the kind you requested) for all negligent suppliers. Industry engaged in good-faith negotiations with Rep. Howard Berman last year to develop such an exception, but could not find a way to exempt negligent suppliers, while adequately protecting non-negligent suppliers from the high litigation costs associated with disproving negligence. Industry is currently looking into other ways to satisfy our concern -- for example, by limiting liability for biomaterials suppliers only when the FDA has reviewed and approved the implanted device -- and may well succeed in doing so. Indeed, we may wish to send a signal that Congress should remove this provision from the products bill, so that we can sign it separately.

Other provisions. Your veto statement contained a number of objections to more minor provisions of the bill relating to the statute of repose, statutes of limitations, and negligent entrustment actions. With the possible exception of the statute of repose provision, compromise on these issues should be easy; members of Congress already have indicated a willingness to delete the offending language. On the statute of repose, the current bill precludes any suit alleging a defect in a product that is more than 15 years old; we could urge an 18-year statute of repose, as we accepted in the aviation liability bill you signed; alternatively, we could press for some kind of exception from the statute of repose for products, such as farm equipment, intended to have a useful life of longer than 15 years.

Other legislation. In the event you choose to reiterate your concerns and veto another products liability bill, you may have other opportunities to signal support for appropriate reform of the legal system. Senator Breaux plans to offer product liability legislation for people who do not like product liability legislation. This legislation would (1) strengthen pleading requirements for punitive damage claims and impose automatic sanctions for frivolous claims; (2) require states to adopt alternative dispute resolution programs and establish certain "offer of judgment" rules meant to promote settlements; (3) impose a nationwide standard for punitive damage awards (similar to the standard most states use now); (4) provide a uniform two-year statute of

limitations; and (5) commission a Department of Justice study on the product liability system.

In another area of law reform, Sens. Lieberman, Moynihan, and McConnell have proposed a so-called "auto-choice" bill, which would allow a driver to select a no-frills auto policy that would reimburse him for all economic costs, but eliminate his option to sue for non-economic losses such as pain and suffering. Trial lawyers are certain to oppose this proposal, but unlike the products liability bill, it probably would benefit consumers. Some experts say that the savings for low-income drivers could reach 45 percent of their current insurance premiums -- and that the nationwide savings over two years could exceed \$80 billion.