

NLWJC - Kagan

Staff & Office - Box 001- Folder 001

Kagan, Elena - Names

FOIA MARKER

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Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Chief of Staff

Series/Staff Member: Harold Ickes

Subseries:

OA/ID Number: 9166

FolderID:

Folder Title:

Kagan, Elena - Names

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Koger, Elaine
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Kagan, Elena
- memo

THE WHITE HOUSE
WASHINGTON

May 20, 1996

Harold Ickes
Deputy Chief of Staff
The White House

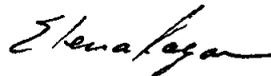
Dear Harold:

Thanks so much for meeting with me on Friday.

I am attaching a copy of my resume, just in case you ever want to remind yourself of my background. One thing I forgot to mention in our discussion is that I worked for then-Chairman Biden during the confirmation hearings of Justice Ginsburg. I believe that Senator Biden has told Jack that he strongly supports my selection.

However this all comes out, I very much appreciate your having taken the time to speak with me. Again, thanks.

Very truly yours,



Elena Kagan

ELENA KAGAN

Home Address:

3133 Connecticut Avenue
Apartment 615
Washington, D.C. 20008
(202) 332-1763

Business Address:

White House Counsel's Office
OEOB 125
Washington, D.C. 20502
(202) 456-7594

EMPLOYMENT:

Associate Counsel to the President
1995-current

Professor, University of Chicago Law School

1994-current

(Assistant Professor, 1991-94)

(On leave, 1995-current)

Courses taught: Constitutional Law (Two courses: First Amendment;
Equal Protection and Due Process); Labor Law; Civil
Procedure

Seminars taught: Rights of Political Participation; Supreme Court
Litigation

Recipient, Graduating Class of 1993 Award for Teaching Excellence

Visiting offers outstanding from Harvard Law School and
Michigan Law School

Special Counsel, Senate Judiciary Committee

June-August 1993

Principal aide for confirmation hearings of Ruth Bader Ginsburg

Litigation Associate, Williams & Connolly

1989-91

Staff Member, Research Unit, Dukakis for President Campaign

July-November 1988

Judicial Clerk, Hon. Thurgood Marshall

Supreme Court of the United States, 1987-88

Judicial Clerk, Hon. Abner J. Mikva

United States Court of Appeals for the D.C. Circuit, 1986-87

EDUCATION:

Harvard Law School

J.D., *magna cum laude*, 1986

Supervising Editor, *Harvard Law Review*

Legal Writing Instructor

Worcester College, Oxford University

M. Phil in Politics, 1983

Princeton University

A.B. in History, *summa cum laude*, 1981

Phi Beta Kappa

Recipient, Daniel M. Sachs Graduating Scholarship for two years
of study at Oxford University

Editorial Chairman, *The Daily Princetonian*

PUBLICATIONS:

As yet untitled contribution to Symposium on Developments in Free Speech Doctrine, *University of California at Davis Law Review* (1996) (forthcoming)

Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Analysis, 63 *University of Chicago Law Review* (1996) (forthcoming).

Confirmation Messes, Old and New (Book Review) 62 *University of Chicago Law Review* 919 (1995).

The Changing Faces of First Amendment Neutrality, 1993 *Supreme Court Review* 29.

Pornography and Hate Speech After *R.A.V. v. St. Paul*, 59 *University of Chicago Law Review* 873 (1993).

A Libel Story (Book Review), 17 *Law & Social Inquiry* 197 (1993).

For Justice Marshall, 71 *Texas Law Review* 1125 (1993).

Note, Certifying Classes and Subclasses in Title VII Suits, 99 *Harvard Law Review* 619 (1986).

PROFESSIONAL ACTIVITIES:

Public Member, Administrative Conference of the United States, 1994-95

Member, Board of Governors, Chicago Council of Lawyers, 1993-95

THE WHITE HOUSE
WASHINGTON, D.C. 20500

DATE: 5-23

TO: Harold

FROM: Staff Secretary

PH 1 - Several very strong
letters from major
constitutional scholars
endorsing Elaine Kazan
for OLC job.
indell

#

Kagan, E. Jenu
- memo

DOJ

THE UNIVERSITY OF CHICAGO
OFFICE OF THE PROVOST
5801 Ellis Avenue
CHICAGO • ILLINOIS 60637-2786

Geoffrey R. Stone, Provost
Harry Kalven, Jr. Distinguished Service Professor of Law

TELEPHONE: (312) 702-8810
FAX: (312) 702-2732

May 20, 1996

President William J. Clinton
The White House
Washington, D.C. 20530

Dear President Clinton:

I recently learned from a colleague that Elena Kagan may be under consideration for appointment as Assistant Attorney General for the Office of Legal Counsel. In the hope that this is true, I am writing to put in my two cents in support of her appointment.

I first met Elena some six years ago when I was Dean of the University of Chicago Law School and she was a young lawyer at Williams & Connolly. I had heard wonderful things about her from a variety of sources, including Ab Mikva, a graduate of Chicago, for whom Elena had clerked. I set about trying to recruit her to join the faculty. In our very first meeting, I saw in Elena all the qualities that Ab and others already had described -- she was a tough, independent, smart lawyer with a clear academic bent. After a year of cultivation, she joined the faculty in the fall of 1991. She has been a great success as a teacher, scholar and colleague.

Elena has focused most of her teaching in the fields of constitutional law, labor law and civil procedure. She is a rigorous, engaging and lively teacher. She demands the best from her students, and they delight in meeting her expectations. She probes, challenges and tests her students' assumptions, and she encourages them to challenge hers. From her very first course, she was regarded by the students as a simply brilliant teacher. Indeed, in only her third year on the faculty she received the Law School's annual award for Excellence in Teaching -- the first and only untenured member of the faculty ever to receive that honor.

President William J. Clinton
May 20, 1996
Page two

Elena has also flourished as a scholar. Most of her research arises out of her interest in freedom of expression. Because this is also my field of study, I am intimately familiar with her work. In her short time on the faculty, she has completed two major articles, as well as several lesser pieces. In her first major work, published in *The Supreme Court Review*, Elena offered a careful, innovative and powerful analysis of the Court's decision in *R.A.V.* (the cross-burning case). In this article, Elena dissected the opinions of the Court and put forth an original and already influential reinterpretation of the central issue presented in the case.

In her second major work, soon to be published in *The University of Chicago Law Review*, Elena sets forth an ambitious and novel understanding of the Court's overall First Amendment jurisprudence. In this article, Elena surveys the entire corpus of First Amendment doctrine and demonstrates that most, if not all, of this doctrine can be explained by the Court's concern with improper governmental motivation -- that is, with its concern that laws regulating speech may consciously or unconsciously be the result of governmental favoritism for or hostility to particular ideas and viewpoints. This is an innovative and provocative thesis which persuasively challenges most of the accepted understandings of existing First Amendment jurisprudence. This article will inform and, indeed, shape academic and legal discourse about freedom of speech for years to come. On the basis of these articles, Elena was promoted last year to the rank of full Professor, with tenure.

It is important to understand that Elena is not one of those all-too-common legal scholars whose primary interest is in abstract theory, divorced from legal doctrine. To the contrary, Elena is a lawyer's scholar. She takes courts, precedents and doctrine seriously. She believes that law matters. She writes in the best tradition of Paul Freund, Harry Kalven and Thomas Emerson. I am confident that, when she returns to the Law School and again turns her energy and curiosity to scholarly research, she will emerge as one of the leading constitutional voices of her generation.

Finally, I should note that Elena is a valued colleague. In only a few short years she has come to be regarded as a central figure in the Law School's decision making structure. As Dean, I sought her advice regularly on a broad range of issues, including faculty appointments, student concerns and institutional policies. She is strikingly forthright, honest and direct. She has wisdom beyond her years, and always offers thoughtful and sensible advice. She listens. She is a person of integrity, independence and commitment to principle. I trust her completely, and I know that every one of my colleagues

President William J. Clinton
May 20, 1996
Page three

-- regardless of seniority or ideology -- shares that trust. It is thus no surprise that, when we speculate about the future, Elena is invariably mentioned as a possible future Dean of the Law School.

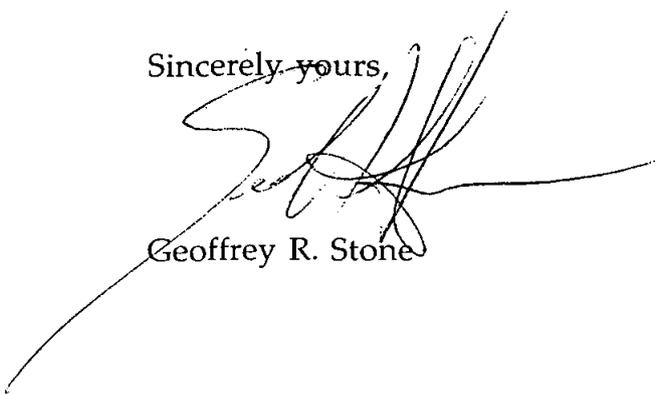
Last year, Ab Mikva -- borrowing back what he first "gave" us -- persuaded Elena to take a leave of absence from the faculty to join him in the office of Counsel to the President. I trust that Elena has performed well in that role, and that her colleagues in that office, as well as others who have worked with her in the past year, will confirm all I have said above.

Although Elena may be on the young side for the position under consideration, she is a truly remarkable person. She is a serious individual who cares deeply about the law, and she has the intellectual and personal skills to fulfill her responsibilities to the very highest degree. Although I would hate to see her remain away from the Law School any longer (I miss her), I am compelled in good conscience to recommend her enthusiastically and without qualification for the position of Assistant Attorney General for the Office of Legal Counsel. She would be a treasure.

If I can be of any further assistance in this matter, please feel free to call or write me at any time.

With warm best wishes.

Sincerely yours,



Geoffrey R. Stone

GRS:cm

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL
1111 EAST 60TH STREET
CHICAGO • ILLINOIS 60637-2786

CASS R. SUNSTEIN
KARL N. LLEWELLYN DISTINGUISHED SERVICE PROFESSOR OF JURISPRUDENCE
CO-DIRECTOR, CENTER ON CONSTITUTIONALISM
IN EASTERN EUROPE

TELEPHONE: 312.702.9498
FAX: 312.702.0730

electronic mail: cass_sunstein@law.uchicago.edu

May 20, 1996

President Bill Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

I have heard that Elena Kagan, a professor at this law school now on leave at the White House, is a candidate for head of the Office of Legal Counsel. I write because I know Elena well and because I think she would be a wonderful choice.

Having worked at OLC in the early 1980s, I have a sense of the Office's functions and needs, and I think that Elena is unusually well-suited to the job. As a lawyer, she is both brilliant and entirely level-headed -- in academia at least, a fairly unusual combination of skills. When she approaches legal issues, she shows a lot of creativity and imagination, but she's also got outstanding judgment, real maturity, and a fine sense of proportion. It's perhaps unnecessary to say that despite her relative youth, she has a wide understanding of many areas of the law. Her work on the first amendment is a nice example; it takes a big step back from the law, organizes it wonderfully, and makes sense of a range of areas not normally grouped together. In fact she has a terrific head start on the questions with which OLC deals, and she's an amazingly fast learner.

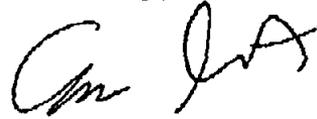
Elena also deals wonderfully with people. She's one of the fairest and most decent people I know, and she is exceptionally well-liked and admired by a wide range of people at the law school -- moderates, conservatives, liberals, and everyone else. As a lawyer she's not at all "political," but she is very well-attuned to people and audiences, and she has a terrific sense what to say and when to say it. In fact she's established herself very quickly as the very best teacher at the law

Page Two

school (I say this with some chagrin). I've also seen her in a range of administrative capacities, and she's an excellent leader. In fact she is widely regarded as a strong candidate to become the next Dean of this law school. From what I've seen, I imagine that she would deal very well with the Congress and with other potentially adversarial bodies. It helps that she has a terrific sense of humor and is extremely reluctant to treat other people as adversaries.

I'm sure that there are a number of excellent choices to head OLC, but as someone who knows Elena and the Office well, I hope you won't mind if I suggest that this would be a terrific match. Very best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "Cass R. Sunstein". The signature is fluid and cursive, with the first name "Cass" and last name "Sunstein" clearly distinguishable.

Cass R. Sunstein

HARVARD UNIVERSITY
LAW SCHOOL

LAURENCE H. TRIBE
*Ralph S. Tyler, Jr. Professor
of Constitutional Law*



HAUSER HALL 420
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-4621

May 19, 1996

President William J. Clinton
The White House
Washington, D.C.

Dear Mr. President:

I've heard reports that Walter Dellinger's former position — head of the Office of Legal Counsel at the Department of Justice — might go to any of several people, and I hope you won't mind my imposing on you with my own views on the matter.

If the rumors I've heard are correct, Elena Kagan is not necessarily at the top of the current list to fill the position. Elena is a professor of constitutional law at the University of Chicago Law School who has taken a leave of absence to serve as an associate White House counsel. I had spoken to the Attorney General at an earlier stage of the process to tell her what I thought of Elena, and I hope the rumors I now hear are wrong. I know quite a lot about all of the people being discussed, and I think Elena is the one who clearly stands out as being genuinely capable of filling Walter Dellinger's shoes.

That's a hard task, because obviously Walter is an extraordinary person and has done a splendid job as head of the Office of Legal Counsel. I think the world of how well he's discharged that important duty.

Having known Elena since she was a student of mine quite some time ago and having watched her meteoric rise to tenure and her current position with Jack Quinn at the White House, I have to say that I am an enormous admirer of her intellectual and moral qualities. She is one of the most insightful constitutionalists of her generation. I have seen her work at close range, and her writing is always illuminating and imaginative. She has a degree of wisdom well beyond her years and a degree of judgment and maturity that is quite remarkable. Her views are thoughtful, moderate, and balanced, and she has no private agenda.

I'm sure that her time in the White House Counsel's office has given her valuable experience in the Administration. I have no doubt that she would discharge the challenging duties of the OLC position with extraordinary distinction and would be a truly knowledgeable source of advice on the sort of issues that Walter has handled so well. In

short, I think that the Attorney General couldn't have a better legal advisor.

At Harvard, we've been trying for some time now to persuade Elena to serve as a visiting Professor of Law. I think something has finally been tentatively arranged for 1997. But I hope that it will be delayed by Elena's tenure at the OLC.

Thank you very much for the opportunity to express my views.

Sincerely,

Laurence H. Tribe

Laurence H. Tribe



HARVARD LAW SCHOOL
CAMBRIDGE · MASSACHUSETTS · 02138

MARTHA L. MINOW
Professor of Law

GRISWOLD 407
(617) 495-4276

May 21, 1996

President Bill Clinton
The White House
FAX: (202) 456-2215

Dear President Clinton:

I understand that the Office of Legal Counsel in the Department of Justice will be needing a new director, and I write to give the strongest recommendation for Elena Kagan, who currently serves on your White House counsel staff. On leave from the University of Chicago Law School, Ms. Kagan is one of the most talented lawyers in her generation. She was a student of mine here at the Harvard Law School, and set such a high standard for accomplishment that colleagues and I talk about talented students using her as the benchmark.

What makes her such a stand-out, I believe, is that she combines the kind of precise analytic rigor we expect from top-flight lawyers with a far more rare quality, good judgment. She has a capacity to see the big picture and to keep it in mind while holding on to all the particular details relevant to a problem. She well understands the multiple arenas in which consequences should be anticipated. She works well with a wide range of people and earns respect quickly. At the University of Chicago, she soared to the top of the students' evaluation of teachers within a short time after her arrival and she similarly impressed her colleagues who promptly placed her in positions of responsibility, such as the hiring committee.

Other qualified candidates surely exist, but it would be difficult to find anyone who combines truly unusual analytic prowess with the quite extraordinary qualities of integrity and good sense exhibited by Elena Kagan. I hope you select her to head OLC.

Sincerely,

Martha Minow
Professor of Law

NLWJC - Kagan

Staff & Office - Box 001- Folder 002

**Folder #1 [Podesta Chron Files -
Kagan/Reed 2/24/97]**

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Subgroup/Office of Origin: Chief of Staff

Series/Staff Member: John Podesta

Subseries:

OA/ID Number: 11232

FolderID:

Folder Title:

Folder #1 [Podesta Chron Files - Kagan/Reed 2/24/97]

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Position:

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February 24, 1997

NOTE FOR SYLVIA MATTHEWS
JOHN PODESTA

FROM: BRUCE REED
ELENA KAGAN

We will get you a proposal
tomorrow based on this memo and
our conversations with OPM.

ROUTING AND TRANSMITTAL SLIP

Date 2/19/97

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Bruce Reed, Assistant to the President		
2. for Domestic Policy		
3.		
4.		
5. *		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS.

Copy for: Sylvia Matthews
John Podesta

BR

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
James B. King, Director	Phone No. 606-1000

5041-102

☆ U.S.G.P.O.: 1994 300-891/80023

OPTIONAL FORM 41 (Rev. 7-76)
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FPMR (41 CFR) 101-11.206



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

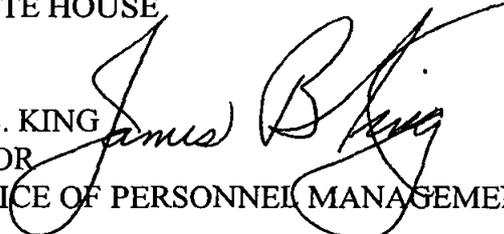
OFFICE OF THE DIRECTOR

FEB 19 1997

MEMORANDUM FOR BRUCE REED
ASSISTANT TO THE PRESIDENT
FOR DOMESTIC POLICY
THE WHITE HOUSE

FROM:

JAMES B. KING
DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT



SUBJECT: Welfare-to-Work Options

As a follow-up to our phone conversation, attached is an options paper outlining steps the Federal government can take to set a good example and help people move from welfare to work.

We have suggested a number of options including:

- Expand use of existing Federal hiring programs designed to attract low-skilled individuals, such as Worker-Trainee appointments.
- Create a new hiring avenue specifically targeted to individuals receiving public assistance.
- Increase availability of child care and possibly subsidize part of the cost.
- Increase awareness of Federal job opportunities through a range of publicity avenues.
- Deliver career counseling through *USACareers*, a new Internet Web site which OPM will launch in March 1997.
- Locate Federal agencies in areas affording ready access to public transportation.

We have also included some statistics about current Federal hiring trends which might be helpful. They depict the most popular occupations for new hires, employment trends in selected metropolitan areas, and the number of new hires by work status and occupational category in FY 1996.

Since you and I talked, we have been contacted by a reporter from *USA Today* who is working on a story about the Federal government's efforts in the welfare-to-work initiative. When you are ready to roll out this effort, OPM would be pleased to work with the reporter on national publicity.

Please let me know if you need any additional information or further explanation about what we have provided. Feel free to contact me or my Chief of Staff, Janice Lachance. Both of us can be reached at (202) 606-1000.

Attachments

U.S. OFFICE OF PERSONNEL MANAGEMENT

WELFARE-TO-WORK PROGRAM OPTIONS

Increase Publicity of Federal Job Opportunities

- ◆ Initiate a publicity campaign to inform both welfare recipients and social service providers of the information provided through the Federal Employment Information Highway, including the latest worldwide job openings, full job descriptions and skills requirements, access to application materials and on-line application, and information on a wide variety of Federal employment-related topics and programs. In addition, publicize this initiative to both Federal managers and personnelists. (A number of the following proposals have significant costs associated with them, and no current funding.)
 - Utilize TV/Ad Council for public service messages.
 - Direct mail to welfare recipients.
 - Direct mail to service providers including State Employment Service Offices and welfare offices, with the focus on simple training to fully use the Highway.
 - Use Federal Executive Boards (FEBs) and Federal Executive Associations (FEAs) across to country to help publicize this initiative, to foster partnerships with State welfare agencies, and to generate innovative hiring approaches.
 - Satellite broadcasts for Federal managers/human resources managers.
 - Satellite broadcasts for welfare job counselors/welfare recipients.
 - Help train welfare job counselors on how to use the Internet to increase access to **USAJOBS**, OPM's employment information Homepage.

- ◆ Expand access points to the Federal Employment Information Highway. Strategically place employment and job information computer *kiosks* at state employment or welfare offices. (Significant funding implications if the Federal government provides. Cost per unit is \$10,600, and there is an annual maintenance fee of \$3,000.)

- ◆ Implement ***Hiring Outlook***, an electronic information system designed to provide a realistic market analysis of the types of occupations the Federal government is recruiting for and what skills are needed by candidates to be competitive for jobs in the Federal sector. Include information on all different types of appointments as well as both permanent and temporary employment opportunities. (Scheduled to go on-line by September 1997.)

- ◆ Promote student employment, both paid and unpaid. Require agencies to post all student employment opportunities, whether paid or unpaid, in OPM's electronic job information system.
- ◆ Expand the Federal Jobs Database by requiring the posting of all Federal government jobs. (Currently, there is no requirement to post excepted service, legislative branch, or judicial branch positions. A change would require legislation.)
- ◆ Continue and expand posting of State, local, and municipal government jobs. Solicit support and help from organizations such as the U.S. Conference of Mayors, the League of Cities, and the National Association of Counties.

Assess "Readiness for Work" - Unveil Innovative Products

- ◆ Design, develop, and implement a computer-based job matching system which would match identified skills with job vacancies and provide information to job seeker. Employers would utilize a skills bank to find potential employees. (Coordinate with the Department of Labor-significant funding implications.)
- ◆ Deliver career counseling through *USACareers*, a new Internet web site currently under development by OPM's Employment Service. Scheduled to go on-line in March 1997, it will provide an interactive computer-based approach to help individuals to learn more about their skills and abilities and providing an integrated approach for identifying work-related skills and career interests, as well as develop training plans for welfare recipients to get the skills and aptitudes needed for Federal employment.

Utilize Targeted Hiring Options

◆ INCREASE USE OF EXISTING PROGRAMS

Worker-Trainee

Program was designed to attract very low-skilled persons into the Federal workforce. It is a quick and easy way to hire individuals into trainee-type positions where needed training in basic skills and developmental experiences are offered. Program has been in place since 1968 but is currently not widely utilized. Provisions of the program include the following:

- May hire at grades GS-1, WG-1 or WG-2, or equivalent.
- May promote to grades GS-3, WG-4, or equivalent.
- Initial appointment is a term-like appointment.
- After 3 years, may convert to career status.

Student Educational Employment Program

The Federal Student Educational Employment Program includes two components: the ***career experience program*** that provides career-related work experience that may lead to permanent employment in the Federal Government; and the ***student temporary program*** that provides temporary work experience in a variety of areas. Provisions include the following:

- Open to all students: high school, undergraduate, graduate, and vocational/technical.
- Hire at grades GS-2 to GS-4.
- Flexible schedule of work assignments.
- Under the career experience program, may include tuition assistance from hiring agency.
- Under the career experience program, may be converted to a career-conditional or career appointment after completing program requirements.

◆ **CREATE NEW FEDERAL HIRING OPTIONS**

New Excepted Service Hiring Authority for Welfare-to-Work Eligibles (OPM can create)

- Indefinite appointment with conversion eligibility to the competitive service.
- Certification of persons by State or local government.
- Conversion after 2 years of satisfactory performance. (**requires an Executive Order**)
- No limitations on appointment grade level.
- Training/education requirement after entry.
- Peer counselor/mentor program advised.
- Tuition assistance option.

Volunteer Program (**Requires legislation**)

- Encourage agencies to host candidate(s) to gain work experience.
- Partner with Dept. of Labor and other agencies who provide host arrangements.

Other Issues that Impact on Employment

◆ **Availability and Cost of Day Care**

- Encourage establishment of more agency-sponsored child care centers (requires agency commitment and often GSA coordination and approval).
- Allow non-DoD agencies to more fully subsidize child care centers as DoD agencies are allowed under the ***Military Child Care Act of 1989*** (requires legislation and appropriations).

- Further encourage agencies to provide resource and referral services to their employees.
- Promote the use of alternative funding methods by Federal child care centers.
- Provide direct subsidies to employees for child care expenses (as currently available for mass transit use)--could be restricted based on financial considerations. (requires legislation).

◆ **Availability of Affordable Transportation**

- Publicize the *Fare Subsidy Program* which allows Federal agencies to subsidize the cost of public transportation in areas where State and local programs exist and encourage its use.
- New E.O. further encouraging Federal agencies to locate in locations affording ready access to public transportation.

◆ **Availability of Health Insurance**

- Permit Federal employees hired on a temporary basis to immediately participate in the Federal Employees Health Benefits (FEHB) program. (**Requires legislation**). Currently, temporary employees must be employed for 1 year before they are eligible to enroll in the FEHB. This proposal would not change the requirement that temporary employees pay the full health insurance premium (government and employee contributions).

Model Performance-Based Organization (PBO) Bill

- ◆ Include a provision in the model PBO bill that would require PBO candidate organizations to give employment consideration and/or priority to individuals currently receiving welfare.

Other Possible Incentives for Agencies to Hire People Off Welfare

- ◆ Pass back some of the savings for taking someone off the welfare rolls to the hiring agency.
- ◆ Presidential recognition of Federal agencies that make the greatest strives to hire people off welfare.
- ◆ "Finders Fee" for hiring matches.
- ◆ Federal agencies set hiring goals.
- ◆ Cabinet Secretaries report monthly to the White House on progress.

Hiring Trends in the Federal Government *

- Of the 200,915 new hires in FY-1996, 142,517 (71%) were for temporary jobs.

MOST POPULAR OCCUPATIONS FOR FEDERAL NEW HIRES IN FY 1996

<i>Permanent</i>		<i>Temporary</i>	
Data Transcriber	(5,965)	Misc. Clerk & Assistant	(15,705)
Mail & File	(1,700)	Forestry Technician	(9,164)
Corrections Officer	(1,637)	Medical Officer	(7,405)
Misc. Clerk & Assistant	(1,602)	Office Automation Clerical & Assistant	(7,376)
Secretary	(1,553)	Laborer	(7,122)

METROPOLITAN AREAS WITH MOST WHITE COLLAR FEDERAL HIRES IN FY 1996 (PERMANENT AND NON-PERMANENT)

Washington, DC	(16,721)
Philadelphia, PA	(3,860)
Atlanta, GA	(3,481)
Kansas City, MO	(2,884)
San Diego, CA	(2,942)
New York, NY	(2,754)
San Antonio, TX	(2,732)
LA/Long Beach, CA	(2,159)

* Data does not include the U.S. Postal Service, Postal Rate Commission, Central Intelligence Agency, National Security Agency, Federal Bureau of Investigation, Tennessee Valley Authority, White House Office, Office of the Vice President, Board of Governors of the Federal Reserve System, Defense Intelligence Agency, Commissioned Corps employees, the Judicial Branch, and the Legislative Branch (except for the Government Printing Office, U.S. Tax Court, and selected commissions).

**NEW HIRES BY SELECTED MSA
GENERAL SCHEDULE AND RELATED PAY PLANS
AND WAGE SYSTEM
FY 1996**

	PERMANENT	NON-PERMANENT	TOTAL
ATLANTA			
Clerical	626	1,059	1,685
Technical	108	482	590
Administrative	125	382	507
Professional	194	267	461
Other White Collar	47	13	60
Blue Collar	61	117	178
ALL	1,161	2,320	3,481
BALTIMORE			
Clerical	73	509	582
Technical	107	211	318
Administrative	175	42	217
Professional	77	27	104
Other White Collar	59	20	79
Blue Collar	39	220	259
ALL	530	1,029	1,559
BOSTON			
Clerical	88	416	504
Technical	58	287	345
Administrative	82	69	151
Professional	82	92	174
Other White Collar	35	45	80
Blue Collar	32	238	270
ALL	377	1,147	1,524
CHICAGO			
Clerical	168	329	497
Technical	129	154	283
Administrative	166	93	259
Professional	113	29	142
Other White Collar	46	40	86
Blue Collar	89	148	237
ALL	711	793	1,504
DALLAS			
Clerical	111	113	224
Technical	101	89	190
Administrative	75	55	130
Professional	61	25	86
Other White Collar	28	10	38
Blue Collar	27	77	104
ALL	403	369	772

**NEW HIRES BY SELECTED MSA
GENERAL SCHEDULE AND RELATED PAY PLANS
AND WAGE SYSTEM
FY 1996**

	PERMANENT	NON-PERMANENT	TOTAL
DAYTON-SPRINGFIELD			
Clerical	64	214	278
Technical	59	102	161
Administrative	17	28	45
Professional	32	31	63
Other White Collar	10	24	34
Blue Collar	24	225	249
ALL	206	624	830
DENVER			
Clerical	78	338	416
Technical	97	231	328
Administrative	54	63	117
Professional	62	84	146
Other White Collar	50	30	80
Blue Collar	55	116	171
ALL	396	862	1,258
KANSAS CITY			
Clerical	1,854	490	2,344
Technical	102	65	167
Administrative	49	24	73
Professional	49	11	60
Other White Collar	48	10	58
Blue Collar	8	174	182
ALL	2,110	774	2,884
LOS ANGELES-LONG BEACH			
Clerical	116	500	616
Technical	123	344	467
Administrative	265	252	517
Professional	89	108	197
Other White Collar	61	54	115
Blue Collar	60	187	247
ALL	714	1,445	2,159
NEW YORK			
Clerical	230	887	1,117
Technical	147	242	389
Administrative	369	195	564
Professional	74	108	182
Other White Collar	155	83	238
Blue Collar	31	233	264
ALL	1,006	1,748	2,754

**NEW HIRES BY SELECTED MSA
GENERAL SCHEDULE AND RELATED PAY PLANS
AND WAGE SYSTEM
FY 1996**

	PERMANENT	NON-PERMANENT	TOTAL
NORFOLK-VA BEACH-NEWPORT NEWS			
Clerical	72	369	441
Technical	115	194	309
Administrative	116	29	145
Professional	97	24	121
Other White Collar	73	6	79
Blue Collar	106	117	223
ALL	579	739	1,318
PHILADELPHIA			
Clerical	1,343	1,476	2,819
Technical	121	157	278
Administrative	112	43	155
Professional	94	69	163
Other White Collar	75	24	99
Blue Collar	71	275	346
ALL	1,816	2,044	3,860
ST. LOUIS			
Clerical	214	375	589
Technical	90	92	182
Administrative	80	18	98
Professional	50	26	76
Other White Collar	25	5	30
Blue Collar	42	109	151
ALL	501	625	1,126
SALT LAKE CITY-OGDEN			
Clerical	813	650	1,463
Technical	40	221	261
Administrative	27	17	44
Professional	24	21	45
Other White Collar	8	7	15
Blue Collar	48	212	260
ALL	960	1,128	2,088
SAN ANTONIO			
Clerical	178	873	1,051
Technical	83	414	497
Administrative	115	90	205
Professional	116	70	186
Other White Collar	65	22	87
Blue Collar	148	558	706
ALL	705	2,027	2,732

**NEW HIRES BY SELECTED MSA
GENERAL SCHEDULE AND RELATED PAY PLANS
AND WAGE SYSTEM
FY 1996**

	PERMANENT	NON-PERMANENT	TOTAL
SAN DIEGO			
Clerical	215	280	495
Technical	240	323	563
Administrative	358	77	435
Professional	109	84	193
Other White Collar	774	77	851
Blue Collar	182	223	405
ALL	1,878	1,064	2,942
SAN FRANCISCO			
Clerical	81	251	332
Technical	31	133	164
Administrative	108	102	210
Professional	49	72	121
Other White Collar	5	18	23
Blue Collar	34	83	117
ALL	308	659	967
SEATTLE-BELLEVUE-EVERETT			
Clerical	164	239	403
Technical	225	225	450
Administrative	49	43	92
Professional	45	44	89
Other White Collar	10	21	31
Blue Collar	17	118	135
ALL	510	690	1,200
WASHINGTON			
Clerical	1,031	5,763	6,794
Technical	530	1,544	2,074
Administrative	1,478	1,456	2,934
Professional	2,205	1,147	3,352
Other White Collar	496	182	678
Blue Collar	253	636	889
ALL	5,993	10,728	16,721

Source: Central Personnel Data File

**Five Most Frequent Occupations Among New Hires
Other White Collar Series**

STATUS	Code	Occupation Name	Count	Percent
Permanent	0007	Correction Officer	1,637	27.40
	1896	Border Patrol Agent	1,331	22.28
	0083	Police	688	11.51
	0399	Administration & Office Support Student Trainee	490	8.20
	0899	Engineering & Architectural Trainee	419	7.01
Temporary	0699	Medical & Health Student Trainee	621	24.27
	0081	Fire Protection & Prevention	465	18.17
	0085	Security Guard	345	13.48
	0083	Police	313	12.23
	0399	Administration & Office Support Student Trainee	167	6.53

Five Most Frequent Occupations Among New Hires
Professional Series

STATUS	Code	Occupation Name	Count	Percent
Permanent	0610	Nurse	1,301	13.21
	0602	Medical Officer	1,163	11.81
	0905	General Attorney	711	7.22
	0855	Electronics Engineering	639	6.49
	1701	General Education & Training	415	4.21
Temporary	0602	Medical Officer	7,405	31.91
	1701	General Education & Training	3,666	15.80
	0610	Nurse	2,265	9.76
	1710	Education & Vocational Training	1,119	4.82
	0180	Psychology	781	3.37

**Five Most Frequent Occupations Among New Hires
Blue Collar Series**

STATUS	Code	Occupation Name	Count	Percent
Permanent	7408	Food Service Worker	653	11.18
	3566	Custodial Worker	437	7.48
	8852	Aircraft Mechanic	327	5.60
	6907	Material Handler	265	4.54
	4749	Maintenance Mechanic	259	4.44
Temporary	3502	Laboring	7,122	28.41
	7408	Food Service Worker	2,113	8.43
	4749	Maintenance Mechanic	1,401	5.59
	3501	Miscellaneous General Services & Support Work	1,070	4.27
	3566	Custodial Worker	1,038	4.14

**Five Most Frequent Occupations Among New Hires
Administrative Series**

STATUS	Code	Occupation Name	Count	Percent
Permanent	1816	Immigration Inspection	894	9.74
	0334	Computer Specialist	819	8.93
	0301	Miscellaneous Administration & Program	808	8.81
	1811	Criminal Investigating	777	8.47
	1890	Customs Inspection	510	5.56
Temporary	0301	Miscellaneous Administration & Program	6,159	46.72
	0025	Park Ranger	1,384	10.50
	1165	Loan Specialist	588	4.46
	1801	General Inspection, Investigation & Compliance	546	4.14
	1712	Training Instruction	487	3.69

FY96 NEW HIRES BY PATCO

	STATUS							
	PERMANENT		TEMPORARY		UNSPECIFIED		ALL	
	NEW HIRES		NEW HIRES		NEW HIRES		NEW HIRES	
	COUNT	PERCENT	COUNT	PERCENT	COUNT	PERCENT	COUNT	PERCENT
PATCO								
PROFESSIONAL	9.847	17.08	23.205	16.28	295	40.03	33.347	16.60
ADMINISTRATIVE	9.174	15.91	13.182	9.25	83	11.26	22.439	11.17
TECHNICAL	8.961	15.54	33.877	23.77	60	8.14	42.898	21.35
CLERICAL	17.860	30.97	39.821	27.94	126	17.10	57.807	28.77
OTHER W/C	5.975	10.36	2.559	1.80	40	5.43	8.574	4.27
BLUE COLLAR	5.839	10.13	25.065	17.59	130	17.64	31.034	15.45
UNSPECIFIED	5	0.01	* 4.808	3.37	3	0.41	4.816	2.40
ALL	57.661	100.00	142.517	100.00	737	100.00	200.915	100.00

* Most of the unspecifieds in this column were reported under an outdated occupation code and belong in the OTHER W/C PATCO category.

Five Most Frequent Occupations Among New Hires
Technical Series

STATUS	Code	Occupation Name	Count	Percent
Permanent	0962	Contact Representative	1,091	12.18
	0525	Accounting Technician	743	8.29
	1702	Education & Training Technician	672	7.50
	0856	Electronics Technician	538	6.00
	0621	Nursing Assistant	480	5.36
Temporary	0462	Forestry Technician	9,164	27.05
	0404	Biological Science Technician	3,959	11.69
	0189	Recreation Aid & Assistant	2,792	8.24
	1702	Education & Training Technician	1,958	5.78
	0025	Park Ranger	1,835	5.42

Five Most Frequent Occupations Among New Hires
Clerical Series

STATUS	Code	Occupation Name	Count	Percent
Permanent	0356	Data Transcriber	5,965	33.40
	0305	Mail & File	1,700	9.52
	0303	Miscellaneous Clerk & Assistant	1,602	8.97
	0318	Secretary	1,553	8.70
	0592	Tax Examining	1,317	7.37
Temporary	0303	Miscellaneous Clerk & Assistant	15,705	39.44
	0326	Office Automation Clerical & Assistant	7,376	18.52
	0305	Mail & File	3,681	9.24
	0322	Clerk-typist	2,326	5.84
	0318	Secretary	1,881	4.72

NLWJC – Kagan

Staff & Office – Box 001-Folder 3

Elena Kagan/”McIntosh”

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Folder Title:

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6

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5

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1

Make copy of entire

file & put in

folder:

Elena Kazary "McIntosh"

N/R

Congress of the United States
Committee on Government Reform and Oversight
House of Representatives

September 25, 1996

The Honorable John M. Quinn
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Quinn:

It remains a mystery as to why it has taken nearly three months for the White House to produce the documents and other materials that you have produced over the last several days in response to the Subcommittee's inquiry regarding the White House Database (WhoDB). As you have known all along, these documents and materials are critical to the Subcommittee's evaluation of whether the creation and operation of the WhoDB is an appropriate and lawful expenditure of taxpayer funds. The documents produced are beginning to give the Subcommittee a better idea of the nature and purposes of the WhoDB.

Nevertheless, the Subcommittee's initial review of the documents produced thus far raises serious questions and suggests that other White House documents that have not been produced could assist the Subcommittee's investigation. In addition, the redaction of portions of certain documents, references in produced documents to others that could not be located in the produced documents, and your letters of September 23 and 24 reflect the White House's failure to supply all of the documents and assurances the Subcommittee requested.

Accordingly, the Subcommittee must insist on a complete production of documents and all the assurances it has previously sought. Specifically, the Subcommittee requests that you provide unredacted copies of all documents that contain redactions. For example, the January 31, 1994 "Briefing Paper on Databases -- Eyes Only" (Document No. M 25138) must be provided without redacting the section on "The Campaign Database," and the November 1, 1994 Memorandum From Marsha Scott to Erskine Bowles and Harold Ickes (Document No. M 25673) must be provided without any redactions. This material is plainly relevant to the Subcommittee's inquiry into whether appropriated funds were used for campaign-related purposes.

There are many contractor e-mails included in the documents produced to Subcommittee. The vast bulk of them appear to be e-mails from or to Keith Hayden, an employee of Integrated Data Systems, Inc. Can you assure the Subcommittee that there are no other contractor employee e-mails that have not been produced?

The Subcommittee also needs certain documents that appear to be referenced but cannot be located in what you have produced. Those documents are (1) documents reflecting the results of Cheryl Mills's review of the WhoDB (referenced in the March 25, 1996 Memorandum from Chris Gruin to

Jodie Torkelson, document no. M 23713), and (2) "memo on political activity" by Cheryl Mills (not Ms. Mills's January 17, 1994 memorandum) referenced in Erich Vaden's memorandum to Cheryl Mills dated August 21, 1995 (Document No. M 26980). In addition, there are other documents that we believe are missing. Please provide your assurance that there are no other documents in your possession that are responsive to our requests.

The Subcommittee also requested that you provide a production log of the documents that would identify the title and source of each document. I am sure that you have kept at least a log of the source of all documents by Bates stamp number (e.g., John Doe's files, M 73500 through M 74500) for your own purposes. Please provide the Subcommittee with such a log.

Because you requested to withhold certain information at this time, the Subcommittee requested that you provide certain assurances that you would provide access or other information at a later time if necessary. Specifically, the Subcommittee needs your personal assurance that you will produce a copy of any WhoDB back-up tapes that the Subcommittee may request. By tomorrow, the Subcommittee needs a copy of the WhoDB back-up tape for February 1996.¹

As you know from our prior correspondence, we will limit access to sensitive information to those individuals who are necessary to complete the investigation in an effective and efficient manner. However, if I cannot be present at the White House, Mildred Webber will be accompanied by one other Subcommittee staff member whenever she reviews information on the WhoDB. You will be hearing from Ms. Webber to arrange for an appointment to view the database.

In addition, the Subcommittee needs your assurance that the version of the WhoDB produced to the Subcommittee includes "inactive" as well as active records. It is only the WhoDB's failure to incorporate an adequate audit trail that forces the Subcommittee to make these three requests.

With regard to the relationship to the First Family field, you still have not provided a description of how someone qualifies for inclusion in each category. In particular, you have not provided an explanation of how someone qualifies for inclusion in the largest category, "PDL." Please produce a list of persons that have the PDL designation, and produce a description of how someone qualifies for inclusion in each category.

Please produce all documents and provide all assurances requested in this letter not later than 6:00 p.m. on Thursday, September 26. We need all the documents and assurances to determine if the Subcommittee must consider the issuance of a subpoena for these and other materials at this time. The Subcommittee's requests should not involve substantial additional work since almost all of them are requests the Subcommittee has previously made and with which you should have already complied.

¹ The log of back-up tapes you provided on September 24, 1996 was incomplete because it did not provide information on back-up tapes prior to June 27, 1996, the date when the Subcommittee first informed you that it was beginning an investigation of the WhoDB. Please provide the complete list of WhoDB back-up tapes that presently exist.

Thank you for your attention to these matters.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: Chairman William F. Clinger, Jr.
Representative Collin Peterson

NLWJC – Kagan

Staff & Office – Box 001-Folder 4

Kagan, Elena

FOIA MARKER

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Folder Title:

Kagan, Elena

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Counsel's Office-Schaffner

Original OA/ID Number:

CF 1614

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21	1	1	2	V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Memo re: Elena Kagan (4 pages)	09/13/1995	P6/b(6), b(7)(C)
002. memo	Abner Mikva to FBI, Liaison re: FBI investigations [partial] (1 page)	06/08/1995	P6/b(6)
003. memo	Director, IRS Office of Disclosure to Abner Mikva re: taxes [26 USC 6103] (1 page)	05/11/1995	P3/b(3), P6/b(6)

COLLECTION:

Clinton Presidential Records
 Counsel's Office
 Schaffner
 OA/Box Number: CF 1614

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc84

RESTRICTION CODES

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

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

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

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

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

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

RR. Document will be reviewed upon request.

FEDERAL BUREAU OF INVESTIGATION
BACKGROUND SUMMARY SHEET

NAME OF NOMINEE/APPOINTEE: Elena Kagan

AGENCY/DEPT: _____

POSITION: _____

NAME CHECK RECEIVED BY WHC: _____

RESULT OF NAME CHECK ADJUDICATION: _____

DATE BI RECEIVED BY WH: 9/13/95

DATE OF BI ADJUDICATION: _____

RESULT OF ADJUDICATION: _____

DATE OF WHC CLEARANCE: _____

SENATORIAL REVIEW:

SENATOR: _____
DATE: _____

SENATOR: _____
DATE: _____

SENATOR: _____
DATE: _____

SENATOR: _____
DATE: _____

SECURITY OFFICER REVIEW:

OFFICE: _____
DATE: _____

OTHER: _____

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Memo re: Elena Kagan (4 pages)	09/13/1995	P6/b(6), b(7)(C)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Schaffner
OA/Box Number: CF 1614

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Kagan, Elena

2009-1006-F
rc84

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Abner Mikva to FBI, Liaison re: FBI investigations [partial] (1 page)	06/08/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Schaffner
OA/Box Number: CF 1614

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc84

RESTRICTION CODES

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

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~~CONFIDENTIAL~~

June 8, 1995

TO: FBI, LIAISON
FROM: ABNER J. MIKVA
SUBJECT: FBI INVESTIGATIONS

[002]

SUBJECTS NAME KAGAN, ELENA SSN: P6/(b)(6)
DATE OF BIRTH 04/28/60 PLACE OF BIRTH NY, NY
PRESENT ADDRESS 3133 Connecticut Ave., Washington DC, 20008

WE REQUEST: Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation: Level I Level II Level III
 Limited Update
 Other

The person named above is being considered for:

White House Staff Position
 Presidential Appointment

Attachments:

SF 86
 SF 87, Fingerprint Card
 SF 86, Supplement

Remarks/Special Instructions:

JUN 15 1995

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Director, IRS Office of Disclosure to Abner Mikva re: taxes [26 USC 6103] (1 page)	05/11/1995	P3/b(3), P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Schaffner
OA/Box Number: CF 1614

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc84

RESTRICTION CODES

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

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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RR. Document will be reviewed upon request.

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NLWJC – Kagan

Staff & Office – Box 001-Folder 5

Kagan, Elena

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Staff Office-Individual:

Counsel's Office

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CF 2046

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	Form SF 278 (6 pages)	06/30/1999	P6/b(6)
002. form	Form SF 278 (6 pages)	04/19/1999	P6/b(6)
003. form	Form SF 278 (6 pages)	05/26/1998	P6/b(6)
004. form	Form SF 278 (6 pages)	05/19/1997	P6/b(6)
005. form	Form SF 278 (6 pages)	05/06/1996	P6/b(6)
006. form	Form SF 278 (6 pages)	07/28/1995	P6/b(6)
007. form	White House SF 278 / OGE 450 Review (1 page)	06/30/1999	P6/b(6)
008. memo	Call / Visit Memorandum (1 page)	04/21/1999	P6/b(6)
009. memo	Kathleen Whalen to Jack Quinn re: waiver (3 pages)	05/14/1996	P6/b(6)
010. form	White House SF 278 / OGE 450 Review (1 page)	04/20/1999	P6/b(6)
011. form	Form SF 278 (6 pages)	06/30/1999	P6/b(6)
012. form	White House SF 278 / OGE 450 Review (1 page)	06/04/1998	P6/b(6)
013. form	White House 278 450 Review (1 page)	06/06/1997	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

RESTRICTION CODES

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

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

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

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

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

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

RR. Document will be reviewed upon request.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014a. fax	Kathi Whalen to Lisa Deener (1 page)	05/14/1996	P6/b(6)
014b. memo	Elena Kagan to Jack Quinn re: waiver (2 pages)	05/14/1996	P6/b(6)
015. form	White House SF 278 Review (1 page)	05/07/1996	P6/b(6)
016a. memo	Kathleen Whalen to Elena Kagan re: Chicago Council (1 page)	10/01/1995	P6/b(6)
016b. memo	Elena Kagan to Kathleen Whalen re: Chicago Council (1 page)	10/02/1995	P6/b(6)
017. form	White House 278 450 Review (2 pages)	07/25/1995	P6/b(6)
018. memo	Karen McSweeney to Elena Kagan re: disclosure statement (1 page)	08/16/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

RESTRICTION CODES

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

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

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	Form SF 278 (6 pages)	06/30/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F
rc85

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

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

RR. Document will be reviewed upon request.

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

- 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]
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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. form	Form SF 278 (6 pages)	04/19/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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

- 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]
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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. form	Form SF 278 (6 pages)	05/26/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

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]
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. form	Form SF 278 (6 pages)	05/19/1997	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

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RESTRICTION CODES

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

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

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. form	Form SF 278 (6 pages)	05/06/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

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RESTRICTION CODES

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

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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. form	Form SF 278 (6 pages)	07/28/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F
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RESTRICTION CODES

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

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

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. form	White House SF 278 / OGE 450 Review (1 page)	06/30/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. memo	Call / Visit Memorandum (1 page)	04/21/1999	P6/b(6)

COLLECTION:

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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. memo	Kathleen Whalen to Jack Quinn re: waiver (3 pages)	05/14/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F
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RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. form	White House SF 278 / OGE 450 Review (1 page)	04/20/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. form	Form SF 278 (6 pages)	06/30/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

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

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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
O12. form	White House SF 278 / OGE 450 Review (1 page)	06/04/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F
rc85

RESTRICTION CODES

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

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

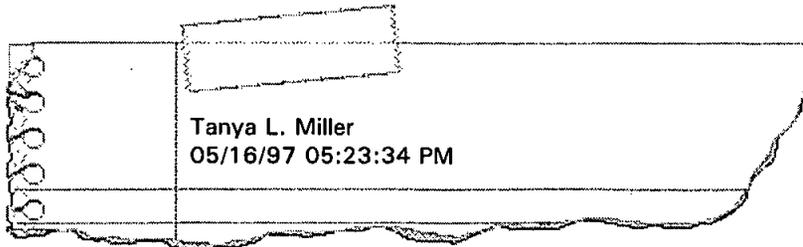
- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Virginia R. Canter/WHO/EOP
Subject: SF 278 Filing Extension

This is to confirm that Ginny Canter has granted you an extension for filing your Public Financial Disclosure form until Monday, May 19. Your form must be turned in to Ginny in room 136 by close of business on that date. Thank you.

To
Elena Kagaw yellow
file → not in cabinet



UNITED STATES
OFFICE OF
GOVERNMENT ETHICS
1201 New York Avenue, NW.
Suite 500
Washington, DC 20005-3917

FACSIMILE TRANSMISSION COVER SHEET

DATE: September 11, 1997

TO: Virginia Cantor, White House

FAX NO. (4562146)

FROM: Michael Korwin 202-208-8000 EXT. 1140

RE: Elena Kagan, James Steinberg and Kathleen Wallman 1997 SF 278 -
OUTSTANDING ISSUE

Pages including cover: 1

Please explain - Did filers surpass salary threshold to file, or did they assume positions that are required to file with OGE. We question as we have no prior record of any of the filers. Thank you.

Mike Korwin:

Elena Kagan - Assumed position required to file with OGE.
Kathleen Wallman - Assumed position required to file with OGE.
Martha Foley - Assumed position required to file with OGE.
James Steinberg - Assumed position required to file with OGE.

9/11/97 Vug - L. Cat

FROM

(THU) 09. 11 ' 97 13:53/ST. 13:52/NO. 3560533357 P 1/1



UNITED STATES
OFFICE OF
GOVERNMENT ETHICS
1201 New York Avenue, NW.
Suite 500
Washington, DC 20005-3917

FACSIMILE TRANSMISSION COVER SHEET

DATE: September 11, 1997

TO: Virginia Cantor, White House

FAX NO. (4562146)

FROM: Michael Korwin 202-208-8000 EXT. 1140

RE: Martha Foley 1997 SF 278 - OUTSTANDING ISSUE

Pages including cover: 1

Please explain - Did filer surpass salary threshold to file, or did she assume a position that required she file with OGE. We question this, as we have no prior record of her filing. Thank you.

See attached

9/11/97 VKC

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
013. form	White House 278 450 Review (1 page)	06/06/1997	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

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

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

RR. Document will be reviewed upon request.

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014a. fax	Kathi Whalen to Lisa Deener (1 page)	05/14/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014b. memo	Elena Kagan to Jack Quinn re: waiver (2 pages)	05/14/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

RESTRICTION CODES

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

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

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SENIOR APPOINTEE PLEDGE

As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

2. In the event that I serve as a senior appointee in the Executive Office of the President ("EOP"), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

5. I acknowledge that the Executive order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Elena Kagan
Signature

January 27 _____, 19 97
Date

Kagan, Elena
Print or type your full name (Last, first, middle -- spell out each fully)

Privacy Act Statement

Executive Order 12834 entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993 (and published at 58 Federal Register 5911-5916 on 1/22/93), requires every senior appointee in every executive agency appointed on or after January 20, 1993 to sign this pledge upon becoming a senior appointee. This pledge establishes a contractual commitment regarding your post-employment activities and your activities after your personal and substantial participation in a trade negotiation has ceased. If there is a violation or apparent violation of this pledge, this pledge may be disclosed to the Department of Justice or any other appropriate Federal agency charged with the responsibility of investigating, prosecuting, enforcing or implementing the Executive order. Disclosure of this pledge can also be made to another Federal agency, a court or a party in court litigation or an administrative proceeding when the Government is a party as well as to another Federal agency in connection with your hiring when the pledge is relevant and necessary thereto. Further, this pledge may be disclosed to the Executive Office of the President and the Office of Government Ethics to enable them to carry out their responsibilities under Executive Order 12834 and other ethics oversight authorities. This pledge will be filed for permanent retention in your official personnel folder or equivalent folder. Your signing this pledge is a condition, and in consideration, of your employment as a senior appointee, or your receiving a pay raise that will make you a senior appointee, as defined in the Executive order.

THE WHITE HOUSE
WASHINGTON

January 23, 1997

MEMORANDUM FOR ELENA KAGAN
DEPUTY ASSISTANT TO THE PRESIDENT
FOR DOMESTIC POLICY

FROM: KATHLEEN M. WHALEN *KMW*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Senior Appointee Pledge

Executive Order 12834 requires all "senior appointees" to complete a senior appointee pledge. You are considered a "senior appointee" for purposes of the pledge. Our records indicate that you have not completed a pledge. Therefore, please complete the attached pledge and return it to me (136 OEOB) as soon as possible, but no later than February 7, 1997.

I have attached general information about the pledge and would be happy to discuss the pledge with you further if you desire. Please call me at 6-6229 if you have any questions.

Attachments

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
015. form	White House SF 278 Review (1 page)	05/07/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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

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

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
016a. memo	Kathleen Whalen to Elena Kagan re: Chicago Council (1 page)	10/01/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

RESTRICTION CODES

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
016b. memo	Elena Kagan to Kathleen Whalen re: Chicago Council (1 page)	10/02/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial:
202/828-2202

April 8, 1997

Elena Kagan, Esq.
The White House, EOB
Room 213
Domestic Policy Council
Washington, DC 20502

Dear Elena:

Several months ago, a group of friends and former colleagues of Zoe and Ab Mikva decided to plan an event to honor this extraordinary couple. The group has expanded as others learned of the effort, and the timing and nature of the event have taken shape.

We are planning to hold a reception at the National Education Association in Washington on June 17. Because we want all those who know and admire Zoe and Ab to attend, we will ask the invited guests only for a small contribution to cover the cost of the reception. This is not a fundraising event. The program will be informal. We are asking people who have known Zoe and Ab at various times in their lives to speak briefly about their shared commitment to the value and dignity of public service.

We are hoping that you will help us in two ways. First, we would like to include your name on the invitation as a member of the Friends Committee. Second, we hope that you will attend the June 17 celebration and bring with you any other friends and admirers of the Mikvas who would like to attend. Your and their presence and participation will be a visible tribute to Ab and Zoe, and to their belief that dedication to public service should transcend party lines, regional differences and social backgrounds.

Although the June 17 event does not involve any fundraising, we intend to announce the initiation of the Mikva Challenge Grant Program -- an endowment that will provide grants to high school teachers in the Chicago area to develop a program for selected high school students to participate in the electoral process. Our goal is to select the first group of teachers and students by September 1997.

*Advised EK okay to
have name listed on
invitation but not to
refer to her position
or title. 4/17/97
me*

598 Madison Avenue • New York, New York 10022-1614

Tel (212) 832-1900 • Fax (212) 832-0341

<http://www.dsno.com>

To Ginny Carter

Ginny -

Can I put my
name on this
invitation?

Elena

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial:
202/828-2202

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Elena - This is a sample of the letter I've sent to all the ASM clerks. Is it OK to include your name on the invitation? K

598 Madison Avenue • New York, New York 10022-1614

Tel (212) 832-1900 • Fax (212) 832-0341

<http://www.dsmo.com>

I hope you will join in making the tribute to Zoe and Ab a success. Please let me know as soon as possible if I am authorized to add your name on the invitation along with other members of the Friends Committee.

Sincerely,

A handwritten signature in black ink, appearing to be 'K. Adams', written in a cursive style.

Kenneth L. Adams

P.S. We would like to include Judge Wald and Judge Edwards' names among the Honorary Committee members listed on the invitation. I have written to each of them making that request. If you are in a position to be of any help in securing a commitment from either or both of them, please give me a call.

WHITE HOUSE SF 278 / OGE 450 REVIEW

Name of Filer:

Position:

Date Due:

Date Filed:

Possible Financial Conflicts (§ 208):

Former Employer, Clients, Spousal Matters (§ 502):

Memberships, Agreements, Continuing Relationships:

Other:

REVIEW/ TELEPHONE NOTES:

ADVICE PROVIDED:

Reviewer and Date:

EXECUTIVE OFFICE OF THE PRESIDENT

11-Oct-1995 02:17pm

TO: Elena Kagan
FROM: Kathleen M. Whalen
Office of the Counsel
SUBJECT: Speaking engagements

This confirms that you may accept invitations to speak at academic conferences where it is clear that you are being invited because of your position with the University of Chicago/your academic persona. As we discussed, however, you may not accept honoraria for such speaking engagements. If the requesting organization offers to pay your travel expenses, meals, lodging, you may accept such payments as a personal gift pursuant to 5CFR 2635.204(e)(2). You should keep track of gifts the total value of which exceed \$250 to be reported on your annual financial disclosure report.

Any questions, you know where to find me.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
017. form	White House 278 450 Review (2 pages)	07/25/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F
rc85

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
018. memo	Karen McSweeney to Elena Kagan re: disclosure statement (1 page)	08/16/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office

OA/Box Number: CF 2046

FOLDER TITLE:

Kagan, Elena

2009-1006-F

rc85

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NLWJC – Kagan

Staff & Office – Box 001-Folder 6

Paula Jones Kathy Wallman's Files

[Elena Kagan Memos]

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title: Paula Jones Kathy Wallman's Files [Elena Kagan Memos]				
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21	4	6	3	v

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Elena Kagan to Jack Quinn et al; re: Jones Litigation (2 pages)	05/22/1996	P5
002. memo	Elena Kagan to Jack Quinn et al; re: Jones Litigation (1 page)	05/08/1996	P5
003. memo	Elena Kagan to Jack Quinn et al; re: Jones Litigation (1 page)	05/07/1996	P5
004. legal brief	re: Reply to Paula Jones' Opposition to the President's Motion (3 pages)	05/07/1996	P5
005. memo	Elena Kagan to Jack Quinn et al. re: Jones Litigation (1 page)	05/06/1996	P5
006a. fax cover sheet	David Strauss to John Quinn; re: Certiorari Petition (1 page)	04/26/1996	P5
006b. memo	Geof Stone and David Strauss to Bob Bennett & Amy Sabrin; re: The Petition (5 pages)	04/26/1996	P5
007. memo	Geof Stone and David Strauss to Bob Bennett and Amy Sabrin; re: The Petition (5 pages)	04/26/1996	P5
008. memo	Elena Kagan to Jack Quinn et al. re: Supreme Court Procedures (1 page)	04/05/1996	P5
009. memo	Elena Kagan to Jack Quinn et al; re: Supreme Court Litigators [partial] [page 2 withdrawn in full] (2 pages)	04/05/1996	P5, P6/b(6)
010. memo	Elena Kagan to Jack Quinn & Kathy Wallman; re: Supreme Court Litigators [partial] [pages 2 and 3 withdrawn in full] (3 pages)	03/11/1996	P5, P6/b(6)

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Clinton Presidential Records
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FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F

jp2028

RESTRICTION CODES

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THE WHITE HOUSE

WASHINGTON

June 18, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
✓ KATHY WALLMAN

file

FROM: ELENA KAGAN *ELK*

SUBJECT: JONES LITIGATION

The Clerk of the Supreme Court told David Strauss that (1) the Jones petition was on the conference list for last Friday and (2) it will be taken up again this Friday.

The possibilities are that (1) one or more Justices wanted to postpone the vote on cert for a week or (2) the Court decided to deny cert and one or more Justices are writing a dissent from the denial. (It is almost unheard of for a Justice to write a dissent from the grant of cert; that is a theoretical, but not a real possibility.)

*file
Paula Jones*

THE WHITE HOUSE

WASHINGTON

June 17, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: JONES LITIGATION

Some ambiguous news on the Paula Jones front.

It seems that the case was on the Court's list for consideration at the Friday, June 14 conference. The Court today issued orders (granting or denying cert) in most of the cases considered at that conference. It did not, however, issue any order in the Jones case.

The worst-case scenario is that the Court has decided to deny cert, but could not issue the order because someone is writing a dissent from the denial.

The best-case scenario is that one or more Justices asked to postpone consideration of the cert petition, possibly until next week (but it is still uncertain whether there will be a conference next week), possibly until next Term (i.e., the first week in October).

David Strauss is going to call Frank Larson (the Clerk of the Court) later today and see what (if anything) he can find out.

file: Paula Jones

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR LEON PANETTA, CHIEF OF STAFF
 HAROLD ICKES, DEPUTY CHIEF OF STAFF

FROM: KATHLEEN WALLMAN *KW*

SUBJECT: DEPARTMENT OF JUSTICE FILING IN JONES CASE

DATE: MAY 24, 1996

You asked this morning about the timing of the Justice Department's filing of its amicus brief. As the attached indicates, the brief has not been filed yet, but will be early next week.

THE WHITE HOUSE

WASHINGTON

May 24, 1996

MEMORANDUM FOR KATHY WALLMAN

FROM: ELENA KAGAN *ek*

SUBJECT: SG BRIEF IN JONES

The SG's office wishes to file its amicus brief in Jones on Tuesday or Wednesday of next week. There is no actual filing deadline. But all the parties' briefs will be filed by Tuesday, and if the SG's brief is to be considered by the Court, it must be filed shortly thereafter.

I will send you and Jack, as soon as I get it, the language in the SG's brief concerning the Soldiers' and Sailors' Act. Expect another memo in a couple of hours.

file

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR LEON PANETTA, CHIEF OF STAFF
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Congress of the United States
House of Representatives
Washington, DC 20515

Dear Colleague:

May 21, 1996

On May 15, 1995, attorneys for President Clinton filed an appeal with the United States Supreme Court seeking to delay the sexual harassment lawsuit filed by Paula Jones, a former Arkansas state employee.

One of the legal arguments used by the President involved **The Soldiers' and Sailors' Civil Relief Act of 1940**, which allows members of the armed forces of the United States to postpone civil litigation while on active duty.

The purpose of the Act is to allow the United States to fulfill the requirements of national defense, by enabling "*persons in the military service...*" to "*devote their entire energy to the defense needs of the Nation.*" According to his pleading, "*President Clinton here thus seeks relief similar to that which he may be entitled as Commander in Chief of the Armed Forces.*"

This Act is quite clear on who is eligible for relief. Only members of the Army, Navy, Marines, Air Force, and Coast Guard, and officers of the Public Health Service when properly detailed, are eligible. Further, this Act defines the term "military service" to include the period during which one enters "active service" and ends when one leaves "active service."

This ignoble pleading is a slap in the face to the millions of men and women who either are serving on active duty, or have served on active duty in the armed forces of the United States. In 1969, President Clinton ran away from his military obligation, dodging the draft, claiming that he "*loathed the military.*" Now, President Clinton by claiming possible protection under **The Soldiers' and Sailors' Civil Relief Act**, makes a mockery of the laws meant to protect the honorable men and women who serve their country in the armed forces of the United States.

In the words of J. Thomas Burch, Jr., Chairman of the National Vietnam Veterans Coalition, "*Bill Clinton was not prepared to carry the sword for his country, but has no hesitancy in using its shield if he can get away with it.*"

Please join us in sending a letter to President Clinton (see the letter on the reverse side), strongly objecting to the use of **The Soldiers' and Sailors' Civil Relief Act** in his defense.

To add your name as a cosigner, please call Mark Katz at 225-3664, or Rachel Krausman at 225-2965 by 12:00 noon on Thursday, May 23, 1996.



BOB STUMP
Chairman
House Committee on Veterans' Affairs



BOB DORNAN
Chairman
Subcommittee on Military Personnel
National Security Committee

(more)

The President
The White House
Washington, DC 20500

Dear Mr. President:

The undersigned Members of the House of Representatives take strong exception to part of your Petition for Writ of Certiorari to the United States Supreme Court in *Clinton v. Jones*. In it, at pages 14-15, you assert the relief you seek in postponing the civil lawsuit against you is similar to that to which you "may be entitled as Commander-in-Chief of the Armed Forces". Certainly, we take no position on the issues being litigated in that case. However, we feel obligated to inform you on behalf of America's veterans that the protections of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. app. sections 501-25 (1988 & Supp. V 1993), are available only to "persons in the military service of the United States" who are in "Federal service on active duty."

The Act is quite clear and specific about its coverage. The Act's purpose is "to enable the United States the more successfully to fulfill the requirements of the national defense" and to enable members of the military services "to devote their entire energy to the defense needs of the Nation." The Act only applies to members of the Army, the Navy, the Marine Corps, the Air Force, the Coast Guard, and officers of the Public Health Service detailed by proper authority to the Army or the Navy.

Under the Constitution, you are the *civilian* Commander-in-Chief of the Armed Forces. The Founding Fathers wanted to enshrine the principle of civilian control of the military in the Constitution and did so by making the President the civilian Commander-in-Chief of the Armed Forces. You are *not* a person in military service, nor have you ever been.

On the eve of Memorial Day, the most sacred time for honoring our fallen heroes of military service, it is imperative that you rectify this ignoble suggestion that you are now somehow a person in military service. By pursuing this argument, you dishonor all of America's veterans who did so proudly serve. We call upon you to take the honorable course and immediately supplement your Petition for Writ of Certiorari to withdraw your argument regarding the Soldiers' and Sailors' Civil Relief Act.

Sincerely,

MAY-20-'96 MON 12:12 IP:

TEL NO:

To: Secretary Brown (80)
Ed Scott (009)

From: Jim Holley

(80)

Ten-Hut

**News for Army, Navy, Air Force and Marine Veterans
From the Republican National Committee**
20 May, 1996

WH Seeks Military Cover In Harassment Suit

Washington, D.C. -- Attorneys for Bill Clinton 15 May filed an appeal with the United States Supreme Court seeking a delay in the sexual harassment lawsuit filed against him by Paula Jones, a former Arkansas state employee.

Veterans will be interested to know that the legal argument for the appeal is based on the Soldiers' and Sailors' Civil Relief Act of 1940, which allows members of the armed services to postpone civil litigation while they're on active duty.

The Supreme Court Appeal reads, "President Clinton here thus seeks relief similar to that to which he may be entitled as Commander in Chief of the Armed Forces." (New York Times, 16 May, 1996)

The irony of Bill Clinton's defense did not escape the attention of National Vietnam Veterans Coalition Chairman J. Thomas Burch, Jr., who promptly fired off a letter to the editor of The New York Times. "Bill Clinton was not prepared to carry the sword for his country, but has no hesitancy in using its shield if he can get away with it."

A decision is expected from the court within the month.

Facts From the Foxhole

Bill Clinton's FY 1997 budget for VA medical care proposes \$17.208 billion. The House Republican budget proposes \$17.3 billion. Even a recruit knows this is an increase!

Bill Clinton's budget would also cut VA medical care funding from \$16.9 billion in FY '96 to \$13 billion by FY '00.

Words On Watch

Keep this quote at the top of your duffel bag and pull it out the next time you hear scuttlebutt about "mean spirited" GOP cuts in VA programs.

In his 29 March, 1996, testimony before the full House Veterans Affairs Committee, VA Secretary Jesse Brown said of Bill Clinton's VA budget plan, "The president's out-year number and last year's out-year numbers would devastate the VA."

Mall Call

Vets looking for the straight skinny on VA programs and proposals can get it by writing to Veterans For Dole, 810 1st Street N.E. Suite 300, Washington, D.C. 20002. To enlist in VFD, call 1-800-Bob-Dole. That decodes to 1-800-262-3653. Ask for Ron Miller.

Judge Learned Hand once commented that as a litigant, he would "dread a lawsuit beyond anything else short of sickness and death."⁶ In this regard the President is like any other litigant, except that a President's litigation, like a President's illness, becomes the nation's problem.

B. The Court Of Appeals Erred In Viewing The Relief Sought By The President As Extraordinary.

The court below appears to have viewed the President's claim in this case as exceptional, both in the relief that it sought and in the burden that it imposed on respondent.⁷ In fact, far from seeking a "degree of protection from suit for his private wrongs enjoyed by no other public official (much less ordinary citizens)" (Pet. App. 13), the relief that the President seeks -- the temporary deferral of litigation -- is far from unknown in our system, and the burdens it would impose on plaintiffs are not extraordinary.

There are numerous instances where civil plaintiffs are required to accept the temporary postponement of litigation so that important institutional or public interests can be protected. For example, the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. app. §§ 501-25 (1988 & Supp. V 1993), provides that civil claims by or against military personnel are to be tolled and stayed while they are on active duty.⁸ Such relief is deemed necessary to enable members of the armed forces "to devote their entire energy to the defense

⁶ 3 *Lectures on Legal Topics*, Assn. of the Bar of the City of New York 105 (1926), quoted in *Fitzgerald*, 457 U.S. at 763 n.6 (Burger, C.J., concurring).

⁷ For example, the panel majority declared that Article II "did not create a monarchy" and that the President is "cloaked with none of the attributes of sovereign immunity." Pet. App. 6.

⁸ Specifically, a lawsuit against an active-duty service member is to be stayed unless it can be shown that the defendant's "ability . . . to con-

needs of the Nation." 50 U.S.C. app. § 510 (1988). President Clinton here thus seeks relief similar to that to which he may be entitled as Commander-In-Chief of the Armed Forces, and which is routinely available to service members under his command.

The so-called automatic stay provision of the Bankruptcy Code similarly provides that litigation against a debtor is to be stayed as soon as a party files a bankruptcy petition. That stay affects all litigation that "was or could have been commenced" prior to the filing of that petition, 11 U.S.C. § 362 (1994), and ordinarily will remain in effect until the bankruptcy proceeding is completed. *Id.*⁹ Thus, if respondent had sued a party who entered bankruptcy, respondent would automatically find herself in the same position she will be in if the President prevails before this Court -- except that the bankruptcy stay is indefinite, while the stay in this case has a definite term, circumscribed by the constitutional limit on a President's tenure in office.

It is well established that courts, in appropriate circumstances, may put off civil litigation until the conclusion of a related criminal prosecution against the same defendant.¹⁰ That process may, of course, take several years, and affords the civil plaintiff no relief. The doctrine of primary jurisdiction, where it applies, compels plaintiffs to postpone the litigation of their civil claims while they pursue administrative proceedings, even though the administrative proceedings may

⁹ Indeed, a bankruptcy judge's discretion has been held sufficient to authorize a stay of third-party litigation in other courts that conceivably could have an effect on the bankruptcy estate, even if the debtor is not a party to the litigation and the automatic stay is not triggered. See 11 U.S.C. § 105 (1994); 2 *COLLIER ON BANKRUPTCY* ¶ 105.02 (Lawrence P. King ed., 15th ed. 1994), and cases cited therein.

¹⁰ See, e.g., *Koester v. American Republic Invs.*, 11 F.3d 818, 823 (8th Cir. 1993); *Wehling v. Columbia Broadcasting Sys.*, 608 F.2d 1084 (5th Cir. 1979); *United States v. Mellon Bank, N.A.*, 545 F.2d 869 (3d Cir.

STATEMENT OF ROBERT S. BENNETT

May 22, 1996

Unfortunately, there is a partisan effort to distort an argument made in the President's petition, by taking it out of context.

In our Petition to the Supreme Court, we argued that the relief the President requests in the Paula Jones case -- the temporary deferral of litigation -- is no different than the kind of stays that occur in other kinds of lawsuits. One of several such examples we gave was the Soldiers' and Sailors' Civil Relief Act, which provides for lawsuits against active duty military personnel to be stayed. We added that this act might also extend to Presidents as Commander-In-Chief -- although we have not relied on it in this case.

The attempt by the President's partisan opponents to distort the President's position -- in order to create a political issue -- illustrates precisely why litigation involving incumbent Presidents should be deferred: because it will be abused for partisan purposes.

We made the same argument -- using the Soldiers' and Sailors' Civil Relief Act as an example -- in the trial court and the court of appeals, by the way. It was not a new argument for the Supreme Court.

THE WHITE HOUSE

WASHINGTON
May 10, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
KATHY WALLMAN

FROM: ELENA KAGAN *EK*
SUBJECT: JONES LITIGATION

As you know, the cert petition must be filed by this coming Thursday; according to Amy Sabrin, that means it should be given to the printers on Monday. Sabrin is currently incorporating Strauss's and Stone's comments. She hopes to have a new draft by very late tonight or (more likely) tomorrow morning. She would like any comments we have by Saturday afternoon.

We should figure out how we want to handle this process: How involved should we be in the editorial process? And if we do want to get involved, how should we coordinate in such short order our own thoughts and comments?

THE WHITE HOUSE

WASHINGTON
May 8, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: JONES LITIGATION

The Eighth Circuit has denied the President's motion for an extension of the stay. The Court acted as soon as it reviewed Jones's opposition to the motion. The Clerk never even had a chance to circulate the reply memo that Skadden filed yesterday.

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM
 1440 NEW YORK AVENUE, N.W.
 WASHINGTON, D.C. 20005

Telephone No.: (202) 371-7000
 Facsimile No.: (202) 393-5760

FACSIMILE TRANSMITTAL SHEET

FROM: Amy R. Sabrin
 DIRECT DIAL: (202) 371-7699
 DIRECT FACSIMILE: (202) 371-7963

DATE: May 7, 1996
 FLOOR/OFFICE No.: 8/7
 REFERENCE NUMBER: 140480

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Please deliver the following pages to:

- | | |
|--|---|
| <p>1. NAME: <u>Elena Kagan, Esq.</u>
 FACSIMILE No.: <u>202-456-1647</u></p> | <p>FIRM: <u>Asst. White House Counsel</u>
 TELEPHONE No.: <u>202-456-7594</u></p> |
| <p>2. NAME: <u>David Strauss, Esq.</u>
 FACSIMILE No.: <u>312-702-0730</u></p> | <p>FIRM: <u>The University of Chicago</u>
 TELEPHONE No.: <u>312-702-9601</u></p> |

Total number of pages including cover(s): 4

MESSAGE: We would like any comments ASAP. Thanks

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. legal brief	re: Reply to Paula Jones' Opposition to the President's Motion (3 pages)	05/07/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F
jp2028

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

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

RR. Document will be reviewed upon request.

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

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. memo	Elena Kagan to Jack Quinn et al. re: Jones Litigation (1 page)	05/06/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F
jp2028

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006a. fax cover sheet	David Strauss to John Quinn; re: Certiorari Petition (1 page)	04/26/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F
jp2028

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006b. memo	Geof Stone and David Strauss to Bob Bennett & Amy Sabrin; re: The Petition (5 pages)	04/26/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F

jp2028

RESTRICTION CODES

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THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL
1111 EAST 60TH STREET
CHICAGO - ILLINOIS 60627-2786

*file:
Paula Jones*

DAVID A. STRAUSS
HARRY N. WYATT PROFESSOR OF LAW

TELEPHONE: 312.702.9601
FAX: 312.702.0730

Friday, April 26, 1996

BY FAX

The Honorable John M. Quinn
Counsel to the President
The White House
Washington, D.C.
FAX 202-456-6279

Re: *Clinton v. Jones* (U.S. Sup. Ct.)

Dear Jack:

Here is a memo about the certiorari petition. I've sent a copy to Bob and Amy too.

With all best wishes,

Sincerely,

David

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. memo	Geof Stone and David Strauss to Bob Bennett and Amy Sabrin; re: The Petition (5 pages)	04/26/1996	P5

COLLECTION:

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2009-1006-F
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. memo	Elena Kagan to Jack Quinn et al. re: Supreme Court Procedures (1 page)	04/05/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F

jp2028

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. memo	Elena Kagan to Jack Quinn et al; re: Supreme Court Litigators [partial] [page 2 withdrawn in full] (2 pages)	04/05/1996	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F
jp2028

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*file
Paula
Jones.*

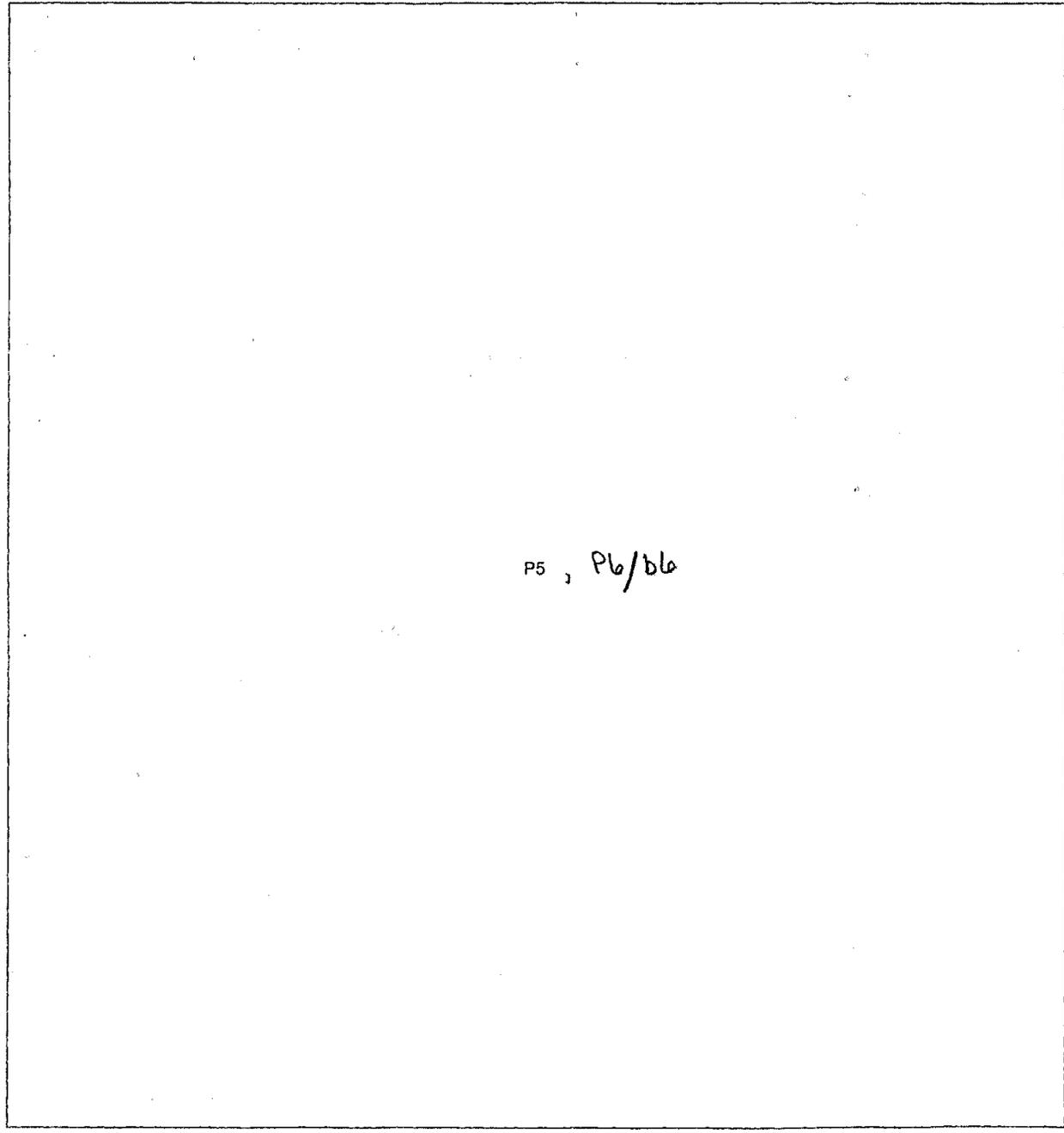
THE WHITE HOUSE
WASHINGTON
April 5, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: SUPREME COURT LITIGATORS

[009]



P5 , P6/b6

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. memo	Elena Kagan to Jack Quinn & Kathy Wallman; re: Supreme Court Litigators [partial] [pages 2 and 3 withdrawn in full] (3 pages)	03/11/1996	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F

jp2028

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THE WHITE HOUSE
WASHINGTON

March 11, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: SUPREME COURT LITIGATORS

*Kathy - [unclear] place
New version
with further
and Culvahors.
Eka*

~~SECRET~~

[010]

P5, P6/b6

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. memo	Elena Kagan to Jack Quinn & Kathy Wallman; re: Supreme Court Litigators [partial] [page 2 withdrawn in full] (2 pages)	03/11/1996	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: CF 814

FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F
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file: Paula Jones

THE WHITE HOUSE
WASHINGTON

March 11, 1996

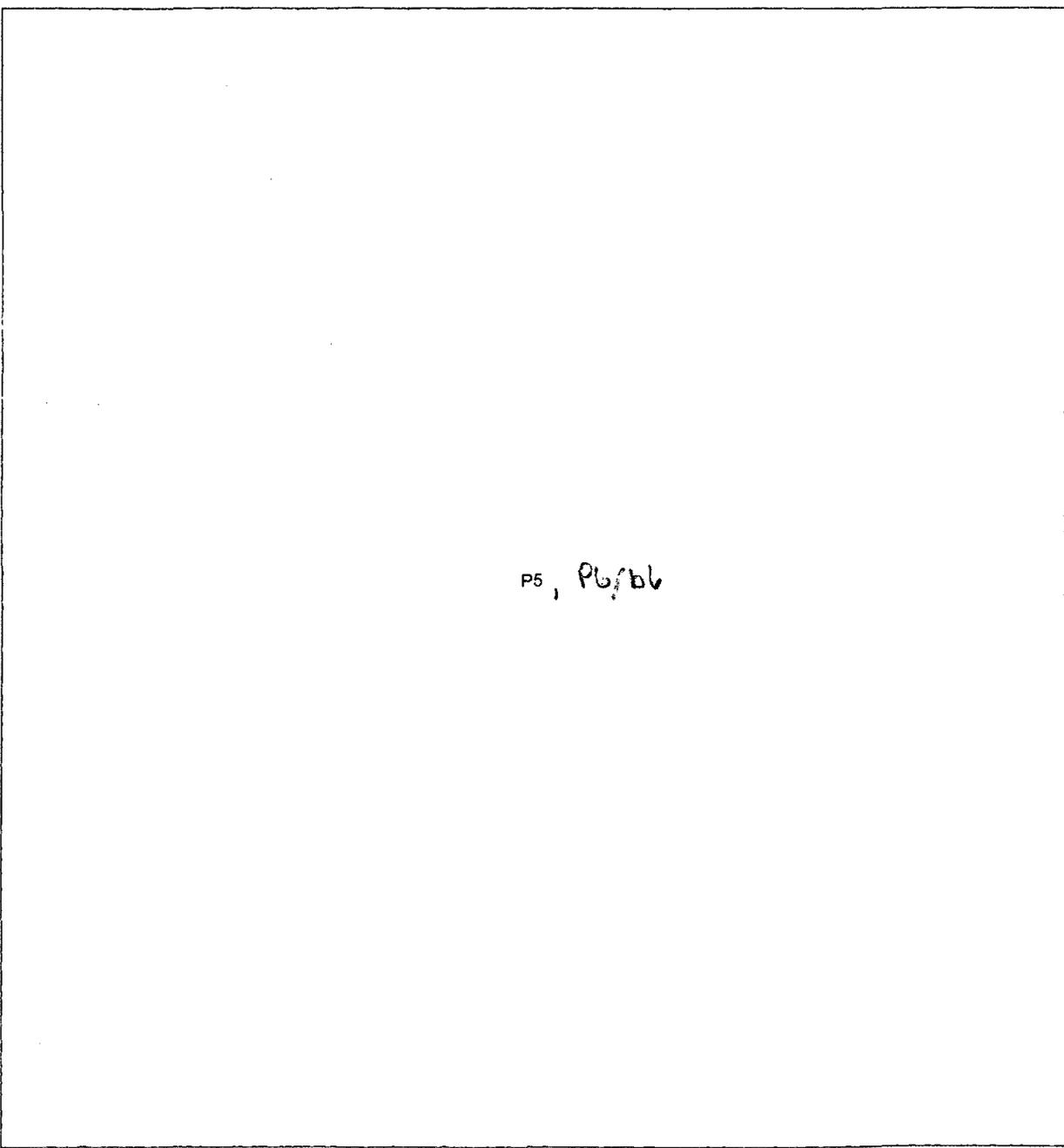
MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *AK*

SUBJECT: SUPREME COURT LITIGATORS

*Jack + Kathy,
I've changed this
to reflect that Rex
Lee died last night.
I also took the oppor-
tunity to make a
couple of other minor
changes.*

Elena



P5, P6/bv

~~██████████~~
[011]

file: Paula Jones

THE WHITE HOUSE

WASHINGTON

February 6, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN

SUBJECT: SG'S BRIEF IN PAULA JONES CASE

Attached is a copy of the Solicitor General's amicus brief in support of the petition for rehearing in Jones v. Clinton. It's really pretty good.

The brief (in my view, correctly) downplays the question whether the President has constitutionally mandated immunity from civil suits involving pre-Presidential conduct. It instead focuses on the question whether a trial court, irrespective of any constitutional "entitlement," should be able to use its discretion over its docket to postpone such litigation. It concludes, based on the "obvious public and constitutional interests in the President's undivided attention to his office," that such an exercise of discretion is entirely appropriate.

The brief notes that the appellate court's decision "invites the filing of politically inspired strike suits by persons who are more interested in obstructing a sitting President than in obtaining private redress." The brief also argues that the appellate court's opinion overstates the importance of the plaintiff's interests in prosecuting her suit without delay.

*Amy Leber
Melissa have copies*

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

<hr/>	
PAULA CORBIN JONES,)
)
Plaintiff-Appellee/Cross-Appellant,)
)
v.)
)
WILLIAM JEFFERSON CLINTON,)
)
Defendant-Appellant/Cross-Appellee,)
)
and)
)
DANNY FERGUSON,)
)
Defendant-Appellee.)
<hr/>	

No. 95-1050
No. 95-1167

**MOTION OF UNITED STATES FOR LEAVE TO FILE AMICUS BRIEF
IN SUPPORT OF SUGGESTION OF REHEARING EN BANC**

The United States of America hereby moves for leave to file a brief as amicus curiae in support of the pending suggestion of rehearing en banc in this case. Copies of the amicus brief are being lodged with the Court concurrently with the filing of this motion. The reasons for the motion are as follows:

1. On January 9, 1996, a divided panel of this Court issued a decision (i) affirming the district court's denial of a stay of pretrial proceedings and (ii) reversing the district court's stay of trial proceedings. On January 23, 1996, President Clinton filed a timely motion for rehearing and suggestion of rehearing en banc.

2. The United States has reviewed the panel decision and the rehearing petition filed by President Clinton. Based on that

review, the United States has concluded that the issues addressed by the panel should be reheard by the full Court. The United States has prepared an amicus brief that explains why, in our judgment, rehearing en banc is appropriate.

3. Throughout this litigation, the United States has participated as an amicus curiae to represent the interests of the office of the Presidency. The United States has similarly participated as amicus curiae in past cases involving the interests of the Presidency, such as Nixon v. Fitzgerald, 457 U.S. 733 (1982). The points made in our amicus brief do not merely repeat the views expressed in the President's rehearing petition, but rather address the legal issues from the institutional perspective of the Presidency. The United States therefore believes that this Court's consideration of whether to rehear this case en banc would be assisted by hearing the views of the United States.

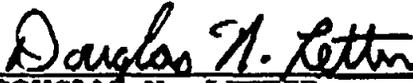
For the foregoing reasons, the Court should grant the United States leave to file an amicus brief in support of the suggestion of rehearing en banc.

Respectfully submitted,

DREW S. DAYS, III
Solicitor General

EDWIN S. KNEEDLER
Deputy Solicitor General

MALCOLM L. STEWART
Assistant to the Solicitor
General


DOUGLAS N. LETTER


SCOTT R. MCINTOSH
Attorneys, Appellate Staff
Room 3127, Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 514-4052

January 30, 1996

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 1996, I served the foregoing MOTION OF UNITED STATES FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF SUGGESTION OF REHEARING EN BANC by mailing true copies, first-class postage prepaid, to:

Robert S. Bennett
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue NW
Washington DC 20005

Joseph Cammarata
Gilbert K. Davis
9516-C Lee Highway
Fairfax VA 22031

Robert Batten
1412 West Main
Jacksonville AR 71004

Bill W. Bristow
216 E. Washington
Jonesboro AR 72401

Stephen Engstrom
Wilson, Engstrom, Corum, Dudley & Coulter
809 West Third Street
Little Rock AR 72202

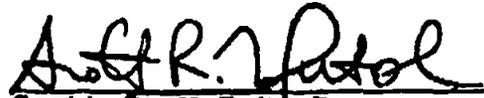
Kathlyn Graves
Wright, Lindsey & Jennings
220 Worthen Bank Building
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Christopher A. Hansen
American Civil Liberties Union Foundation
132 West 43rd Street
New York NY 10036

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University of Illinois School of Law
216 Law Building
504 East Pennsylvania Avenue
Champaign IL 61820

Kathleen M. Sullivan
Stanford Law School
Nathan Abbot Way at Alvarado Road
Stanford CA 94305-8610

Daniel M. Traylor
400 West Capitol Avenue, Suite 1700
Little Rock AR 72201


Scott R. McIntosh

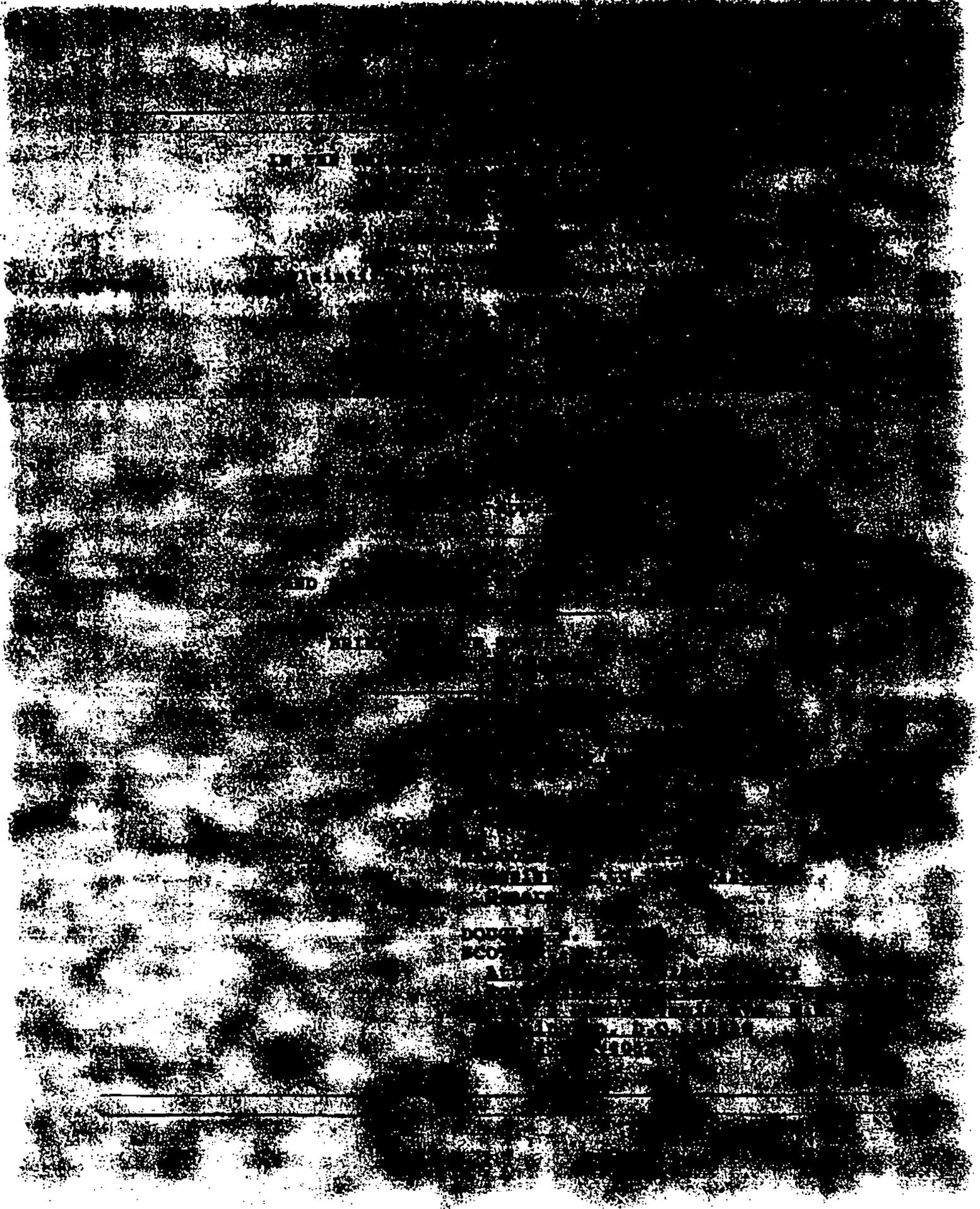


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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NOS. 95-1050 & 95-1167

PAULA CORBIN JONES,
Plaintiff-Appellee/Cross-Appellant

v.

WILLIAM JEFFERSON CLINTON,
Defendant-Appellant/Cross-Appellee,

and

DANNY FERGUSON,
Defendant-Appellee.

ON PETITION FOR REHEARING
AND SUGGESTION OF REHEARING EN BANC

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

STATEMENT

This Court has before it a petition for rehearing and suggestion of rehearing en banc filed by the President of the United States. The United States has participated in this case as an amicus curiae to protect the interests of the institution of the Presidency. In that capacity, we now submit this brief in support of the suggestion of rehearing en banc. For the reasons set forth below, the United States believes that the legal issues presented by this appeal are sufficiently important, and the resolution of those issues by the divided panel sufficiently questionable, to warrant consideration by the full Court.

1. The central issue in this appeal is one of first impression in the federal courts: whether a sitting President should be compelled to defend himself during his term of office against a private civil action based on pre-Presidential conduct. In the view of the United States, he should not. Courts enjoy the general power to stay their proceedings, see Landis v. North American Co., 299 U.S. 248 (1936), and that power normally should be exercised in favor of staying the litigation until the completion of the President's term. A stay would prevent the litigation from interfering with the President's discharge of his constitutional duties under Article II, while preserving the plaintiff's ultimate ability to have his or her claims resolved on the merits. See generally Op. 26-32 (Ross, J., dissenting). The rule we suggest is not an inflexible one: in the exceptional case where a plaintiff will suffer irreparable injury without immediate relief, and it is evident that prompt adjudication will not significantly impair the President's ability to attend to the duties of his office, a stay properly may be withheld. Ordinarily, however, the obvious public and constitutional interests in the President's undivided attention to his office will demand a stay.

The panel rejected this view, on the ground that "the Constitution does not confer upon an incumbent President any immunity from civil actions that arise from his unofficial acts." Op. 16-17. As Judge Ross's dissent shows, that holding rests on a reading of Supreme Court precedent and constitutional history that is debatable at best. See id. at 26-27. In particular, the majority's reasoning does not give adequate weight to the consti-

tutional concerns identified by the Supreme Court in Nixon v. Fitzgerald, 457 U.S. 731 (1982). Fitzgerald holds that "[t]he President occupies a unique position in the constitutional scheme" (457 U.S. at 749); that the President should not be diverted from attending to the duties of his "unique office" by "concern with private lawsuits" (id. at 749, 751); and that where the public interest in the President's attention to his official responsibilities conflicts with a private litigant's interest in obtaining redress for legal wrongs, the private interest must yield. Id. at 754 n.37. Those principles argue strongly in favor of recognizing a generally applicable constitutional bar against the prosecution of private suits against sitting Presidents.

But even if the majority's constitutional analysis were correct on its own terms, that is not the end of the matter. The issue in this case is not confined, as the majority seems to have thought, to whether the Constitution ex proprio vigore renders the President "immune" from civil actions during his term of office. Instead, the question is whether the constitutional and practical demands of the Presidency should lead a court to exercise its undoubted authority over its docket to postpone the litigation. The majority opinion fails to come to terms adequately with that question.

The panel majority appears to have been led astray by the concept of Presidential "immunity." The majority opinion reasons that Presidential immunity "is not a prudential doctrine fashioned by the courts," but rather is a rule that applies, "if at all, only because the Constitution ordains it." Op. 16; see also id.

at 7 (official immunity "is not to be granted as a matter of judicial largesse"). As a general matter, that is simply not correct.¹ But even if immunity from liability had to be constitutionally grounded, the "immunity" asserted by the President in this case is fundamentally different. No one has suggested that the President is immune from liability for pre-Presidential conduct. What is at issue here is simply a question of timing: when, not whether, the President must participate in judicial proceedings based on allegations concerning his private conduct. On that score, a court enjoys inherent authority to control the progress of cases on its docket, regardless of whether there is a constitutional imperative for it to do so. See, e.g., Landis, supra.

The panel majority acknowledged that the district court has "broad discretion in matters concerning its own docket." Op. 14 n.9. Nonetheless, the majority held that exercising that discretion in favor of a stay here constitutes reversible error. Op. 14 n.9. The majority reasoned that because (in its view) the President "is not constitutionally entitled" to "temporary immunity," it was "an abuse of discretion" for the district court to grant a stay on equitable grounds. Ibid.

¹ The Supreme Court has not confined official immunity to cases where "the Constitution ordains it" (Op. 16). To the contrary, the Court has stated that "the doctrine of official immunity from § 1983 liability * * * [is] not constitutionally grounded." Butz v. Economou, 438 U.S. 478, 497 (1978) (emphasis added). The Court has looked to common law immunity rules, rather than to the Constitution, as the benchmark for official immunity in Section 1983 actions. See, e.g., Pierson v. Ray, 386 U.S. 547 (1967).

That reasoning, we submit, is a non sequitur. Rarely, if ever, are parties "constitutionally entitled" to postpone litigation. But it hardly follows that the lack of a constitutional "entitlement" makes granting a stay an abuse of discretion. To the contrary, courts enjoy broad authority to stay civil proceedings in order to accommodate public and private interests that would be unfairly prejudiced by immediate litigation. For example, courts may stay civil actions in order to accommodate related criminal prosecutions -- not because the Constitution compels a stay, but simply because the public interest calls for one. See, e.g., United States v. Mellon Bank, N.A., 545 F.2d 869 (3rd Cir. 1976); 2 Beale & Bryson, Grand Jury Law and Practice § 8:07 (1986). The panel majority disregards this long-recognized authority.

The majority opinion is thus significant not only for the importance of the questions it addresses, but also for the extreme character of the answers it adopts. The panel decision, it must be emphasized, does not merely hold that courts are not required to stay private civil suits against a sitting President. Instead, the panel holds that courts are prohibited from staying such suits.

This holding is difficult to fit together with the surrounding legal landscape. For example, the available evidence strongly indicates that the Framers did not contemplate the possibility that criminal prosecutions could be brought against a sitting

President.² The panel's decision thus gives greater priority to private civil actions than criminal law enforcement proceedings would be entitled to. Yet as the Supreme Court noted in Fitzgerald, "there is a lesser public interest in actions for civil damages than * * * in criminal prosecutions." 457 U.S. at 754 n.37.

The panel's holding is similarly at odds with the public policies reflected in the Soldiers' and Sailors' Civil Relief Act ("SSCRA"), 50 U.S.C. App. §§ 501 et seq. Section 201 of that Act requires federal and state courts to grant a stay in any suit involving "a person in military service," if the court determines that "the ability of the plaintiff to prosecute the action or the defendant to conduct his defense [would be] materially affected by reason of his military service." 50 U.S.C. App. § 521. If the court makes the necessary finding regarding the impact of military service on the litigation, Section 201 mandates a stay of proceedings regardless of the effect of the stay on other litigants. See, e.g., Sawler v. Oertwig, 12 N.W.2d 265, 270 (Iowa 1943); Coburn v. Coburn, 412 So.2d 947, 949 (Fla. Dist. Ct. App. 1982). The policy considerations that underlie the SSCRA apply with far greater force to a civil action that threatens to impair the

² See, e.g., 2 Farrand, Records of the Federal Convention of 1787 64-69, 500 (New Haven 1911); The Federalist No. 69, at 416 (C. Rossiter ed. 1961) (the President "would be liable to be impeached, tried, and, upon conviction * * * removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law"). In In Re Proceedings of the Grand Jury Impaneled December 5, 1972, Civil 73-965 (D. Md.), the United States took the position that while a sitting Vice President is subject to criminal prosecution, a sitting President is not.

attention to duty of the President, who is the Commander in Chief. U.S. Const. Art. II, § 2. Yet far from adopting a comparable rule in favor of staying civil actions against sitting Presidents, the panel has adopted precisely the opposite rule.

Not only is the panel's holding debatable as a legal matter, but it is highly troubling as a practical one. However unintentionally, the panel decision invites the filing of politically inspired strike suits by persons who are more interested in obstructing a sitting President than in obtaining private redress. It is hardly reassuring that, as the majority opinion notes, "few such lawsuits have been filed." Op. 14. Prior to this case, no federal court had ever held that such suits could go forward during the President's term of office. Now, this Court has held not only that they may go forward but that they must. The consequences of that unprecedented holding, both for the office of the Presidency and for the American people, are potentially severe.³

2. The panel decision is also problematic in its handling of the other interests involved in this case. The majority opinion and Judge Beam's concurrence express concern for the possible adverse impact of delay on the plaintiff in this case and on plaintiffs as a class. The United States does not suggest that

³ The majority opinion reasons that the "universe of potential plaintiffs" who might bring suit against a sitting President for his private actions is relatively small. Op. 15. We respectfully disagree. Every President in this century has held one or more prominent positions before ascending to the Presidency. In each case, the inevitable result is a large class of persons with whom the President has had prior social, professional, or business dealings that could give rise to litigation.

the potential consequences for plaintiffs are irrelevant. But in several important respects, the majority and the concurrence overstate those consequences.

The majority opinion suggests that delaying litigation until the President leaves office would infringe on the plaintiff's constitutional right of access to the courts. Op. 10. But a stay affects only the timing of the litigation, not whether the plaintiff receives her day in court. As a result, the plaintiff's asserted constitutional interest in access to the courts is unaffected. We note in this regard that while the Bill of Rights guarantees the right to a speedy trial in criminal cases, it conspicuously lacks a similar guarantee for civil litigation.⁴

The concurring opinion cites the risk that testimony may be lost because of the death or incompetence of witnesses during the pendency of a stay. Op. 18. But as the United States noted in its amicus brief in this Court, and as the district court itself recognized when it granted a stay of discovery pending appeal, there is no reason why the parties cannot make arrangements to preserve evidence when necessary. Cf. Fed. R. Civ. P. 27(a),

⁴ The concurring opinion is similarly mistaken when it suggests that staying the litigation would infringe on the plaintiff's Seventh Amendment right to trial by jury. Op. 18. The Seventh Amendment concerns who will decide contested issues of fact, not when such issues will be decided. In the words of the Fifth Circuit, "[n]othing in the seventh amendment requires that a jury make its findings at the earliest possible moment in the course of civil litigation; the requirement is only that the jury ultimately determine the issues of fact * * *" Woods v. Holy Cross Hospital, 591 F.2d 1164, 1178 (5th Cir. 1979) (emphasis in original); see also Capital Traction Co. v. Hof, 174 U.S. 1, 23 (1899) (Seventh Amendment "does not prescribe at what stage of an action a trial by jury must * * * be had").

27(c) (perpetuation of testimony). Moreover, even if there were concrete reasons to think that evidence might be lost in the absence of discovery -- and no such reasons are evident in this case -- that risk would hardly justify reversing the district court for staying trial, as distinct from pretrial, proceedings.

In sum, the panel decision in this case addresses issues of considerable significance to the Presidency and the public, and disposes of those issues in ways that are both legally and practically problematic. Before a sitting President is compelled for the first time in the Nation's history to stand trial as a defendant in a private lawsuit, review of these issues by this Court en banc is called for.

CONCLUSION

For the foregoing reasons, the cross-appeals in this case should be reheard by the Court en banc.

Respectfully submitted,

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January 30, 1996

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 1996, I served the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE by mailing true copies, first-class postage prepaid, to:

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012. memo	Elena Kagan to Jack Quinn and Kathy Wallman; re: Paula Jones Petition [partial] (1 page)	01/26/1996	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
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FOLDER TITLE:

Paula Jones Kathy Wallman's Files [Elena Kagan Memos]

2009-1006-F
jp2028

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]

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RR. Document will be reviewed upon request.

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- 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]

THE WHITE HOUSE
WASHINGTON
January 26, 1996

*file:
Jones*

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: PAULA JONES PETITION

This past Tuesday, Robert Bennett filed a petition in Paula Jones v. Clinton for rehearing or, alternatively, for rehearing en banc before the full Eighth Circuit.

The petition notes that the case presents novel and important questions and argues that the panel decision erred in deciding these questions. Specifically, the petition claims:

- The panel decision misconstrued the critical Supreme Court precedent -- Nixon v. Fitzgerald -- in holding that the Constitution offers the President no protection against civil suits alleging private misconduct. The panel read Fitzgerald to protect the President against only those civil damage suits involving official conduct. But the reasoning of Fitzgerald -- particularly, its concern about diverting the President's time and attention for the sake of a suit brought for private interest -- applies equally well to suits involving non-official conduct.
- The panel decision failed to fully take into account that the President seeks not full immunity, but only postponement of the suit until he finishes his term in office.
- The panel decision disregarded evidence that the Framers intended the President to be immune from all civil claims.
- The panel decision erred in holding that a stay of the suit would constitute an abuse of the trial court's discretion. Even assuming that the President has no constitutional immunity, the trial court should retain discretion to consider the President's special status, and the public interests that status implicates, when exercising its discretion to control its docket.
- The panel decision provides the courts with unprecedented and sweeping powers over the Presidency, effectively enabling courts to determine whether the President will spend his time attending to the national business or participating in litigation.

P5 / P6, B6


[02]

Jones

cc: Elena

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL
WASHINGTON, D.C. 20530**

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REMARKS:

For ELENA

50 App. USCA § 511
50 App. U.S.C.A. § 511

Page 1

**UNITED STATES CODE ANNOTATED
TITLE 50 APPENDIX. WAR AND NATIONAL DEFENSE
SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940
ACT OCT. 17, 1940, C. 888, 54 STAT. 1178
ARTICLE I-GENERAL PROVISIONS**

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Current through P.L. 104-126, approved 4-1-96

§ 511. Definitions

(1) The term "person in the military service", the term "persons in military service", and the term "persons in the military service of the United States", as used in this Act [sections 501 to 591 of this Appendix], shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act [said sections], shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [said sections], means, in the case of any person, the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

(3) The term "person", when used in this Act [said sections] with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [said sections], shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

CREDIT(S)

1990 Main Volume

(Oct. 17, 1940, c. 888, § 101, 54 Stat. 1179; Oct. 24, 1972, Pub.L. 92-540, Title V, § 504(1), 86 Stat. 1098.)

1996 Interim Update

(As amended Mar. 18, 1991, Pub.L. 102-12, § 9(1), 105 Stat. 39.)

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

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Walter - note various people held not to
be within statute

50 App. USCA § 511

Page 8

Where express purpose of § 501 et seq. of the Appendix was, by means of temporary suspension of certain legal proceedings which might prejudice rights of persons in military service, to enable such persons to devote their entire energy to defense needs of nation, former serviceman was not entitled to protection of § 501 et seq. of this Appendix on basis of claimed constructive military service even if rejection of attempted reenlistment was found to be invalid. *Diamond v. U. S.*, Ct.Cl.1965, 344 F.2d 703, 170 Ct.Cl. 166.

Soldiers' and Sailors' Civil Relief Act of 1918, former § 101 et seq. of this Appendix, did not prevent the forfeiture of an oil and gas lease granted to a soldier for nonpayment of an installment of rent due 12 days after lessee's discharge from the service. *Hickernell v. Gregory*, Tex.Civ.App.1920, 224 S.W. 691.

40. — Employees of independent contractors

An independent contractor's employee who was not actually in any branch of the military service was not entitled to protection of § 501 et seq. of this Appendix when performing work on vessel owned and operated by United States, notwithstanding that employee was performing work on vessel usually done by seamen. *Abbattista v. U S*, D.C.N.J.1951, 95 F.Supp. 679.

41. — Heirs of servicemen

Heirs of deceased were entitled to deduct period of deceased's service in Navy in computing 25-year limitation period against action for trespass to try title. *Easterling v. Murphey*, Tex.Civ.App.1928, 11 S.W.2d 329, error refused.

42. — Merchant seamen

Merchant seaman was not entitled to protection of § 501 et seq. of this Appendix, though subject to court martial jurisdiction. *Osbourne v. U. S.*, C.C.A.2 (N.Y.) 1947, 164 F.2d 767.

Plaintiff having made no effort during the 10 years action was pending to bring it on for trial, its dismissal was not an abuse of discretion, his engagement, from the beginning of the war, as captain of a vessel carrying troops and munitions to Europe, shown by affidavit, not being a service covered by, nor shown in the manner provided in, the Soldiers' and Sailors' Civil Relief Act of 1918, former § 101 et seq. of this Appendix. *Greenwood v. Puget Mill Co.*, Wash.1920, 191 P. 393, 111 Wash. 464.

43. — Retired servicemen

A retired Army officer, not being entitled to benefits of § 501 et seq. of this Appendix, was not entitled to have opened default judgment against him for arrears of alimony or to have attorney appointed to protect his interests in absence of any showing of prejudice to him in defense of action, or that he had a legal defense to the proceedings. *Lang v. Lang*, N.Y.Sup.1941, 25 N.Y.S.2d 775, 176 Misc. 213.

Where order staying execution of final judgment was granted under section 501 et seq. of this appendix, but judgment debtor was not a serviceman but only a former or retired serviceman, judgment debtor was not entitled to relief under section 501 et seq. of this appendix and order would be reversed. *Jax Navy Federal Credit Union v. Fahrenbruch*, Fla.App. 5 Dist.1983, 429 So.2d 1330.

44. — Spouses of servicemen

Section 501 et seq. of this Appendix could not be construed to include wife who brought suit in her own name to recover derivatively for damages for injuries suffered by her husband who was covered



MESSAGE CONFIRMATION

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FAX to Elean

What about civil proceedings brought by U.S. DOJ? No compelling public interest?

is just a witness, the principle of separation of powers is strained to the limit. The course respondent suggests -- giving a trial court the power to manage the President's priorities to accomodate personal damages litigation -- pushes the separation of powers well past the breaking point.

Finally, even in cases where only testimony or evidence has been sought from a President, this Court repeatedly has drawn a clear line between criminal proceedings -- ~~where a compelling public interest is involved~~ -- and civil proceedings. See Nixon v. Fitzgerald, 457 U.S. at 754 & n.37; United States v. Nixon, 418 U.S. 683, 712 n.19 (1974). The fact that Presidents on occasion appear as witnesses in criminal proceedings, therefore, does not support the conclusion that a President is required to participate in a ^(private) civil damages action in any capacity -- and certainly not as a defendant.

3.a. The brief in opposition also attempts to create the impression that the President seeks to be held absolutely immune from liability for actions he took while he was not President. The President seeks no such thing, and respondent's elaborate arguments against that proposition (Br. in Op. xx, xx, xx) are simply a determined effort to confuse the issue. Rather, throughout this case, the President has asserted that the responsibilities of the Presidency warrant deferring this litigation until he leaves office. He does not seek to extinguish the

fair trial"), aff'd, 910 F.2d 843 (D.C. Cir. 1990), cert. denied, 500 U.S. 941 (1991).



Jones

Elena (JR) KW/

PL

WHITE HOUSE WEEKLY

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Monday, July 29, 1996

WHW Volume 17, Number 30

CAPITAL DIARY

Immigrants And Strange Animosities

BY LLEWELLYN KING

Peter Jennings, who reads the news on ABC-TV in an avuncular and concerned way, is, one presumes, rolling in money. This is just as well, because the welfare reform bill, which is about to leave Capitol Hill for 1600 Pennsylvania Avenue, is aimed at people like Jennings, among others.

Jennings is a Canadian citizen who has not changed his nationality. He once said that his mother would never forgive him if he became an American, although he has lived here for many years and achieved great success.

The Republican welfare bill censures people like Jennings. They cannot draw welfare under it and their children can be denied school lunches. The bill implies that there is some sort of moral failure in people who do not become citizens; that they have an overriding loyalty to some other power and are here for no better purpose than to rip off our social services.

It is one more unpleasant aspect of this unpleasant piece of legislation, this bill designed—like three strikes, you're out—to produce a crueller, harsher America.

This bill, which is supposed to turn layabouts into productive citizens imbued with a work ethic, has at its heart a desire not only to make the poor, the stupid and

(Continued on page 2)

Vets May Resurrect Attack On White House Paula Jones Defense

BY TONY CAPACCIO

A veterans' group is considering filing an *amicus curiae* brief with the Supreme Court in order to press its opposition to what has been widely seen as a claim by President Clinton that, as the nation's commander-in-chief, he is on "active-duty" status.

The group spearheaded a Memorial Day weekend attack on the president for purportedly using such a claim in an alleged attempt to delay the progress of the Paula Jones sexual harassment case. The controversy neatly captured the fact that, although the Cold War is over and his Pentagon team is credited with good management credentials, Clinton remains vulnerable on the "commander-in-chief" issue.

A Supreme Court filing by the Coalition of American Veterans could tap that vulnerability—and might in the process elevate national defense, now fairly dormant in the presidential campaign, as a campaign issue. Currently, the coalition is assessing whether to bring its fight to the nation's highest court; seven attorneys are scheduled to meet on either Thursday or Friday to

(Continued on page 4)

Israel Among Most 'Extensive' In Economic Espionage—CIA

BY TONY CAPACCIO

For the first time on the public record, the CIA has identified the governments of France and Israel as among a handful of nations it says are "extensively engaged in economic espionage" against the United States, *White House Weekly* has learned.

In contrast, the CIA concluded in the just-released testimony that Japan—an ally viewed by some as among the most unscrupulous in trying to steal U.S. technology—engages in "mostly legal" collection efforts.

"We have only identified about a half-dozen governments that we believe have extensively engaged in economic espionage as we define it," said the CIA in May 10 written material provided to the Senate Select Committee on Intelligence.

"These governments include France, Israel, China, Russia, Iran and Cuba. Japan and a number of other countries engage in economic

(Continued on page 5)

Vets May Attack Again... (Continued from page one)

discuss the group's legal options.

Retired Marine Corps Col. William "Lucky" Luchsinger, the coalition's chairman, this week acknowledged the organization's hope that a filing might influence both general public opinion and the court's verdict, even if that filing missed prescribed legal deadlines.

"We are processing it now. We are looking at people who would take the case *pro bono*," Luchsinger said. "It's a question of timing. We may do it anyway because if we don't, who will?"

Luchsinger said his coalition, unlike most veterans' organizations, gets actively involved in political and even legal issues.

Time appears to be on the coalition's side. The Supreme Court on June 24 agreed to hear the case, effectively delaying Jones' high-profile lawsuit until after Election Day. Clinton's attorneys have 45 days from June 24 to file a "brief on the merits." The document's preparation is on schedule, the president's attorneys confirmed yesterday.

Interested parties then have 30 days in which to file *amicus curiae* or "friend of the court" briefs supporting Jones or Clinton, the court clerk's office said. "I think public opinion is important.... They are cognizant of public opinion," Luchsinger said of the Supreme Court.

Luchsinger also acknowledged that his organization, once nearly bankrupt, has leveraged its Memorial Day roll for fund-raising purposes.

In attacking the White House, veterans' groups, GOP lawmakers and *New York Times* columnist Maureen Dowd interpreted Clinton's legal defense, as offered in a May 15 Supreme Court brief, as resting largely on purported "active service" status as commander-in-chief.

According to this view, Clinton was claiming to be eligible under the Soldiers' and Sailors' Civil Relief Act of 1940 for a delay of the sordid civil case. Critics and reporters failed to mention, however, that as far back as August 1994 Clinton legal briefs maintained that he was *not* relying on the act.

Instead, according to Clinton attorneys, the act has been

referenced to illustrate a defense theory: If the act grants soldiers temporary legal relief while on active service, then the president, by dint of his greater responsibilities, should enjoy similar status.

"It is arguable that the Act expressly applies to the President as Commander-in-Chief but we do not press the argument here," said an Aug. 10, 1994, filing.

Who is right can be debated on *Geraldo*. What is evident is that the issue is not as clear-cut as the Memorial Day firestorm suggested.

For its part, the coalition spent \$144,300—nearly its entire budget—placing, in 24 major and regional papers, full- and quarter-page ads featuring a May 27 letter of criticism signed by five Congressional Medal of Honor winners.

The papers included the *Washington Times*, the *Orange County Register*, the *Philadelphia Inquirer*, *Stars and Stripes*, the *St. Petersburg Times* and the *Detroit News*. Luchsinger said the coalition wanted to "straighten the record"

over what he claimed was the Clinton legal team's continued reliance on the Soldiers' and Sailors' Act.

"I understood Clinton's attorneys ain't giving up," said Vietnam War veteran Elliot Williams, past president of the Congressional Medal of Honor Society. "They are dropping the issue of the 1940 Sailors' Act. It's new words, but it's going to be the same claims."

Williams said the letter reflected one step aimed at politically energizing veterans' groups—not on behalf of any one candidate, but simply to get more involved. "There are 18 chartered groups out there and they are not getting together. They are guarding their turf for membership. They won't admit that, but it's the truth," Williams said, adding that he hopes the coalition's past and future involvement will bring the groups together.

Williams said the May 27 letter, to which he is a signatory, reflected language he and another Vietnam medal winner and former Army Public Affairs chief, Maj. Gen. Patrick Brady, had drafted. Adding some confusion, however, Brady said in an interview that he never talked to Williams and can't remember who called him asking him to sign the letter.

"I drafted the letter, but a lot of stuff was drafted by Brady," Williams said. "Then collectively we came out with one letter. The coalition got some things in there, too. They were full partners. Let's put it that way."

"To retreat from the call to arms and then later embrace its code when it is convenient is an outrage to all who served," said the letter in recounting Clinton's 1960s draft history.

"It is a distasteful irony that you would invoke the Act at a time when we remember those who gave their lives while wearing the uniform of the American military you once professed to loathe," the letter added.

The phrase about "loathing the

(Continued on next page)

'It's a question of timing. We may do it anyway because if we don't, who will?'

'Extensive' In Economic Espionage... *(Continued from page one)*

collection, but we believe their efforts are mostly legal and involve seeking openly available material or hiring well-placed consultants," the CIA said in its testimony.

The new material was released without fanfare yesterday as part of a declassified hearing volume on "Current and Projected National Security Threats to The United States."

Until the new CIA statement, the U.S. government had never publicly confirmed that Israel has engaged in clandestine attempts to gain U.S. technology.

Israel Embassy spokesman Gadi Baltiansky said yesterday he was not aware of the CIA material, but he stated: "Israel is not engaged in any form of espionage in or against the United States."

Economic espionage has been a hotly debated topic in national security and defense industry circles.

So concerned was the Clinton administration that, in 1994, it set up a National Counterintelligence Center (NACIC) to pool FBI, CIA, Defense Intelligence Agency, State Department and National Security Agency resources.

It was NACIC's research that led to a listing of the governments, according to the material. "The Center has narrowly defined economic espionage to include a government-directed or orchestrated clandestine effort to collect U.S. economic secrets or proprietary information," the testimony said.

"The Counterintelligence Center has examined a

number of countries from the standpoint of their willingness to conduct economic espionage against U.S. interests," said the CIA in the material released yesterday.

"We see government-orchestrated theft of U.S. corporate science and technology data as the type of espionage that poses the greatest threat to U.S. economic competitiveness."

News of the CIA characterization of Israel comes as that nation is reacting with anger to the Clinton administration's denial of a pardon for convicted spy Jonathan Pollard.

A widely publicized—and equally criticized—Defense Investigative Service (DIS) "Counterintelligence Profile" on Israel, disclosed in February, recounted public-record examples of industrial espionage.

"Israel aggressively collects military and industrial technology. The United States is a high-priority collection target," said the profile, which also implied that U.S. citizens with ethnic ties to Israel are prone to betray U.S. technology.

CIA Director John Deutch in Feb. 22 testimony hit the DIS profile as "a terrible document."

In a Feb. 28 report, the General Accounting Office, without explicitly naming Israel—which it identified only as "Country A—said it "conducts the most aggressive espionage operation against the United States of any U.S. ally."

The new CIA material tends to corroborate rather than to debunk the DIS and GAO assessments.

Vets May Attack Again... *(From previous page)*

military" was in Clinton's now infamous Dec. 3, 1969, letter to Arkansas ROTC official Col. Eugene Holmes. Three years earlier, then-Boatswain's Mate First Class Williams won his Medal of Honor for taking on 10 Viet Cong junks and sampans in a savage river firefight.

"Mr. President,...withdraw your use of the Soldiers' and Sailors' Civil Relief Act," the letter said.

Clinton's attorney, Robert Bennett, acknowledged in an interview the conclusions of a May 22 Congressional Research Service opinion relied on by Republicans to attack Clinton: that the commander-in-chief title does not imply "active duty."

"I agree, but we've never argued that. We are not saying he is on active duty," Bennett said.

"Everybody has been over the papers," said an exasperated Bennett when asked why the issue had not surfaced two years ago, when the 1940 Act was first brought up in his legal briefs. "At no time did any-

body raise a question, no print or television reporter. The point was never made an issue."

Just one excerpt illustrates the case's complexity:

In a June 5, 1995, reply brief, for example, lawyers for Clinton wrote: "The President does not rely directly on the Act, choosing instead to invoke the constitutional protection due the presidency. Nonetheless, we feel compelled to address certain statements about the Act [made] in the opposing briefs..."

"Although the Act does not expressly include the commander-in-chief, a review of the legislative history reveals no intent to exclude him and it would be consistent with the overall purpose of the Act to extend its coverage to the commander of the armed forces...."

"In any event, the Act provides a useful example of another instance in which our legal system subordinates the interests of individual litigants to overriding national interests when circumstances require."

For Conference Information See

WORLD WIDE WEB SITE: <http://www2.dgsys.com/~kingcomm>
EMAIL ADDRESS: kingcomm@dgs.dgsys.com

NLWJC – Kagan

Staff & Office – Box 001-Folder 7

Crime – Youth Gun Initiative

(Elena's Files)

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

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Folder Title:

Crime - Youth Gun Initiative (Elena's Files)

Stack:

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Row:

97

Section:

4

Shelf:

10

Position:

1

Crime - youth gun initiative

THE WHITE HOUSE
WASHINGTON

July 7, 1998

YOUTH HANDGUN SAFETY EVENT

DATE: July 8, 1998
LOCATION: Rose Garden
BRIEFING TIME: 10:55 am
EVENT TIME: 11:30 am
FROM: Bruce Reed

I. PURPOSE

To announce three news steps that the Administration will take to continue to promote gun safety and responsibility throughout the country. Specifically, you will: (1) call on Congress to pass Child Access Prevention (CAP) legislation; (2) require federally licensed gun dealers to post signs and issue warnings concerning juvenile handgun possession; and (3) partner with the State of Maryland to reduce gun-related violence.

II. BACKGROUND

You will be addressing approximately 100 law enforcement representatives and gun safety advocates on the importance of keeping guns out of the hands of children. As you know, the recent surge of school shootings has fueled increased national attention in gun safety and responsibility. This event is an opportunity to highlight the Administration's ongoing commitment to reducing youth gun violence. You will be introduced by Suzann Wilson, the mother of Brittheny Varner who, at age 11, was one of the victims of the Jonesboro school shooting. As an Arkansas native, Suzann is supportive of gun ownership but has now become a strong advocate for national CAP legislation.

Specifically you will make the following announcements:

- **A National Child Access Prevention (CAP) Law.** You will call on Congress to promote gun safety and responsibility nationwide by working with the Administration to pass federal legislation that holds gun owners criminally responsible if they fail to keep loaded firearms out of the reach of children. Fifteen states have enacted CAP laws. A recent study published by the Journal of the American Medical Association found that CAP laws reduced fatal unintentional shootings by an average of 23%. Senators Durbin and Chafee have introduced a CAP bill in the Senate. In addition, Rep. Carolyn McCarthy and Senator Kennedy have included a CAP proposal as part of a broader gun package.

- **The Youth Handgun Safety Act.** Passed as part of the 1994 Crime Act, the Youth Handgun Safety Act generally prohibits juveniles from possessing handguns and adults from transferring handguns to juveniles. In response to your directive to the Treasury Department last year, the ATF will now publish a final regulation requiring all federally licensed gun dealers to post signs and issue written warnings that state the following:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities;

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents and save lives;

(3) Federal law prohibits, except in certain limited circumstances, any one under 18 years of age from knowingly possessing a handgun, or any person from selling, delivering or otherwise transferring a handgun to a person under 18; and

(4) A knowing violation of the prohibition against, selling, delivering or otherwise transferring a handgun to a person under 18 is, under certain circumstances, punishable by up to 10 years in prison.

- **Maryland Gun Enforcement Initiative.** Building on your Youth Crime Gun Interdiction Initiative, which is tracing all crime guns in 27 pilot cities, you will announce that the Administration will partner with the State of Maryland to launch a joint ATF-Maryland State Police initiative effort to trace every crime gun seized in the state. Additionally, Maryland will target “Youth Gun Hot Spots” throughout the state; expand enforcement of the state’s CAP law; and establish an Office of Gun Enforcement to coordinate these efforts and generally facilitate gun investigations.

III. PARTICIPANTS

Briefing Participants:

- Bruce Reed
- Rahm Emanuel
- Larry Stein
- Jose Cerda

Event Participants:

- Attorney General Reno
- Secretary Rubin
- Suzann Wilson, mother of Jonesboro school shooting victim
- Superintendent of Maryland State Police, Colonel David Mitchell

Seated on stage:

- Secretary Riley
- Senator Richard Durbin
- Senator John Chafee

Representative Carolyn McCarthy

IV. PRESS PLAN

Open Press.

V. SEQUENCE OF EVENTS

- **YOU** will be announced onto stage accompanied by Secretary Rubin, Attorney General Reno, Colonel David Mitchell, and Suzann Wilson.
- Secretary Rubin will make remarks and introduce Colonel David Mitchell.
- Colonel David Mitchell will make remarks and introduce Attorney General Reno.
- Attorney General Reno will make remarks and introduce Suzann Wilson.
- Suzann Wilson will make remarks and introduce **YOU**.
- **YOU** will make remarks and then depart.

VI. REMARKS

Remarks Provided by Speechwriting.

President Clinton: Promoting Gun Safety and Responsibility
Questions and Answers
July 8, 1998

Youth Handgun Safety Signs and Warnings

Q: Can you tell us more about the signs and warnings that gun dealers will be required to post and issue?

A: On June 11, 1997, the President signed a directive to require federal firearms dealers to post signs and issue warnings about the responsibility that gun purchasers have under current law to not transfer a handgun to juveniles -- as well as about the dangers that handguns pose to children generally.

After going through an extensive comment period -- and hearing from gun manufacturers, gun control advocates, and others -- the President today announced that next Monday the Department of the Treasury will publish in the Federal Register the final regulation requiring federally licensed gun dealers to post signs and issue warnings to handgun purchasers concerning youth handgun safety. The signs, which are 17" x 22" in size, and written warnings will be printed and distributed through the Bureau of Tobacco, Alcohol and Firearms (ATF). Approximately 90,000 federally licensed firearms manufactures, importers and dealers will have to comply with this new regulation.

Q: What happens if a gun dealer refuses to post the new signs or issue the written notices provided by ATF?

A: Any licensee who willfully fails to comply with the Gun Control Act -- or regulations promulgated under the Gun Control Act -- is subject to having his or her license revoked.

Q: How many firearms used by juveniles actually come from federally licensed gun dealers?

A: According to ATF's tracing data, nearly all firearms used by juveniles can be originally traced back to a federally licensed gun dealer; however, the firearms may have gone through several other persons in the interim. And in the 17 cities where ATF, as part of the President's Youth Crime Gun Interdiction Initiative, is tracing all recovered crime guns -- one out of every ten is traced back to a juvenile.

Thus, there is ample evidence that for almost every gun that gets into a juvenile's hands, an adult had the opportunity -- in fact, the legal responsibility -- to stop that transfer from taking place. The signs and warnings being required by the Administration will put adult gun purchasers on notice about this responsibility and warn them about the legal sanctions that may apply if this responsibility is ignored.

Q: Can you clarify under what authority the Administration is requiring gun dealers to post these signs and issues written notices?

A: The authority for this action is two-fold: (1) 18 U.S.C. Sec. 926(a) generally provides that the Secretary of the Treasury may proscribe certain rules and regulations to carry out the provisions of the 1968 Gun Control Act; and (2) 18 U.S.C. Sec. 922(x)(1) -- or the Youth Handgun Safety Act, which was included by Senator Kohl as an amendment to the 1994 Crime Act -- prohibits, in most circumstances, juveniles from possessing handguns, and adults from transferring handguns to juveniles.

Q: Why did it take the Treasury Department so long to implement the President's directive of June 11, 1997?

A: Pursuant to the Administrative Procedure Act, agencies are generally required to provide notice and comment prior to issuing a final regulation. On August 27, 1997, ATF issued a notice of proposed rulemaking. The comment period for this rulemaking closed on November 25, 1997. After carefully considering the 62 comments received in response to the proposed rule, ATF drafted the final regulation being announced today.

Q: What punishments are provided for in the Youth Handgun Safety Act?

A: Juveniles who violate the ban on handgun possession are subject to mandatory probation. Adults who violate the prohibition on transferring handguns to juveniles are punishable by a prison term of 1 to 10 years, depending on the circumstances. If the transferor knew or had reasonable cause to believe that the juvenile intended to carry or use the handgun in the commission of a crime of violence, the punishment may be a fine and/or imprisonment of up to ten years. In other circumstances, the punishment may be a fine and/or imprisonment of up to one year.

Additionally, the Administration has called for increasing both of these penalties in its juvenile crime legislation. Specifically, the Administration has proposed replacing mandatory probation for juveniles with up to one year of imprisonment, and providing for a mandatory minimum sentence of three years for adults who knowingly transfer a handgun for a juvenile to use in a violent crime.

Child Access Prevention Legislation (CAP)

Q: In challenging Congress to pass federal CAP legislation, did the President specifically endorse the Durbin-Chafee bill?

A: The President believes that the Durbin-Chafee bill -- and similar language incorporated into broader gun legislation introduced by Senator Kennedy and Representative McCarthy -- is a good first start. It is a serious bipartisan attempt to promote gun safety and responsibility throughout our country by holding gun-owning adults who fail to keep loaded firearms out of the reach of children criminally responsible for their actions.

Fifteen states have enacted CAP laws, and a recent study by the Journal of the American Medical Association found that they reduced unintentional shootings by an average of 23%. So the President supports the Durbin-Chafee effort, and he has asked the Secretary of the Treasury and Attorney General to work with the Senators to pass the best federal CAP law possible.

Q: What are the 15 states with CAP laws?

A: The 15 states with CAP laws on the books include:

Florida (enacted in 1989);
Connecticut (enacted in 1990);
Iowa (enacted in 1990);
California (enacted in 1991);
Nevada (enacted in 1991);
New Jersey (enacted in 1991);
Virginia (enacted in 1991);
Wisconsin (enacted in 1991);
Hawaii (enacted in 1992);
Maryland (enacted in 1992);
Minnesota (enacted in 1993);
North Carolina (enacted in 1993);
Delaware (enacted in 1993);
Rhode Island (enacted in 1995); and
Texas (enacted in 1995).

Maryland Gun Enforcement Initiative

Q: What exactly is the Administration's role in the Maryland Gun Enforcement Initiative being announced today.

A: The Administration welcomes Maryland's new initiative as a way to expand collaboration with federal law enforcement in investigating, prosecuting and incarcerating illegal gun traffickers and reducing gun violence. Baltimore is already one of the 27 cities tracing all recovered crime guns as part of the President's Youth Crime Gun Interdiction Initiative. The initiative announced today will allow the Administration to expand this effort to the entire state of Maryland. By helping Maryland trace all recovered firearms, Maryland can maximize information about the illegal sources of firearms and build a statewide strategy against illegal firearms trafficking.

Maryland's new initiative demonstrates that federal, state, and local law enforcement can work together to broaden their approach from simply reacting to gun crimes -- to a proactive enforcement strategy aimed at reducing the illegal supply of guns and preventing gun violence in the first place.

Child Access Prevention Legislation (CAP)

Q: What specific changes will the Administration be seeking to the Durbin-Chafee CAP legislation?

A: The Attorney General and Secretary of the Treasury have recommended that the proper federal role for child access prevention legislation would be to target the most egregious offenses. We support -- and, in fact, have transmitted to states -- model legislation very similar to the Durbin-Chafee bill that would encourage states to prosecute and punish negligent storing of firearms. However, we believe that federal CAP legislation should be tougher and targeted. Accordingly, after reviewing the Durbin-Chafee bill, the Attorney General and Treasury Secretary have recommended three changes:

(1) Raising the standard of liability from negligence to recklessness. This means that a person must be aware of the risk and disregard it. By contrast, a standard of negligence would apply to any person who should be aware of a risk, but is not.

(2) Elevating the offense from a misdemeanor to a felony. Since Justice and Treasury propose targeting the most egregious cases -- not simply negligence -- they support tougher penalties -- or at least one year's imprisonment.

(3) Limiting federal jurisdiction to cases where a child causes death or bodily injury.

We intend to work with Senators Durbin and Chafee to pass the best federal Child Access Prevention law possible -- and to encourage states to adopt complimentary laws as well.

**PRESIDENT CLINTON:
PROMOTING GUN SAFETY AND RESPONSIBILITY**

July 8, 1998

"From now on, no one who enters a gun shop should mistake their responsibility. All federal gun dealers will now be required to issue written warnings and post signs like this one. The sign makes plain for all to see -- in black and white, in the simple, direct language of the law -- it is illegal to sell, deliver, or transfer a handgun to a minor. Period."

President Bill Clinton

July 8, 1998

Today, President Clinton is joined by Attorney General Janet Reno, Secretary Robert Rubin, Secretary Richard Riley, Senator John Chafee (R-RI), Senator Richard Durbin (D-IL), Representative Carolyn McCarthy (D-NY), Suzann Wilson, mother of Jonesboro school shooting victim Brittheny Varner, Superintendent of Maryland State Police David Mitchell, and Maryland Lieutenant Governor Kathleen Kennedy Townsend to announce three new steps the Administration is taking to promote gun safety and responsibility throughout the country. Specifically, the President will (1) announce the publication of a final regulation requiring all federally licensed gun dealers to post signs and issue warnings concerning juvenile handgun possession; (2) Call on states and Congress to pass Child Access Prevention (CAP) legislation; and (3) announce a partnership with the state of Maryland to reduce gun-related violence.

THE YOUTH HANDGUN SAFETY ACT. Passed as part of the 1994 Crime Act, the Youth Handgun Safety Act generally prohibits juveniles from possessing handguns and adults from transferring handguns to minors. Today, in response to a directive issued last year by the President, the Treasury Department will announce the publication of a final regulation requiring all federally licensed gun dealers to post signs and issue written warnings that state the following:

- The misuse of handguns is a leading contributor to juvenile violence and fatalities;
- Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives;
- Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from selling, delivering, or otherwise transferring a handgun to a person under 18; and
- A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

HOLDING GUN-OWNERS ACCOUNTABLE FOR CHILD SAFETY. President Clinton is calling on states and Congress to pass Child Access Prevention (CAP) laws that hold adults responsible if they allow children easy access to loaded firearms. Fifteen states have already passed CAP laws, and the President is seeking a tough, targeted, federal CAP law with new penalties to punish serious offenders. A recent study published by the Journal of the American Medical Association found that CAP laws have reduced fatal unintentional shootings by an average of 23 percent.

BUILDING A PARTNERSHIP WITH STATE AND LOCAL LAW ENFORCEMENT. In support of the President's Youth Crime Gun Interdiction Initiative, the Administration will begin a partnership with the State of Maryland to launch a joint ATF-Maryland State Police initiative to trace every gun seized in the state that was used in a crime. This effort will allow the state of Maryland to maximize information about the illegal sources of firearms and build a statewide strategy against illegal firearms trafficking. Today's announcement is another example of federal, state, and local law enforcement working together to broaden crime prevention strategies from simply reacting to gun-related crimes to a strategy aimed at reducing the illegal supply of guns and preventing gun violence in the first place.



Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: 1998-07-08 remarks on children and handgun safety

----- Forwarded by Neera Tanden/WHO/EOP on 07/09/98 01:53 PM -----



SUNTUM_M @ A1
07/08/98 12:28:00 PM

Record Type: Record

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

cc:

Subject: 1998-07-08 remarks on children and handgun safety

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 8, 1998

**REMARKS BY THE PRESIDENT
ON CHILDREN AND HANDGUN SAFETY**

Room 450
Old Executive Office Building

12:03 P.M. EDT

THE PRESIDENT: I would like to begin by thanking Suzanne Wilson for making the long trip up here from Arkansas, with her sister, to be with us today, so soon after that terrible tragedy. Most people wouldn't feel like going out of the house, much less coming all the way to Washington, and I think it is a real credit to her and to her devotion to her daughter that she is here today. (Applause.)

I want to thank Colonel Mitchell and Lt. Governor Kathleen Kennedy Townsend, and in his absence, Governor Glendening, for the path-breaking work being done in Maryland on this important issue. I thank Secretary Rubin and Mr. Johnson and Mr. Magaw for being here, and the work the Treasury Department is doing. Thank you, Secretary Riley, for the work you've done to have zero tolerance for guns in schools. Thank you, Attorney General Reno, for the steady work now we have done for six years to try to bring this issue to the American people.

I thank Senator Durbin, Senator Chafee, Senator Kohl, and a special word of thanks to Representative Carolyn McCarthy. And to all the advocates out here, I welcome you here and I thank you, and especially to the law enforcement officers.

I think that this recent series of killings in our schools has seared the heart of America about as much as anything I can remember in a long, long time. I will always personally remember receiving the news from Jonesboro because it's a town I know well. I know the local officials, I know the school officials. I've spent large numbers of days there. I've been in all the schools and answered the children's questions. And once you know a place like that, you can't possibly imagine something like this occurring.

But it's happened all over the country. I was in Springfield, Oregon, as you know, in the last couple of weeks, meeting with the families there. I think every American has sent out prayers to Suzanne and the other parents and the other spouses and people who were so wounded by this. But in a fundamental way, our entire nation has been wounded by these troubled children with their guns.

As has already been said, these events have been even more difficult for us to understand because they're occurring at a time when we've had the lowest crime rate in America in 25 years and, for the first time in a decade, a steady drop in the juvenile crime rate. So we struggle for answers. We say, well, does the popular culture have anything to do with this? Does good parenting have anything to do with this? And we know that probably everything we consider has something to do with this. But no matter how you analyze this, it is clear that the combination of children and firearms is deadly. As parents, public officials, citizens, we simply cannot allow easy access to weapons that kill.

For five years now, our administration has worked to protect our children, and we are making progress, as has been said. A great deal of the credit goes to far-sighted leaders at the city level and at the state level -- people like Lt. Governor Kathleen Kennedy Townsend and Superintendent Mitchell, Governor Glendening.

We're well on our way toward putting 100,000 police on

the street. About a quarter of a million people have not been able to buy guns in the first place because of the Brady law, because of their criminal background or their mental health history. We have banned several types of assault weapons and have struggled to preserve the integrity of that law against a commercial assault from importers.

School security is tighter; anti-gang prevention is better; penalties are stronger. We promoted discipline in schools with anti-truancy and curfew and school uniform policies, and, in various ways, they have worked marvelously in many communities. And we have a national policy now in all our schools of zero tolerance for guns in schools. Over 6,000 students with guns were disarmed and sent home last year, doubtless preventing even more terrible acts of violence.

But it is not enough if children have access to guns. In Springfield, Oregon, the young man in custody was sent home the day before because he had a gun in the school.

So, yes, our laws must be strong, our enforcement resolute. At home, parents must teach their children the difference between right and wrong and lead them away from violence. But recent events remind us that even if all this is done, it is still too easy for deadly weapons to wind up in the hands of children -- by intent or by accident -- and then, to lead to tragedy -- by intent or by accident.

We can't shrug our shoulders and say, well, accidents will happen, or some kids are just beyond hope. That is a cop-out. Instead, every one of us must step up to our responsibility, that certainly includes gun owners, gun purchasers, and gun dealers. Today, we say to them, protecting children is your responsibility too, and there are penalties for the failure to fulfill it.

In response to the directive I issued to Secretary Rubin in June of last year, all federal gun dealers will now be required to issue written warnings and post signs like that one over there. The sign makes it plain for all to see in simple, direct language, that it's illegal to sell, deliver or transfer a handgun to a minor, period. From now on, no customer or employee can avoid personal responsibility by pleading ignorance of the law.

Responsibility at gun shops, of course, must be matched by responsibility at home. Suzanne talked movingly about that. Guns are kept in the home for many purposes, from hunting to self-defense. That is every family's right and, as she said more eloquently than I, that is not in question. The real question is every parent's responsibility, every adult's responsibility to make sure that unsupervised children cannot get a hold of the guns. When guns are stored carelessly, children can find them, pick them up, court danger. Most will put them back where they found them. Others, as we know now from hard experience, will touch the trigger by accident; a troubled few will take guns to school with violence in mind.

Too many guns wielded in rage by troubled adolescents can be traced back to an irresponsible adult. As has been previously said, in Maryland now, and now in 14 other states, parents have a legal responsibility to keep guns locked and out of reach of young hands. That should be the law in all 50 states. There are 35 more

that ought to follow Maryland's lead. It should be the practice in every home.

There is also a proper federal role in preventing children's access to firearms, and Congress should pass a tough, targeted child access prevention law with new penalties to punish the most egregious offenders.

I applaud Senators Chafee and Durbin for their legislation, starting us down the road toward making this the law of the land. I thank Senator Kohl and Representative McCarthy for their strong support. They are doing the right thing. And during the last days of this legislative session, this is how we should move forward -- again I say, with progress, not partisanship.

There is much we must do in public life to fulfill our obligation to our children. More than a year ago, we directed all federal law enforcement agencies to issue child safety locks to federal officers so that their guns could not be misused. A majority of our gun manufacturers have joined us voluntarily in this effort, and that has been successful. I hope all other gun manufacturers will follow suit.

The real work, of course, must still be done in our homes -- beyond law and policy -- to the most basic values of respect, right and wrong, conscience and community, and violence rejected in favor of nonviolence and communication. Only parents can remedy what ails children in their heart of hearts. But the rest of us must do our part to help, and must do our part to contain the potential for destructive violence when things fail at home.

So I say again, this is an issue that has wounded every American in one way or the other. Of the four women standing to my right, three have lost members of their immediate family because of gun violence. All of us have grieved with them. We can do better. This is one big first step.

Thank you very much. (Applause.)

END

12:13 P.M. EDT

Message Sent To: _____



Jose Cerda III

12/15/97 03:27:32 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
cc: Leanne A. Shimabukuro/OPD/EOP
Subject: Youth Crime Gun Interdiction Initiative

EK:

Below please find the few sentences you requested on Treasury/ATF's expansion of the Youth Crime Gun Interdiction Initiative (YCGII) in the budget. The initiative received no special funding in FY 97. It received a \$1 million line-item in FY 98 and should also receive \$10 million from the Treasury Secretary's Forfeiture Fund. However, the current funding has generally not provided for ATF to hire/dedicate additional agents to the project or to increase investigations on gun traffickers (funding to date has generally provided training to state and locals, computer equipment/software and contract personal to do tracing).

The current OMB recommendation for FY 99 proposes \$28 million for the YCGII -- \$12 million that is already built into the base and an additional \$16 million that they are supporting from the Presidential Priority Reserve (PPR). These funds will be used, in part, for new agents. Treasury is appealing for an additional \$4 million in personal from the PPR.

Youth Crime Gun Interdiction Initiative -- The proposed FY 99 budget includes \$28 million to expand the President's Youth Crime Gun Interdiction Initiative (YCGII). This includes \$16 million in new funds to hire 162 ATF agents to crackdown on illegal gun traffickers in the 27 youth crime gun cities, and \$12 million to continue the Administration's comprehensive gun tracing in these cities. ATF's crime gun tracing has been a key component of Boston's successful youth violence strategy.

NB: If Treasury wins its appeal for an additional \$4 million, which I believe DPC and Rahm should support, we could add 27 agents (mostly for training), 33 inspectors to visit firearms dealers, and 50 clerical and support staff to the above total.

Jose'



Jose Cerda III

12/15/97 03:27:32 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc: Leanne A. Shimabukuro/OPD/EOP

Subject: Youth Crime Gun Interdiction Initiative

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Crime - Youth Gun Initiative

THE WHITE HOUSE
WASHINGTON

12-10-97

RAMM (BRUCE) (ELENA):

ONE MORE REASON
TO SUPPORT THE EXTRA
FUNDS IN THE BUDGET
PROCESS FOR
ATF'S YOUTH GUN
INTRODUCTIONS INITIATIVE...





Bureau of Alcohol, Tobacco & Firearms
Office of Public Information

ATF News Summary

Monday, Dec. 8, 1997

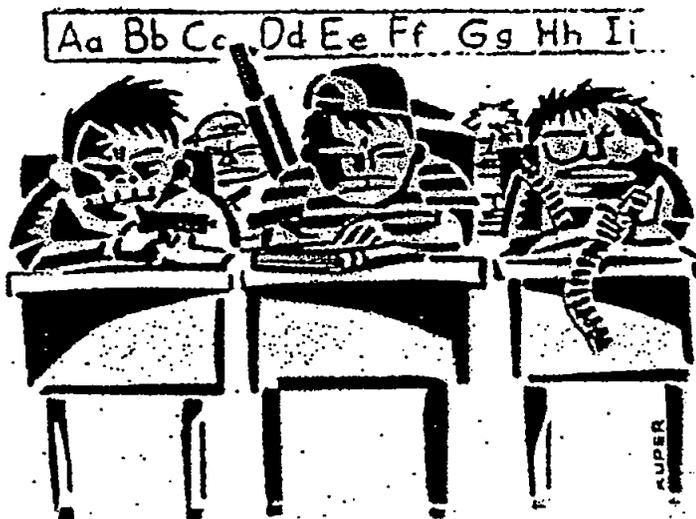
ABC News 12/5/97 p. 1 of 5



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Across U.S., Gun Tracing Yields Early Results

Kids Can Easily Get Guns



Kids across the U.S. fear gun violence.
878k (avi)
856k (mov)
RealVideo (download)
RealPlayer

While violence in schools is down nationwide, guns are easily accessible for juveniles. Now a federal program to track guns is aiming to cut off the supply. (Illustration Peter Kuper)

By Jackie Cooperman
ABCNEWS.com

Dec. 5 — A 14-year-old allegedly brings a small arsenal of semiautomatics into his West Paducah, Ky., high school, killing three classmates in a prayer circle. A teen in the hamlet of Pearl, Miss., guns down two students and injures seven others.

Both attacks happened in small towns, far from the

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- ▶ SEARCH

Clinton Calls for Report on School Violence

Doctors Struggle With Gun Violence

Students Grapple with Kentucky Shooting

In July 1996, the Youth Crime Gun Interdiction Initiative began in:

- Atlanta
- Baltimore
- Birmingham
- Boston
- Bridgeport, CT
- Cleveland
- Inglewood, CA
- Jersey City, NJ
- Memphis
- Milwaukee
- New York
- Richmond, VA
- St. Louis
- Salinas, CA
- San Antonio
- Seattle
- Washington DC
- Last summer, the federal government budgeted \$ 11 million in new funding, and added*
- Los Angeles
- Philadelphia
- Chicago
- Detroit
- Houston
- Miami
- Tucson
- Minneapolis
- Gary, ID
- Cincinnati

youth gun violence in the last 10-12 years," Kennedy said.

Policy Makers Optimistic

But not so much in Boston, where no young people have died from gun wounds in more than two years, a "miracle" widely attributed to gang prevention and gun tracing. Now 27 other cities are trying to copy that success by focusing on gun tracking, with help from the Bureau of Alcohol, Tobacco and Firearms.

Many law enforcement officials are optimistic that by targeting the gun supply, they can prosecute illegal dealers and get the weapons out of circulation.

"It's a pretty revolutionary idea," said Daniel Webster, an assistant professor at the Johns Hopkins Center for Gun Policy and Research in Baltimore.

Since the initiative began in 17 cities in July 1996, the ATF has initiated 86 investigations, recommended 90 defendants for prosecution, arrested 61 defendants and sentenced 15. The number of tracing requests from local police departments has grown exponentially: the ATF traced 191,378 guns in fiscal year 1997, up from 79,777 guns in fiscal 1995.



Ruger Model P95DC 9 mm

"Three years ago, if you looked around the country and said 'what are you doing about people selling guns to adult felons and juveniles?' the answer was essentially 'nothing,'" said Kennedy, one of the founders of Boston's initiatives. "And that's not true anymore."

'Boston Miracle' Inspires Cities

For five years, Boston police worked with the ATF to trace guns, but did not initially use the data. When they finally looked at the information two years ago, the statistics contradicted widely held theories. They discovered that guns were often sold legally, 30 to 40 at a time, to a "straw buyer," who then sells them illegally on the street. Also, the guns were often purchased locally, not trafficked from other states.

"Everyone thought all the guns were coming from down south," Kennedy said. In fact, the majority of guns in Boston came from within Massachusetts.

Most guns taken from people 21 years and younger were less than a year old, he added. "Those are guns that

urban centers typically associated with youth violence. And while violence in schools is down nationwide, an unprecedented federal gun tracing effort shows that no community should be surprised at kids bearing arms.



Boston Police Chief Paul Evans wants to intervene before kids turn violent

[580k \(wav\)](#)
[\(RealAudio\)](#)

In 17 cities, investigators found that young people often buy guns near their home towns, that guns move quickly from legal sales to illegal use and that even when they don't go on headline-making shooting sprees, teens are buying weapons with alarming ease.

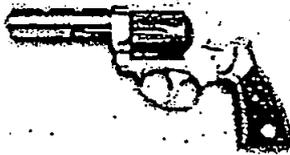
"Most times it's a 9mm or a .380. You can tell who to go to," said Michael Hogan, an 18-year-old who left Atlanta, where he could buy a gun for the price of a pair of tennis shoes, for the Laurinburg Institute, a boarding school in Laurinburg, NC. "They're standing around with a bookbag on, and sometimes they'll give you the eye and ask you, 'do you smoke?' And then they'll say, 'I've got a pistol to sell' and you take it from there."



David Kennedy, criminal justice researcher at Harvard, on why kids use guns

[504k \(wav\)](#)
[\(RealAudio\)](#)

David Kennedy, a senior researcher at Harvard



**Zastava Model 1983
.357-caliber Magnum**

University's Kennedy School of government, believes police can drastically reduce crime by going after the people who make guns so accessible to juveniles.

"There's been this historically unprecedented, and by any measure appalling increase, in

are just a skip and a jump from retail sale.”

National Cities Share Boston Trends

Preliminary results in the initial 17 cities showed similar trends, according to the ATF. Also, young people were more likely to use semiautomatic weapons, and the guns are often less than a year old. Like sneakers or other teen status symbols, a few brands of guns carried a high proportion of street chic, giving investigators leads for tracing.

“There are literally tens of thousands of different kinds



Norinco Type CQ 5.56 mm rifle

of guns out there but we're not finding that many on the street,” said Kennedy. “We're finding five or ten different models and the particular kinds of guns change from city to city, but you can focus your energies on those specific types of gun.”

The ATF traced nearly 13,000 guns used in crimes in New York City. Of those, 11 percent came from juveniles.

Nationwide, the figure is 10 percent. In Seattle and Memphis, juveniles were responsible for more than 20 percent of illegal gun crimes. Handguns far outpaced all other types of guns recovered from crimes, making up 63 percent of all guns recovered in Salinas, Calif. and 98 percent in Atlanta.

Guns Thrive With Gangs

Boston's “miracle” also hinged on the “demand” side of the gun market: gangs.

In May 1996, Boston gathered law enforcement officials ranging from community police officers to representatives from the U.S. Attorney's office. Together, they called in representatives from Boston street gangs and confronted them.

“This group met systematically with gangs and said ‘we know who you are and we know what you're doing’ and when you and your friends hurt somebody, we'll figure out what we can do to exact penalties,” said Kennedy. The get-tough stance included stiffer federal sentencing for gang members, nighttime patrols in gang-filled neighborhoods and threats to bring in the FBI.

It worked — gang violence plummeted.

Minneapolis was among the first cities to follow suit, exchanging law enforcement officials with Boston, and using similar methods to infiltrate gangs and decrease gun crimes.



"As a result of the research it was clear there was a gang-related connection to the violence," said Minneapolis Police Chief Robert K. Olson. Minneapolis had an 80% drop in its homicide rate last summer, going from 40 murders in June, July and August of 1996 to 8 murders for the same period in 1997. "Our whole target was to have a safe summer and we feel it really worked."

It all comes down to a basic equation, experts say: The key principle is to increase the cost of gun carrying to kids. "And you do that in two ways: you increase penalties and you decrease supply into the market," Webster said. "When you dry up supply, cost goes up and the market goes down, it's classic macroeconomics."

How it Works: The Detective Trail

Gun tracing often follows a tangled path, as forensic scientists and law enforcement officials piece together leads to establish a gun's history.

Police forward guns recovered at crime scenes to three tracking labs where the ATF now traces approximately 230,000 guns annually.

As many as 20 percent of the guns recovered have obliterated serial numbers. The ATF won't say exactly how they restore the numbers, for fear of encouraging gun runners to develop restoration-proof techniques, but ATF spokesman Joe Green did say that a team of forensic scientists often has success restoring the numbers.

"It can take from several hours to several days," Green said, "depending on the severity."

The guns without serial numbers also tend to cluster in groups that were first purchased legally and then sold illegally.

The scientists determine each gun's make, model and caliber. ATF agents then contact the guns' manufacturer, who can identify the original gun dealer. From there, agents try to find who sold the guns illegally and prosecute them, often working with gun shops.

"When you look at the names of the first purchasers, they also have multiple traces coming back to them," Kennedy said. "Most of the gun stores have in fact not done anything illegal but lots and lots and lots of the first purchasers are either traffickers themselves or part of a trafficking operation."

**THE YOUTH CRIME GUN INTERDICTION INITIATIVE
PHASE TWO CITIES
JULY 19, 1997**

Chicago, Illinois
Los Angeles, California
Detroit, Michigan
Philadelphia, Pennsylvania*
Houston, Texas
Miami, Florida
Tucson, Arizona*
Minneapolis, Minnesota*
Las Vegas, Nevada
Cincinnati, Ohio

Most cities were selected because of the high number of firearms and violent offenses committed by juveniles and youth. Those cities marked with an asterisk (*) were chosen because, unlike the national trend, they have experienced increases in violent crime.

**EXPANSION OF THE YOUTH CRIME GUN INTERDICTION INITIATIVE
JULY 19, 1997**

BACKGROUND:

- On July 8, 1996, President Clinton directed the Attorney General and Secretary Rubin to implement a pilot program in 17 cities to trace as many guns as possible, especially those trafficked to kids.
- Under this pilot program, the Youth Crime Gun Interdiction Initiative (YCGII), Federal and local law enforcement in each city worked together to submit all crime guns seized for tracing and use this information to identify and locate illegal gun traffickers.
- Since then, the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (ATF) has provided local police departments and ATF special agents with specialized training, computers and software -- and traced as many guns as possible through the National Training Center. Today's report details the findings of this effort.

FINDINGS OF TODAY'S REPORT:

- **Confirms kids and guns is a serious problem in all 17 cities.** Juvenile and youth crime guns account for nearly half (45%) of the firearms recovered from crime scenes and criminals.
- **Reveals that kids use some of the most concealable and dangerous guns.** While 80% of youth and juvenile crime guns are handguns -- and 60% are semiautomatic pistols, only 70% of adult crime guns are handguns -- and less than half, or 47%, are semiautomatics.
- **Crime guns used by kids are concentrated among a relatively small number of makes and models.** The 10 most popular types of crime guns account for 25% of all crime guns. In some cities, this percentage is as high as 50% for youth or juveniles (e.g., Birmingham, Memphis).
- **At least 25% of the crime guns used by kids move rapidly (3 years or less) from first retail sale to crime scenes.** That means that a significant portion of legally purchased guns are quickly and illegally diverted to kids and criminals.
- **The number of trace requests nearly doubled in the 17 pilot cities.** While not all traces submitted could be completed, for a variety of reasons, overall requests submitted to ATF jumped from about 20,000 to 37,000.

HOW TRACING WORKS

- **The Shikes Case.** Shortly after the YCGII was launched, ATF and the Milwaukee Police Department received a tip that an individual named "Larry" was selling guns to gang members. This individual was Larry Shikes, and he was selling guns from the trunk of his car in the parking lot of the grocery store where he worked as a security guard.

A review of trace information on Milwaukee crime guns revealed that Shikes had originally purchased several guns that were recovered in connection with youth gang crimes -- including homicides, assaults and drive-by-shootings. Shikes illegal activity was further documented by undercover purchases of additional shotguns and handguns.

Shikes was arrested in April 1997. He pled guilty to dealing in firearms without a license and providing firearms to convicted felons. He is scheduled to be sentenced next month.

LESSONS LEARNED:

- **A new anti-crime tool.** By submitting all crime guns for tracing, the YCGII is showing law enforcement at all levels how young people are getting guns. This is critical information that will allow law enforcement to prioritize the investigation of gun traffickers.
- **Guns are being trafficked to kids.** ATF traces and investigations clearly show that certain corrupt gun dealers are selling guns to large volume traffickers and straw purchasers, who are in turn funneling guns to our youth. With more tracing information and enforcement resources, we can crackdown on these traffickers and break-up the supply of guns to kids and criminals.
- **Brady checks important.** Background checks are needed to help keep guns from being illegally diverted. So it's critical that state and local law enforcement continue their commitment to Brady.

TODAY'S ANNOUNCEMENT:

- **More Cities, More Resources.** Today, the President will expand the YCGII to 10 more cities. The Treasury Department will commit \$11 million to augment its tracing efforts next year, and the Department of Justice will dedicate funds from the Bureau of Justice Assistance to help provide training to participating state and local law enforcement agencies. Additional funds will also be sought for ATF agents from unobligated funds.

**YOUTH CRIME GUN INTERDICTION INITIATIVE
QUESTIONS AND ANSWERS
JULY 19, 1997**

Q: What exactly has the Administration learned from this report -- and how will it be used to reduce juvenile gun crime?

First, we have learned that comprehensive, community-based tracing of crime guns is doable -- as well as a worthwhile endeavor. The voluntary commitment of each of these cities to submit as many crime guns as possible for tracing resulted in a near doubling in the overall number of trace requests -- from about 20,000 to 37,000. In New York, for example, trace requests jumped from 4,000 to 13,000; in San Antonio, trace requests increased from a mere 500 to about 2,000.

Second, we have learned that substantial number of guns -- nearly half of those recovered from crime scenes or criminals -- are being trafficked to our kids in a variety of ways and shortly after they were legally purchased. We have learned that kids are more likely than adults to commit a crime with a new handgun -- especially with certain types of semiautomatic pistol. And we have learned that most crime guns generally originate from in-state sources.

And thirdly, each of the communities involved -- and Federal law enforcement -- have learned more about the make-up and trafficking patterns of crime guns in their area. These community specific reports are a valuable enforcement tool that can be used to crackdown on local traffickers and break-up the supply of guns to our kids. This is how Boston has used its trace information, and -- as I understand it -- last week they celebrated their second anniversary of no juvenile gun homicides.

Q: Can you please clarify today's announcement?

A: Based on our experience with the first 17 cities, we are going to expand the Youth Crime Gun Interdiction Initiative (YCGII) to an additional 10 cities. There was considerable interest from other cities when we initiated the pilot program last year, so we are pleased to expand the YCGII today. A copy of these cities should be in your press packet.

To pay for this -- and to increase ATF's overall ability to do more traces and trace analysis -- Treasury will dedicate about \$11 million from its forfeiture fund next year. That's about 10 times what we've spent during this first year, so that's a significant enhancement.

Also, the Justice Department's Bureau of Justice Assistance has set aside some funds to help train participating state and local law enforcement agencies.

Q: How were both the new cities for this initiative picked?

A: As I understand it, most of the cities were selected based on the number of firearms and violent offenses committed by youths and juveniles. However, several of the cities were picked because, unlike the national crime trend, they have been experiencing increases in violent crime over the past few years.

Q: If tracing and trace analysis lead to cracking down on gun traffickers, how many have you prosecuted as a result of this effort?

A: Well, first let me make clear that we are only one-year into this initiative, and that establishing the tracing infrastructure (i.e., trained officers, computers, software, etc.) and producing the national and local reports was our initial goal.

Also, the YCGII is a special component of ATF's overall firearms trafficking strategy that has generated thousands of investigations over the past year -- involving tens of thousands of illegally trafficked firearms. And over time, we expect the YCGII to contribute many important cases to this workload.

Having said that, to date, ATF estimates that the YCGII has helped initiate some 75 pending trafficking investigations.

Q: How come ATF only traced an average of 37% of the guns submitted to the National Tracing Center?

A: There are several reasons why complete traces were not conducted for all crime guns. In some cases, because of different tracing guidelines and practices, not all of the required information was submitted. In other cases, firearms were either too old or serial numbers obliterated. While traces can be completed in these instances, they are much more resource intensive. Many of these issues can now be addressed.

It is important to note, however, that not all trace analyses depend on a successfully completing trace requests.

Crime - Youth Gun Initiative



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

July 18, 1997

Dear Mr. President:

On July 8, 1996, you announced the start of the Youth Crime Gun Interdiction Initiative (YCGII), a collaborative effort among law enforcement officials in 17 cities to reduce youth firearms violence by disrupting the illegal markets that put firearms in the hands of juveniles and youth. The YCGII brought together four significant law enforcement themes of this Administration: first, that we work in a collaborative effort with our state and local law enforcement partners; second, that we make smart and effective use of our limited law enforcement resources; third, that we do everything possible to lower the level of gun violence across the Nation; and fourth, that we make a special effort to reduce youth gun violence.

In the one year since your announcement, we have learned a great deal and have made substantial progress in developing a sophisticated infrastructure to combat illegal gun trafficking. Perhaps most important, we have learned that universal tracing of crime guns in particular communities is achievable. During the past year, gun tracing requests in the 17 pilot cities nearly doubled. Over the coming year, we will strive to increase the number of localities that trace all guns linked to crime.

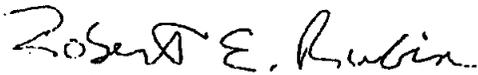
Through universal tracing, we can greatly improve the quality of crime gun data that is being collected. This will result in law enforcement being better able to identify illegal gun traffickers and develop investigative priorities. For example, we have documented that illegal handguns recovered from juveniles and youth are highly concentrated among a relatively small number of kinds of firearms, particularly semi-automatic weapons. This information is critical, for it permits federal, state, and local enforcement officers to assign priorities to investigations of traffickers based on the known popularity of certain weapons among juveniles and youth, as well as adult criminals.

The Departments of Treasury and Justice are fully committed to this important Initiative. While the initial results are encouraging, we have much more to do. In the next year, we will continue working with state and local officials in the original 17 sites to improve gun tracing and enforcement strategies. We will also be working with additional cities, sharing what we have learned and assisting them in establishing their own gun tracing systems.

With your leadership and your support, our goal of effective action against illegal firearms markets that supply juveniles and youth will be achieved. By stemming the flow of illegal firearms to juveniles and youth, we expect that the level of violence in our communities will continue to drop.

We are attaching for your information a brief summary of the Initiative, as well as a comprehensive report compiled by the Department of Treasury describing results of ATF's analyses of crime gun trace information in the 17 pilot cities.

Sincerely,



Robert E. Rubin
Secretary of the Treasury



Janet Reno
Attorney General

SUMMARY OF
NATIONAL ILLEGAL FIREARMS TRAFFICKING STRATEGY
&
YOUTH CRIME GUN
INTERDICTION INITIATIVE

Since 1993, this Administration has developed several successful approaches to fighting violent crime and the proliferation of illegal firearms. New laws such as the Brady Act and the Assault Weapons Ban gave us significant tools to prevent criminals from obtaining certain types of firearms.

In 1994, the Departments of Justice and Treasury announced the Administration's Anti-Violent Crime Initiative (AVCI). The AVCI promotes cooperation among federal, state, and local law enforcement agencies in working together to develop coordinated investigative priorities within individual communities. In many communities, gun violence and the proliferation of firearms among juveniles and gang offenders has been identified as the most important violent crime problem. Local task forces in Youth Crime Gun Interdiction Initiative (YCGII) cities, such as Boston, Baltimore, Memphis, and Milwaukee, have been successful in identifying and prosecuting numerous individuals who have brought illegal firearms into our communities.

We have recognized that stopping illegal gun trafficking before it begins has a greater impact and requires fewer resources than pursuing firearms once they have reached the hands of criminals through the illicit trafficking market. Since 1994, the Department of Treasury has pursued an "Anti-Trafficking Strategy," which targets illegal gun trafficking at its source. In addition, we worked to strengthen the licensing of dealers and assure their compliance with applicable laws and regulations, resulting in over a 50% drop in the number of federal firearms licensees.

Reducing the numbers of licensed dealers is not enough, for even with the dramatic reduction, there are still approximately 110,000 licensees. Thus, we have also strived to identify dealers who may be illegally selling firearms, as well as non-licensed individuals who buy and sell firearms that originally were purchased lawfully. Historically, identifying these persons and the resulting trafficking patterns has been difficult. But this is where the YCGII shows great promise.

For the past few years, researchers in Massachusetts had sought to identify the original legitimate source of every gun seized by the Boston Police Department, to determine whether there were any specific patterns that could help law enforcement stem the flow of illegal firearms to criminals. ATF also developed a computer program, Project LEAD, that could take that data, commonly referred to as "trace information," and use it to identify individuals and locations that might be involved in illegal firearms trafficking.

The combination of these two projects was tested in a few additional localities and then greatly expanded last July, when the President announced the YCGII in 17 cities across the country. Through the YCGII, we have learned a great deal more about gun trafficking in just one year.

- Approximately 25% of the crime guns used by juveniles (age 17 and under) and youth (ages 18-24) move rapidly from their point of first retail sale to recovery by law enforcement agencies. Through investigative experience, ATF has learned that recovery of new firearms often signals increased illegal diversion of weapons.
- Illegal handguns recovered from juveniles and youth are highly concentrated among a relatively small number of kinds of firearms. This information is critical. Law enforcement officers have become familiar with these patterns and the guns involved, and assign priorities to investigations of traffickers based on the known popularity of certain weapons among juveniles and youth, as well as adult criminals.
- In most participating cities, the state in which the community is located is the single largest source of recovered firearms successfully traced to retail sale. The identification of the sources of the firearms allows law enforcement more efficiently to investigate the primary sources of illegal firearms (whether operating intrastate or interstate). Collaboration among federal, state, and local law enforcement agencies is needed to mount an effective response, and strategies must be designed that take into account different local illegal market conditions.
- Preliminary research of selected communities by the ATF's National Tracing Center indicates that between 9% and 20% of recovered firearms have had their serial numbers obliterated, and were originally purchased as part of a multiple-gun sale and then illegally trafficked. Firearms traffickers remove serial numbers in an attempt to defeat tracing. Crime labs can now often restore these serial numbers, providing us with new and important investigative information.
- Handguns predominate among recovered crime guns. Seven out of ten guns recovered from adults are handguns, while for juveniles and youth the number is eight out of ten. As for the type of handguns, 47% of the firearms recovered from adults are semi-automatic handguns, 58% of those recovered from juveniles are semi-automatic handguns, and 61% of those recovered from youth are semi-automatic handguns.

These are just a few examples of the statistical data that

is being provided to each of the participating cities, which will assist local law enforcement officials in setting investigative priorities based on the patterns unique to their community. It is through the expansion of this type of information, which can only be obtained by increased crime gun tracing, that we will be able to more broadly assist individual investigators in their cases across the nation.

The YCGII has developed tools that can be used in cities throughout the country to strengthen enforcement efforts against illegal traffickers to juveniles and youth. By expanding comprehensive crime gun tracing to additional cities, increasing the development of crime gun trace analyses, increasing federal, state, and local training in trafficking investigations, and continuing federal-state-local collaboration in trafficking investigations and local violence reduction initiatives, we will ensure the effectiveness of our nationwide effort to disrupt this lethal trade and reduce juvenile and youth firearms violence.

ATTF



The Youth Crime Gun
Interdiction Initiative

Crime Gun
Trace Analysis Reports:
The Illegal
Youth Firearms Markets in
17 Communities

Department of the Treasury
Bureau of Alcohol, Tobacco, and Firearms





DEPARTMENT OF THE TREASURY
WASHINGTON, DC 20226

UNDER SECRETARY

MEMORANDUM FOR SECRETARY RUBIN

FROM: Raymond W. Kelly
Under Secretary (Enforcement)

SUBJECT: Youth Crime Gun Interdiction Initiative

Attached are reports prepared by the Bureau of Alcohol, Tobacco and Firearms (ATF) for the 17 communities participating in the Youth Crime Gun Interdiction Initiative. They fulfill three goals by:

- (1) Documenting how juveniles and youth illegally obtain firearms;
- (2) Enabling Federal and local enforcement agencies to assess the illegal firearms problem in their communities and develop strategies to combat it;
- (3) Reporting on greatly increased ATF tracing of firearms recovered by enforcement agencies.

The following are among the reports' findings about firearms recovered by enforcement agencies:

- Firearms rapidly diverted from first retail sales at federally licensed gun dealers to an illegal market account for at least a quarter of the firearms that police recover from juveniles and youth.
- One out of ten firearms recovered by police is from a juvenile (17 and under). When youth (ages 18-24) are included, the number changes to four out of 10.
- In 15 of the 17 sites, the majority or the single largest supply of the crime guns successfully traced comes from retail sources *within* the State. Jersey City and Washington, DC, are the only sites where the largest single source of successfully traced crime guns is outside of their State or borders.
- Seven out of ten crime guns recovered from adults are handguns. For juveniles and youth, the number is eight out of 10.
- Half of all crime guns recovered by police are semiautomatic pistols, which are also the preferred weapons for juvenile and youthful offenders (60 percent).
- While thousands of different kinds of firearms are available, crime guns are concentrated among a relatively small number of makes and calibers in each city.
- Preliminary research shows that a high percentage of crime guns with obliterated serial numbers were originally purchased as part of a multiple sale by a federally licensed gun dealer and then illegally trafficked.

During the course of the initiative, trace requests from the 17 sites nearly doubled over the same period the previous year, from 20,000 to more than 37,000 requests. Trace information is stored in the National Tracing Center's illegal firearms trafficking information system, Project LEAD, which enforcement officials use in the identification of illegal traffickers. By expanding the volume of tracing, participants in the initiative not only provided data needed to identify community patterns, but have added significantly to the investigative information available to make cases against illegal traffickers.

We are confident that these reports will enable local enforcement officials, working with State and Federal authorities, to better protect our young and the public by preventing the illegal trafficking of firearms to those who would use them to commit violent crime.

ATF CRIME GUN TRACE ANALYSIS REPORT

Youth Crime Gun Interdiction Initiative

Introduction

The Youth Crime Gun Interdiction Initiative is a 17-city demonstration project aimed at reducing youth firearms violence. Officials from the Bureau of Alcohol, Tobacco and Firearms (ATF), police chiefs, local prosecutors, and U.S. attorneys are developing information about illegal trafficking of firearms to young people and new methods of reducing the illegal supply of firearms to them. The initiative was developed by ATF and its National Tracing Center, funded by the Department of the Treasury's Office of Enforcement and the National Institute of Justice, and announced by President Clinton on July 8, 1996.

Purposes of This Report

Since July 1996, participants have tested a new method of developing and providing information about the illegal sources of firearms to youth. Federal and local enforcement officials in each jurisdiction voluntarily agreed to submit information on all recovered crime guns to ATF's National Tracing Center. ATF developed the tools to analyze the information. ATF is publishing this report of its analyses for the following purposes:

To provide new information about illegal firearms activity by community. These reports provide an overall view of firearms associated with illegal possession or activity in a jurisdiction. They identify the types of firearms that enforcement agencies most frequently recover, the types of crimes with which these weapons are associated, the time it takes for firearms to move from a federally licensed firearms dealer to recovery by enforcement officials, and the source States of these firearms. This is the first time ATF has developed and published standardized reports on recovered crime guns.

To identify differences in adult, juvenile, and youth illegal firearms activity. These reports analyze firearms recoveries by age group, with a focus on young people. The information establishes whether patterns of crime gun acquisition differ by age group. While ATF has previously collected information from enforcement agencies on firearms recovered from juveniles from across the country, this is the first time ATF has been able to provide age-based analysis by local jurisdiction. This analysis provides enforcement officials with a new and important tool for reducing illegal juvenile and youth access to firearms.

To expand access to firearms-related enforcement information. These reports share ATF firearms-related enforcement information with other enforcement agencies. The reports thereby provide a new, common foundation for collaboration among ATF, the offices of the U.S. attorney, and local police and prosecutors, as well as other agencies concerned with youth violence. Using this information, police departments and local prosecutors may choose to modify resources devoted to firearms trafficking interdiction, and local task forces may choose to pursue firearms trafficking cases in Federal or State courts.

To initiate community, State, and national reporting on firearms trafficking. These reports provide a model for standardized, annual ATF reports on firearms recoveries at the city, State, and national level. State and national reports using firearms recovery information provided by every jurisdiction allow regional and national patterns to be identified.

To enable enforcement officials to focus their resources where they are likely to have the greatest impact on illegal trafficking to juveniles and violent youth gang members, as well as adult criminals. Specific investigative information about the illegal sources of crime guns can be obtained by a variety of

methods, including Project LEAD, ATF's computerized illegal firearms information trafficking system, debriefing armed arrestees, and other street sources. These reports do not provide additional investigative information (such as the identities of federally licensed gun dealers or retail purchasers repeatedly associated with new crime guns). Rather, they provide analyses that can be useful in deciding how best to focus investigative resources to reduce the illegal firearms supply used in violent crime.

Strategic targeting of illegal sources of juvenile and youth crime guns. Information about the percentages of a jurisdiction's crime guns recovered from juveniles, youth, and adults allows investigative priorities to be established and assessed. For instance, enforcement officials may choose to use Project LEAD to look for federally licensed gun dealers and first purchasers linked with crime gun traces associated with juveniles and youth.

Strategic targeting of illegal sources of certain crime guns. Enforcement officials also can draw on the reports to develop other enforce-

ment strategies. Federal investigators already look for high volume traffickers operating across jurisdictional lines, whether interstate or intrastate, and use Project LEAD to investigate the illegal sources of guns used in violent crimes. Drawing on these reports, Federal and local officials can jointly decide to use Project LEAD and other investigative tools to target the illegal sources of various groups of crime guns: firearms with obliterated serial numbers; firearms most often used by juveniles and youth in violent crimes; illegally trafficked firearms most popular among juveniles, violent youth, and violent gangs; firearms with short "time-to-crime" rates, which are likely to have been deliberately trafficked; and firearms originating in-State or firearms originating out of State.

Optimum, balanced local enforcement strategy. By combining a focus on high volume traffickers with targeted trafficking enforcement efforts using trace analyses and information about local conditions, enforcement officials can work toward the optimum strategy for reducing local illegal access to firearms, especially by juveniles and violent gang members.

What This Report Contains

Information about crime guns. A crime gun is defined, for purpose of firearms tracing, as any firearm that is illegally possessed, used in a crime, or suspected by enforcement officials of being used in a crime. Report E shows the crime types most frequently associated with crime gun trace requests.

Comprehensive crime gun trace data by community. The report presents information about how many crime guns were submitted for tracing. Participants in the Youth Crime Gun Interdiction Initiative voluntarily agreed to trace *all* crime guns recovered in their jurisdiction. Police departments are not required by Federal law to maintain or supply crime gun recovery information and have not historically submitted all crime guns for tracing. Lack of comprehensive tracing has precluded certain kinds of crime gun analyses since there may not have been enough crime gun trace requests from particular jurisdictions to identify community-wide patterns. The voluntary tracing agreement under this initiative was intended to overcome this problem.

Information from National Tracing Center traces. The information in this report is derived from data contained in requests for crime gun traces that enforcement agencies submitted to ATF's National Tracing Center (NTC) and from the results of traces that the NTC conducts. An *NTC trace* uses records maintained and made available by the firearms industry to identify the history of a firearm's ownership. A *successful NTC trace* describes firearm ownership from the manufacturer or importer through the wholesaler to the first known retail dealer. Depending on the investigative circumstances, the NTC trace may also identify the first retail purchaser, and sometimes even subsequent purchasers. Because of the structure of Federal firearms regulation and recordkeeping requirements, however, it is generally not possible for the NTC to trace a crime gun beyond its first retail sale using firearms industry records. To further trace a crime gun's path, ATF must conduct an *investigative trace*, in which special agents investigate

the subsequent chain of possession. Investigative traces are extremely resource intensive and are generally conducted only where there is a specific investigative need.

Analyses of requests for crime gun traces. The report contains certain analyses that are based on the information contained in *requests* for crime gun traces. These analyses do not depend on the NTC successfully completing the traces. Information available for all crime guns submitted for tracing, whether or not the crime gun is successfully traced by the NTC, includes the number of recovered crime guns in a community, the type of firearm (e.g., revolver, rifle), and its manufacturer and caliber.

Analyses of successful NTC traces. The report also contains certain analyses that are based on the results of *successful NTC traces*. Information available only for crime guns successfully traced by the NTC includes the time it takes for a crime gun to move from its last known retail sale to recovery by enforcement officials, and the State in which the crime gun was sold.

Analysis of incomplete traces. The report shows the number of successful NTC traces and explains why the NTC closed the remaining traces without a successful NTC trace. This information is intended to assist in increasing the number of successful NTC traces.

Analyses by adult, youth, and juvenile age categories. The report generally presents information in four age categories: adults (25 and over); youth (ages 18 through 24); juvenile (17 and under); and all age categories combined.

Crime gun trace information for a 10-month period. The patterns depicted in this report are based on crime guns for which trace requests were submitted to the NTC during the period of July 1, 1996, through April 30, 1997. The NTC provided project training in August and September 1996; project tracing then began in all sites. Early trace requests may not include as complete information as later traces.

General Findings From the Participating Communities

This section presents general findings based on experience in all 17 participating communities. These 17 communities may not comprise a valid sample for purposes of national analysis. However, this is the largest collection of community-based information yet available on recovered crime guns.

List of Participating Communities

The communities participating in this initiative, and on which the findings are based, are:

Atlanta, Georgia
Baltimore, Maryland
Birmingham, Alabama
Boston, Massachusetts
Bridgeport, Connecticut
Cleveland, Ohio
Inglewood, California
Jersey City, New Jersey
Memphis, Tennessee
Milwaukee, Wisconsin
New York, New York
Richmond, Virginia
St. Louis, Missouri
Salinas, California
San Antonio, Texas
Seattle, Washington
Washington, DC

This section is divided into two parts: (1) comprehensive community-based crime gun tracing and (2) local illegal firearms markets. These findings are intended to give enforcement officials in each community a wider perspective on its use of crime gun tracing and on its violent firearms crime and trafficking problems, particularly as they involve juveniles and youth.

General Findings: Comprehensive, Community-Based Crime Gun Tracing

The 17 participating sites jointly tested the feasibility and utility of an enforcement policy of submitting all recovered crime guns in a community to the National Tracing Center (NTC) for tracing. Based on this experience, ATF reaches the following conclusions:

Comprehensive, community-based crime gun tracing is achievable. Trace requests from the 17 sites during the 10-month period nearly doubled over the same period the previous year, from approximately 20,000 trace requests to more than 37,000 trace requests. Tracing volume in all of the sites increased. Police departments in all of the sites had official policies requiring tracing of all recovered crime guns for all or part of the project period. Eight of the communities reported that they had a general tracing policy before the initiative began. One site, Jersey City, was part of a state-wide agreement by enforcement officials and prosecutors to trace all crime guns. One State, Virginia, mandates tracing of all firearms recovered by State and local enforcement agencies. Sixteen of the seventeen participating police departments continue to have a written or stated policy of tracing all recovered firearms.

Technical improvements in local and State tracing capability increase crime gun tracing levels, efficiency, and accuracy. Working with local and State enforcement officials, ATF has tested three methods of facilitating comprehensive crime gun tracing. The methods vary according to the jurisdiction's volume of recovered firearms, recordkeeping procedures, and level of computerization. Costs of such technical assistance are low and the benefits high, both for the police departments and ATF. Because of technical improvements, for instance, New York City's requests for traces jumped to close to 13,000 crime guns during the 10-month project period, from fewer than 4,000 crime guns during the same time period the previous year. San Antonio's tracing rate increased 500 percent, to close to 2,000 crime gun traces during the project period from fewer than 400 traces during the same period the previous year.

Comprehensive crime gun tracing achieves its primary purpose: to increase the number of investigative leads to illegal traffickers derived from NTC tracing. The primary purposes of NTC crime gun tracing are to assist in solving individual gun crimes and to increase the amount of investigative information about illegal gun trafficking available to enforcement agencies. Crime gun trace information is added to the NTC's Project LEAD. This information system aggregates crime gun trace information from enforcement agencies throughout the Nation, and identifies links among those traces. For instance, Project LEAD could link a crime gun that enforcement officials in Inglewood, California, submit for tracing with a crime gun that enforcement officials in Jersey City, New Jersey, submit for tracing by showing that both were sold by the same Federal firearms licensee or purchased by the same individual. By nearly doubling the volume of trace requests from the 17 communities, ATF and local and State enforcement agencies have significantly increased the amount of trace information in Project LEAD and the number of investigative leads available to enforcement agencies throughout the country.

As demonstrated by these reports, comprehensive crime gun tracing can also be used to assist enforcement agencies by identifying major crime gun patterns in a community. By simply submitting trace requests on all recovered firearms, enforcement officials can check for patterns and trends on crime guns in their community. When the NTC can successfully trace these crime guns, additional strategic and investigative information is available.

Refinement of tracing guidelines and practices will result in greater consistency in trace analysis reporting. While participants have followed or are following comprehensive tracing policies, tracing procedures vary. For instance, practices may differ for tracing firearms that have obliterated serial numbers, are recovered by school authorities, are found without identified possessors or are known to be stolen, or are antique. In addition, there are variations in how the exact location of where the firearm was recovered is reported. For this reason, a few crime guns recovered in nearby jurisdictions may have been included in reports from some of the 17 sites. Finally, during this special initiative, enforcement agencies may have submitted all available firearms rather than only firearms recovered after the initiative began. Trace levels can be expected to stabilize if technical improvements are made and as the NTC refines tracing guidelines.

Faster NTC trace completion time benefits enforcement agencies. The faster a crime gun trace can be completed, the sooner the trace information can be entered into the Project LEAD illegal trafficking information system and the sooner it can be used by enforcement officials in investigations of illegal traffickers. The NTC presently completes trace requests in an average of 9 days. Crime gun-related investigations would benefit from faster completion times. Two factors affect completion time: NTC resources and the speed with which Federal firearms licensees make records available. The firearms industry has recently pledged to assist the NTC in speeding up crime gun tracing by making more records accessible electronically.

Increasing the number and percentage of successful NTC traces benefits enforcement agencies. The NTC successfully completed approximately 37 percent of the traces requested during this project. Reasons for lack of successful NTC tracing include lack of needed information about the firearm in trace requests (23 percent), lack of Federal firearms licensee records (7 percent), and legal and resource limitations on tracing older firearms (33 percent). Not all trace analyses depend on successfully completing trace requests. However, the benefits of crime gun tracing for enforcement agencies are maximized if traces are successfully completed. Many of the reasons preventing successful NTC tracing can and should be addressed.

Training in crime gun tracing benefits enforcement agencies. Working together, police departments and ATF fulfilled their goal of tracing all recovered crime guns, with a minimum of training. However, some sites were more successful than others in submitting the full amount of crime gun-related data that can be used in Project LEAD and in trace analyses. In particular, a few sites provided insufficient possessor date of birth information to provide reliable analysis by age category. Most importantly, 23 percent of the trace requests overall were submitted with insufficient firearms information to successfully complete the traces. This reflects several factors, including that some police departments' internal firearms-related procedures are more conducive than others to comprehensive crime gun tracing. Training in crime gun tracing and a collaborative effort between the NTC and State and local enforcement agencies are needed to improve the level of information provided in trace requests.

General Findings: Local Illegal Firearms Markets

This section summarizes enforcement findings and conclusions based on crime gun trace information from the 17 participating communities. The category "adult" includes ages 25 and over, "youth" includes ages 18 to 24, and "juvenile" includes ages 17 and under.*

Adult crime guns predominate. Most crime guns are recovered from adults. While youth firearms crime remains a special priority because of high rates of youth violence, adult firearms crime still predominates. In the largest city among the participants, New York, where almost 13,000 crime guns were submitted for tracing, juveniles under age 18 account for 11 percent of the crime guns, youth ages 18 to 24 account for 34 percent, and adults age 25 and over account for 55 percent. Only in Bridgeport does the adult crime gun category not constitute a plurality.

Juvenile crime guns are a significant percentage of the total. One out of ten crime guns is recovered from a juvenile. Juvenile crime gun trace requests accounted for at least 10 percent of the total traces requested, with three exceptions, Cleveland (6 percent), Milwaukee (8 percent), and Richmond (9 percent). The percentage of juvenile crime guns submitted for tracing was over 20 percent in two cities: Seattle and Memphis.

Juvenile and youth crime guns comprise almost half of the total. Juvenile and youth crime guns combined account for 45 percent of the crime guns requested for tracing, while adult crime guns account for 55 percent of the total.

Handguns predominate. Eight out of ten crime guns traced are handguns. Handguns include semiautomatic pistols, revolvers, and derringers. In all sites, handguns are the largest category of firearms recovered by enforcement agencies. The percentage of crime guns accounted for by handguns recovered from all age groups ranged from 63 percent in Salinas, to 98 percent in Atlanta.

A disproportionate number of juvenile and youth crime guns are handguns. Juvenile and youth crime guns are more likely than adult crime guns to be handguns. Eight out of ten

juvenile and youth crime guns traced are handguns, whereas seven out of 10 adult crime guns are handguns. Of the crime guns recovered from *juveniles*, the percentage that are handguns ranges from 73 percent in Salinas to more than 90 percent in five cities: Cleveland, New York City, Seattle, Richmond, and Boston. Of the crime guns recovered from *youth*, the percentage that are handguns ranges from 67 percent in San Antonio to more than 90 percent in three cities: Washington, DC, Memphis, and New York City. Of the crime guns recovered from *adults*, the lowest percentage of handguns is in Seattle and Memphis, 56 percent. Handguns account for between 80 and 90 percent of the adult crime guns in four cities.

Semiautomatic handguns predominate. Semiautomatic handguns are more common crime guns than revolvers. Semiautomatic handguns range from a high of 67 percent of crime guns in Atlanta, to a low of 39 percent in St. Louis. Revolvers supplied no more than 41 percent of crime guns in any site. Half of all the crime guns recovered are semiautomatics.

A disproportionate number of juvenile and youth crime guns are semiautomatic handguns. In each site, juveniles and youth are more likely to be associated with semiautomatic handguns than are adults. Semiautomatic handguns accounted for a high of 66 percent of the *juvenile* crime guns in Boston, to a low of 47 percent of the juvenile crime guns in Baltimore and Birmingham. Semiautomatic handguns accounted for a high of 71 percent of the *youth* crime guns in Memphis, to a low of 46 percent of the youth crime guns in Salinas. Semiautomatic handguns accounted for a high of 54 percent of the *adult* crime guns in New York City and Washington, D.C. to a low of 35 percent of the adult crime guns in Birmingham and Milwaukee. Overall, 47 percent of the adult crime guns are semiautomatics. Semiautomatics constitute 61 percent of the youth crime guns and 58 percent of the juvenile crime guns.

* Not all sites were considered for each of the findings below. Where the number of cases was insufficient for the particular finding, the site was excluded. A technical note with further explanation is available from ATF.

In each site crime guns are concentrated among a relatively few kinds of firearms by manufacturer and caliber. The top 10 types of crime guns, by manufacturer and caliber, represent a disproportionately large share of the total number of recovered firearms. The greatest concentration is in Inglewood, where the top 10 types of crime guns by manufacturer and caliber account for 48 percent of the total; 58 types of crime guns by manufacturer and caliber account for the remaining 52 percent. Even in Milwaukee, where the concentration is the least, the top 10 types of crime guns by manufacturer and caliber still account for 21 percent of the total; 567 types of crime guns by manufacturer and caliber account for the remaining 79 percent. Overall, the top 10 types of firearms by manufacturer and caliber account for more than 9,000 crime guns, or 24 percent, while 1,207 kinds of firearms by manufacturer and caliber account for the over 28,000 crime guns remaining, or 76 percent.

Crime gun concentration by kind of firearm, by manufacturer and caliber, is relatively greater among juveniles and youth than among adults. The highest concentration among *juvenile* crime guns is in Birmingham where the top 10 types of firearms by manufacturer and caliber account for 52 percent of recovered juvenile firearms. The highest concentration among *youth* crime guns is in Memphis where the top 10 kinds of firearms by manufacturer and caliber account for 46 percent of recovered youth firearms. By comparison, the highest concentration among *adult* crime guns is in Bridgeport, where the top 10 types of firearms by manufacturer and caliber account for 36 percent of the recovered adult firearms.

In general, the State in which the community is located is the largest single source of its successfully traced crime guns. In 12 of the 17 sites, the State itself supplies a *majority* of the successfully traced crime guns. This majority ranged from a high of 77 percent in San Antonio to a low of 54 percent in Seattle. In three of the 17 sites, the State itself supplies more crime guns than any other single source State, while the combination of all other States

supplies more than half of the successfully traced crime guns. This plurality ranges from a high of 47 percent in St. Louis to a low of 13 percent in New York City. There are two exceptions: for Jersey City, the top two source States are Virginia and Florida, each supplying 14 percent of the successfully traced crime guns, while New Jersey supplies 10 percent. No crime guns were traced to first retail sales in Washington, DC.

Many recovered firearms are rapidly diverted from first retail sales at federally licensed gun dealers to a black market that supplies juveniles and youth. This is shown by the proportion of guns recovered by law enforcement officials that are new, that is, bought less than three years before recovery by enforcement officials. New guns in young hands signal direct diversion — by illegal firearms trafficking, including straw purchases, theft from federally licensed gun dealers, or a combination of all of these. Enforcement officials can often identify the illegal sources of new firearms by following up on trace information. By contrast, older crime guns are more likely to have passed through numerous hands before entering illegal commerce, requiring other methods, such as debriefing criminal offenders, to identify their illegal sources. Based on crime guns recovered and submitted for tracing during the initiative, ATF estimates that new crime guns comprise between 22 percent and 43 percent of the firearms recovered from *juveniles*, between 30 percent and 54 percent of the firearms recovered from *youth*, and between 25 percent and 46 percent of the firearms recovered from *adults*.^{*} This finding leads to our conclusion that an effort to identify, prosecute, and incarcerate illegal firearms traffickers can reduce the illegal firearms supply that supports criminal activity by young people.

Crime guns with obliterated serial numbers are likely to have been illegally trafficked. Local tracing practices with respect to firearms with obliterated serial numbers varied too much during this initiative to provide consistent community-based analyses of crime guns with obliterated serial numbers. Therefore, reports on crime guns with obliterated serial numbers are not

* A technical note explaining how these ranges were calculated is available from ATF upon request.

provided for the participating sites. However, preliminary research by the NTC in selected communities indicates that between 9 percent and 20 percent of recovered firearms have their serial numbers obliterated. NTC analysis indicates that *a very high percentage of firearms with obliterated serial numbers were originally purchased as part of a multiple sale and then illegally trafficked*. Restoration of obliterated serial numbers is often possible by either ATF or police department laboratories. Restoration of these serial numbers and tracing of the firearm should be given high priority.

Preventing trafficking in new firearms to youths and juveniles. Crime gun tracing is identifying many investigative opportunities for enforcement officials. The fact that many young people are using relatively new firearms, purchased from Federal firearms licensees that are maintaining records, provides significant opportunities for

enforcement agencies to identify illegal traffickers. Project LEAD and trace analyses can facilitate the investigation, arrest, and prosecution of illegal suppliers of these crime guns.

Preventing trafficking of older firearms. Preventing the trafficking of older firearms requires a different approach. Older firearms enter the illegal market through several routes: they are sold by federally licensed gun dealers as used firearms, they are sold as used firearms on the legal secondary market (i.e., private sales exempt from federal regulation), they are stolen and resold through gun traffickers, or they are stolen personally by the crime gun possessor. Finding the source of older guns requires, in addition to crime gun tracing, debriefing of arrestees associated with crime guns and investigation into the chain of transfers of the crime gun beyond the first retail purchaser.

Future Crime Gun Trace Analysis Techniques

The ATF National Tracing Center is continuing to develop new techniques to analyze crime gun traces. These will further increase the ability of enforcement agencies to investigate and prosecute illegal traffickers. Future developments will include the following:

Reporting on crime guns with obliterated serial numbers that cannot be restored. The NTC has established a data base for crime guns for which serial numbers have been obliterated and cannot be restored. Collection of this information is critical to the NTC's efforts to report on crime gun trafficking.

Improvements in Project LEAD. Project LEAD, ATF's illegal firearms trafficking information system, is being improved to add indicators that will suggest new types of leads to trafficking investigators. In addition, special agents will be able to access Project LEAD in real time.

Reports on multiple purchases of crime guns by a single purchaser. When a Federal firearms licensee sells two or more handguns in five business days to a single purchaser, the licensee must notify ATF of these sales in writing. ATF provides a multiple sales form to simplify this notification. Information supplied by Federal firearms licensees on multiple sales forms is integrated into Project LEAD for use in

illegal firearms trafficking investigations. In the future, information on crime gun traces associated with multiple purchases can be included in crime gun trace analysis reports.

Reports on crime guns that possessors report to be stolen. The submission of trace requests for firearms known by enforcement officials to have been stolen was inconsistent among participating sites. NTC procedures will be altered to permit accurate reporting of this information. Currently, less than 1 percent of all crime guns submitted for tracing to the NTC are reported to have been stolen.

Use of a ballistics identification system to help identify firearms traffickers. ATF has pioneered ballistics technology that allows enforcement agencies to link recovered bullets and cartridge cases with recovered crime guns. To facilitate identification of traffickers and other criminals, the ballistics data base and the NTC crime gun data base can be linked, and ballistics-related information can be captured in crime gun trace analyses.

The Youth Crime Gun Interdiction Initiative and Related Local Initiatives

The Youth Crime Gun Interdiction Initiative builds on leadership and innovations in a number of jurisdictions where enforcement agencies have been focusing on reducing illegal access to firearms. Three important examples follow:

Project LISA: New Jersey's statewide crime gun tracing system. Locally developed crime gun information systems, such as Project LISA in New Jersey, have served as local models for Project LEAD, ATF's national crime gun information system. Information on all recovered crime guns statewide is entered into the LISA system, enabling enforcement officials to identify juvenile and adult offenders. U.S. Attorney Faith Hochberg organized this statewide system through a memorandum of understanding among all enforcement officials in the State.

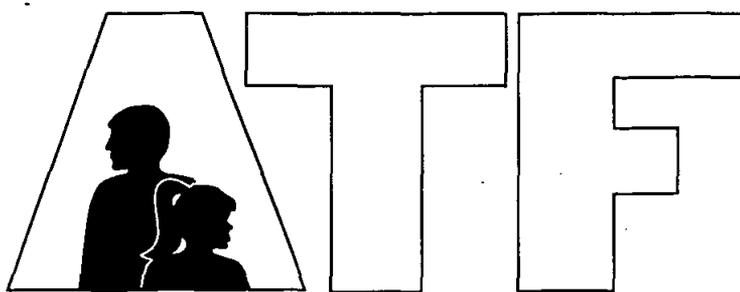
The Boston Gun Project/Ceasefire. The Boston Gun Project/Ceasefire is a joint Federal and local effort to reduce youth firearms violence in Boston under the leadership of Commissioner Paul Evans, U.S. Attorney Don Stern, and ATF Special Agent in Charge Jeff Roehm. David Kennedy, a senior researcher at Harvard's John F. Kennedy School of Government, developed the project under a grant from the National Institute of Justice. Participants also include the Department of Probation, youth outreach workers, the Department of Parole, the Department of Youth Services, and school police. The strategy combines: (1) a local, State, and Federal effort to crack down on the illegal gun supply and (2) a local, State, and Federal strategy to deter violence by youth gangs.

The Boston Gun Project: crime gun supply reduction. This project developed comprehensive tracing and trace analysis and instituted the debriefing of arrestees especially gang members arrested for weapons, drug, and violent offenses, for information leading to local gun traffickers. ATF agents, police, and prosecutors are using traditional criminal investigative techniques to identify and prosecute specific traffickers.

Participants are also developing an enforcement strategy based on trace analysis to disrupt Boston's illegal youth gun market. This focuses on guns recovered less than two years from first retail sale, guns with two or more crime gun traces, guns recovered from members of violent gangs, and guns identified as particularly popular with gang members. ATF and police are restoring obliterated serial numbers, tracing those firearms, and focusing on FFL's and gun purchasers associated with those weapons.

The Boston Gun Project: deterring violent gang crime. Participants in the Gun Project researched the Boston youth homicide problem and determined it to be largely gang related. Participating officials agreed to deliver and act on a new enforcement message to these gangs: *violence will not be tolerated in Boston; it will be met with a strong and coordinated interagency response.* Officials delivered this message through formal meetings with gang members, individual police and probation contacts with gang members, meeting with all inmates of secure juvenile facilities in the city, and gang outreach workers. Where violence occurs, it is met with a coordinated interagency response, using all possible enforcement tools, from probation supervision to Federal investigation and prosecution.

Memphis U.S. Attorney's Anti-Violent Crime Task Force. This task force is a joint Federal and local effort to reduce youth firearms violence in Memphis, spearheaded by U.S. Attorney Veronica Coleman. The group developed comprehensive crime gun tracing and trace analysis and instituted the debriefing of all arrestees, especially gang members and juveniles arrested with firearms or for violent offenses. This task force is currently working with ATF to expand local capacity to restore obliterated serial numbers on crime guns.



The Youth Crime Gun Interdiction Initiative

The following are consistently the fastest “time-to-crime” guns recovered by law enforcement from juveniles and youth in the 17 Youth Crime Gun Interdiction Initiative sites (by manufacturer, caliber, and type):

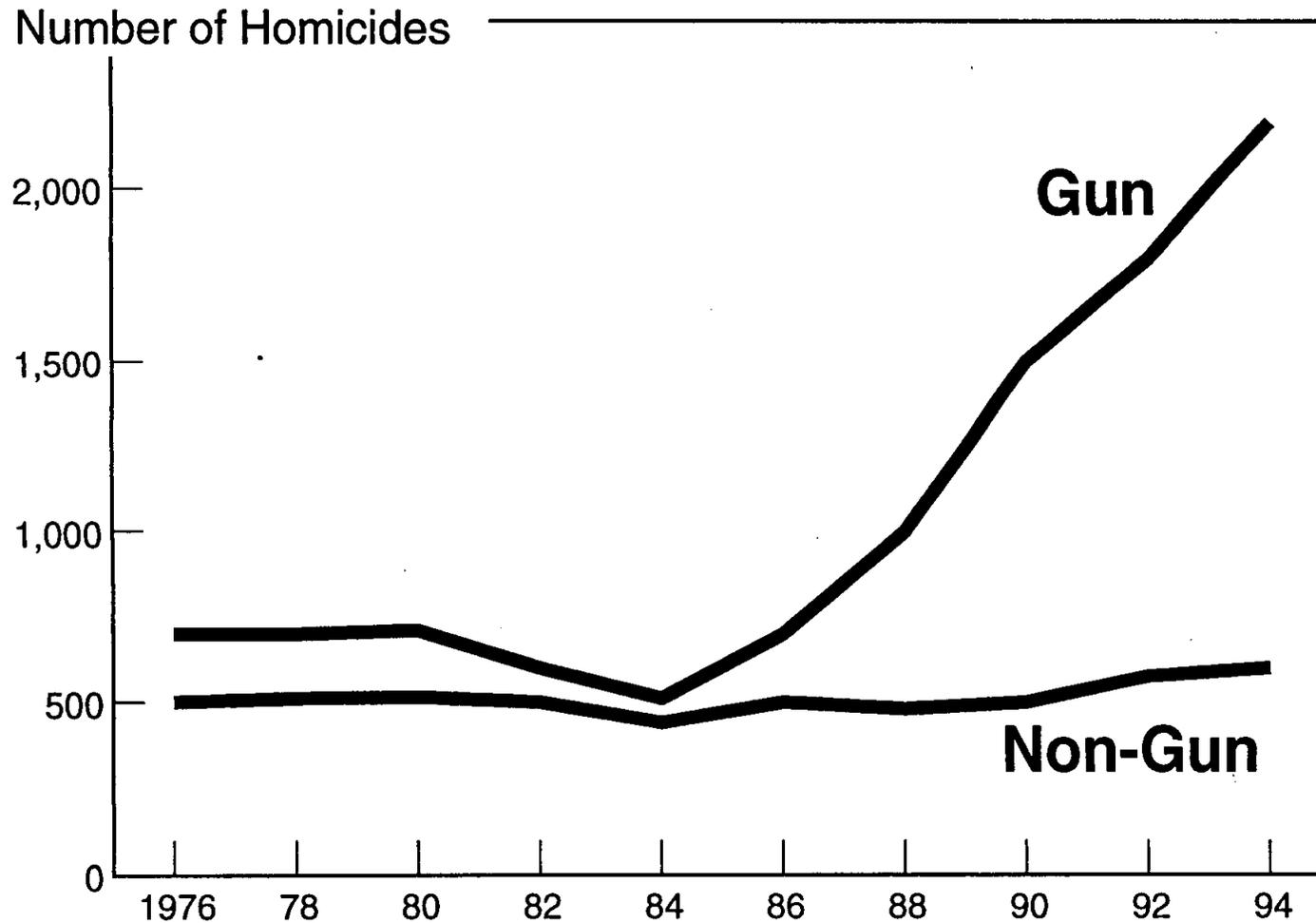
- Bryco, 9mm, semiautomatic pistol
- High Standard, 9mm, semiautomatic pistol
- Lorcin, .380 caliber, semiautomatic pistol
- Glock, 9mm, semiautomatic pistol
- Ruger, 9mm, semiautomatic pistol
- Smith & Wesson, 9mm, semiautomatic pistol
- Mossberg, 12 gauge, shotgun
- Intratec, 9mm, semiautomatic pistol
- Bryco, .380 caliber, semiautomatic pistol
- Lorcin, .25 caliber, semiautomatic pistol

Note: More than 50% of the total number of each of these types of recovered crime guns moved from their first retail sale to their recovery by law enforcement from a juvenile or youth in under three years. The firearms pictured are typical of models falling under the type of firearm listed above. Trafficking investigations aimed at the sources of these firearms have the highest probability of success.

Note: “Time-to-Crime” is that period of time (measured in days) between a firearm’s acquisition from a retail market and law enforcement’s recovery of that firearm during use, or suspected use, in a crime. A short time-to-crime usually means the firearm will be easier to trace, and when several short time-to-crime traces involve the same individual/FFL, this can be an indication of illegal trafficking activity.

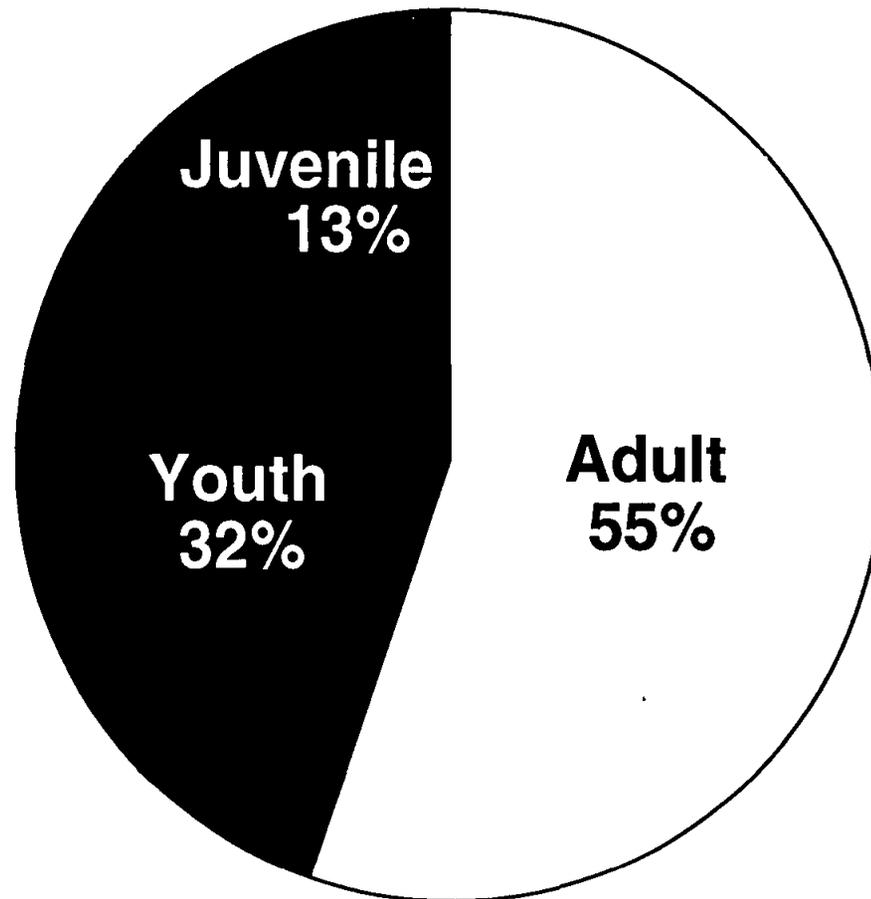
Firearm and Non-Firearm Juvenile Homicides

Juvenile Offenders (ages 10-17)



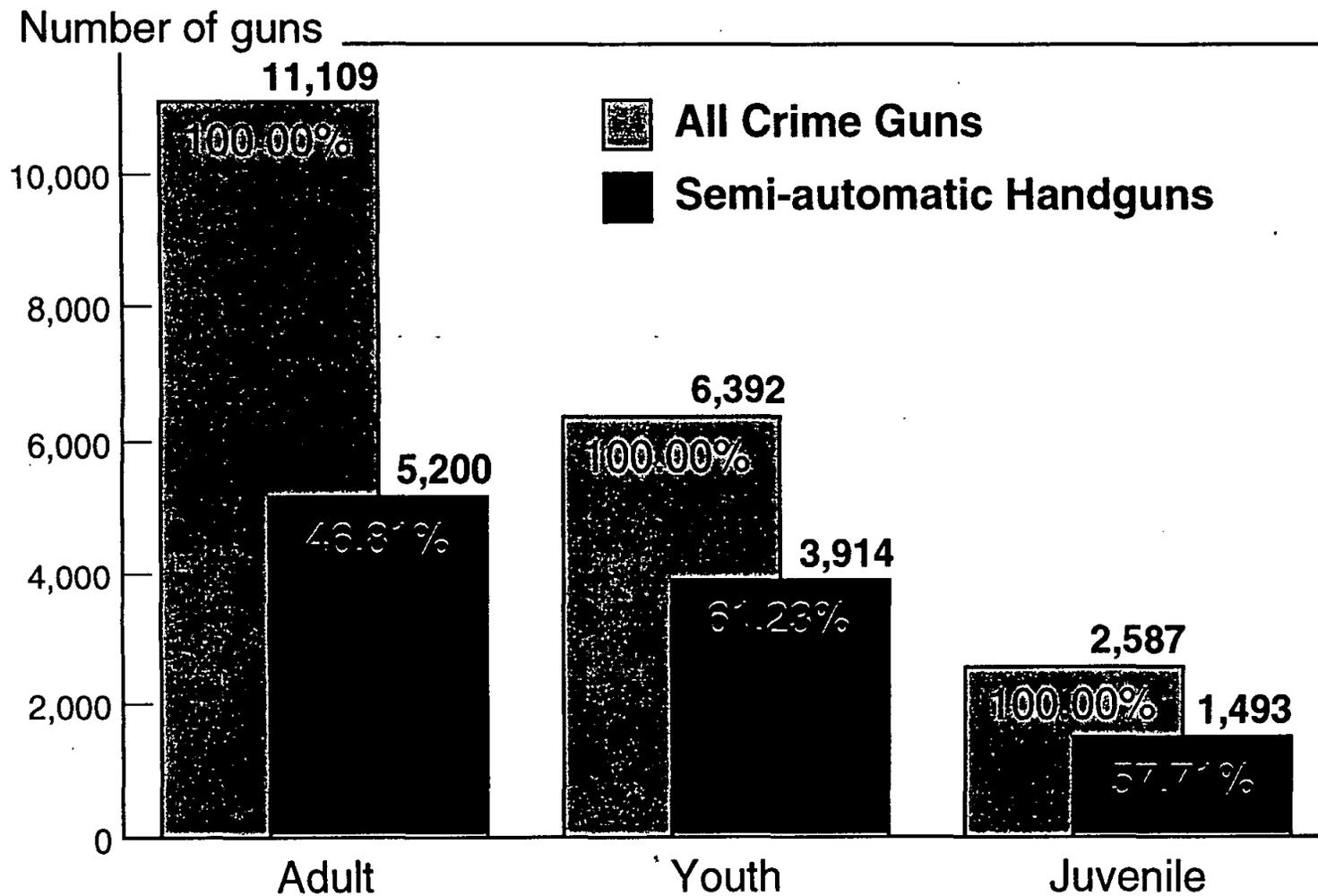
Youth Crime Gun Interdiction Initiative

Crime Gun Recoveries by Age Group



Based on recoveries in 13 of 17 communities. The following sites were excluded: Atlanta, Inglewood, Jersey City, and St. Louis. These sites include too few cases in one or more age categories to be used in an age-based comparison.

Youth Crime Gun Interdiction Initiative
Crime Guns Recovered in 17 Communities
**Semi-automatic Handguns as a
Percentage of All Crime Gun Recoveries**





Jose Cerda III

07/16/97 08:51:43 PM

Record Type: Record

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

cc:

Subject: kids and guns funding

I'll follow-up at tomorrow's meeting on this. jc3

----- Forwarded by Jose Cerda III/OPD/EOP on 07/16/97 08:51 PM -----



Mike.Froman @ MS01.DO.treas.sprint.com

07/16/97 05:00:00 PM

Record Type: Record

To: Jose Cerda III, Michael Deich

cc:

Subject: kids and guns funding

Date: 07/16/1997 05:53 pm (Wednesday)

From: Michael Froman

To: EX.MAIL."cerda_j@a1.eop.gov", EX.MAIL."deich_m@a1.eop.gov"

CC: EX.MAIL."serena_c_torrey@oa.eop.gov"

Subject: kids and guns funding

We have reviewed DPC's proposal and analyzed our funding situation in light of the recent mark-up of our appropriations bill in the Senate. It might be useful to do a conference call or meeting tomorrow to settle any remaining issues, but here's where we are:

1. Contrary to Senator Campbell's comment, Treasury Enforcement was not funded above the President's request. In fact, it left out important infrastructure investments (e.g., ATF's new headquarters).
2. We have determined that the \$11 million from the Customs Foreiture Fund can still be made available, although it cannot be used to hire FTE's.
3. We have looked at DPC's proposal for expanding the tracing center by 13 tracers and for placing 3 (vs. 6) agents in each city. We do not believe that the 13 tracers are sufficient to expand the tracing program to the additional 10 cities and to boost tracing beyond the 37% level. Also, ATF continues to maintain that these cases are labor intensive and, if pressed, would rather put 6 agents in half as many cities than to put 3 agents in all of the cities. Therefore, we have the following proposal to make:

-- We think the President in his radio address could announce the following: a) we will expand tracing to 10 additional cities (using the \$11 million from the Customs Forfeiture fund for equipment and contract employees), b) we will work with local and state law enforcement officials to strengthen their capacity to work with gun traces (assuming the \$3 million in Justice money is available), and 3) we will work with Congress to get further support for agents to investigate these gun cases.

4. That "support" could come in the following forms: a) permission to increase Treasury's carry-over authority from 50% to 100%, or 2) some other means that our appropriators might suggest. We also would need a commitment from OMB to approve the request for the necessary additional agents for the 25 cities in FY 99 and beyond.

5. We will not be able to promise agents in the 25 cities, and we should not raise expectations about numbers of cases, etc., but this announcement could help build support for further agent funding.

Crime - Youth Gun Initiative



Jose Cerda III

07/15/97 04:19:10 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP, Michelle Crisci/WHO/EOP

cc:

Subject: No Extra Funds in Senate Committee Markup for Treasury Law Enforcement

Trouble, trouble, trouble....jc3

----- Forwarded by Jose Cerda III/OPD/EOP on 07/15/97 04:18 PM -----

Michael F. Crowley

Record Type: Record

To: Michael Deich/OMB/EOP

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

Subject: No Extra Funds in Senate Committee Markup for Treasury Law Enforcement

Based on a quick review of the Senate committee markup for Treasury/Postal, Treasury's optimism about extra funds for law enforcement appears to have been unwarranted. Treasury enforcement is down \$61M from President's request in the markup (\$70M excluding an earmark for ONDCP). Most of the damage is to ATF, which is down by \$41M from request. The markup means that the Senate committee has given us little room to look to FY 1998 to find funding for the Youth Gun initiative.

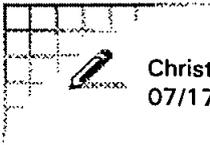
Most of the damage to ATF is that the \$26M request for site expenses for the new HQ building is not funded. (Not critical, if ATF is moving to Federal Center SE.) Other items left unfunded, include:

- \$5.5M for increased explosives inspections (at manufacturing & storage locations);
- \$6.6M for base restoration (lab, telecom, and computer equipment); and
- \$4.0M for expansion of the canine explosives detection training program.

Message Copied To:

Jose Cerda III/OPD/EOP
James Boden/OMB/EOP
Harry G. Meyers/OMB/EOP
Alan B. Rhinesmith/OMB/EOP
Patricia E. Romani/OMB/EOP
Theodore Wartell/OMB/EOP
Julie L. Haas/OMB/EOP

Crime - Youth Gun Initiative



Christa Robinson
07/17/97 12:35:29 PM

Record Type: Record

To: Kevin S. Moran/WHO/EOP

cc: Ann F. Lewis/WHO/EOP, Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP

Subject: Re: Radio Address

Everything is set for the radio address. One or two chiefs may come, but we tried to cancel all guests since it is now being taped. Also, Rubin and Reno are now not coming. There will be no leaking -- the report will be released tomorrow with the transcript and everything will be embargoed for Sunday papers. There will be NO breaking of the embargo for any single paper -- Rahm knows this!

Each city is doing amplification events on Saturday immediately following the broadcast of the radio address and Ray Kelly the Undersecretary for Treasury for Enforcement is doing a conference call tomorrow for all regional papers (for the crime reporters.)

WHITE HOUSE AT WORK

July 21, 1997

SATURDAY: PRESIDENT CLINTON ANNOUNCES RESULTS OF YOUTH CRIME GUN INTERDICTION INITIATIVE

"Make no mistake: Gun traffickers are behind the surge in deadly youth violence. We have learned how they operate. Now we intend to shut them down." -- President Clinton, Radio Address

During his weekly Radio Address, the President highlighted the results of the Youth Crime Gun Interdiction Initiative. Last July, the President launched a national initiative in 17 cities to trace the guns used in crimes to find out where these guns are coming from and how they are getting into the hands of violent youth. With this information, law enforcement is able to target illegal gun traffickers for prosecution, particularly those who put guns into the hands of our nation's young people. This initiative has told us for the first time where juveniles are getting guns, how they get them, and what kinds of guns they are using.

The Results: We now know that nearly half of those guns recovered from crime scenes or criminals are being trafficked to our kids in a variety of ways and shortly after they were legally purchased. And we have been able to learn that many violent teenagers are buying guns in bulk from shadowy suppliers - a criminal network that includes some corrupt licensed dealers and large-scale traffickers. The Clinton Administration and local law enforcement are now cracking down on those suppliers.

Expanding on Success: Because of the success of the program, the President is expanding it to ten more cities, including Philadelphia and Los Angeles. The Clinton Administration will work with Congress to hire more ATF agents to work with local police officers and prosecutors to nail traffickers based on the new leads we are generating every day.

THE COMBINATION OF KIDS, GANGS & GUNS IS THE #1 CRIME PROBLEM TODAY

While crime is down, juvenile crime remains an important problem.

Homicides with Guns is Fueling Our Juvenile Crime Problem. Since the mid-1980's, the number of gun-homicides perpetrated by juveniles has quadrupled, while the number of juvenile homicides involving all other weapons combined has remained virtually constant.

PRESIDENT CLINTON'S FIGHT AGAINST JUVENILE CRIME: PART OF THE SOLUTION

We Know What Works. Some local communities are finding solutions to their juvenile crime problem. For example, Boston has implemented an innovative strategy to attack the juvenile gun problem by tracing guns so that they can crack down on illegal gun suppliers, adding prosecutors to go after gangs, and creating positive alternatives for kids. These ideas are showing real results -- there has not been a single juvenile gun homicide in Boston in over two years. The President's comprehensive juvenile crime plan incorporates these effective strategies:

The President's Anti-Gang and Youth Violence Strategy toughens penalties on those who sell guns to kids and deters crime by keeping schools open after hours to keep children off the streets and out of trouble. It also bars violent juvenile offenders from buying guns as adults and requires child safety locks be sold with every gun to keep children from hurting themselves or each other.

NLWJC – Kagan

Staff & Office – Box 001-Folder 8

Memos – Elena Kagan

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THE WHITE HOUSE
WASHINGTON

October 18, 1996

MEMORANDUM FOR MELANNE VERVEER
BRUCE REED
RAHM EMANUEL
FLO McAFEE
JOHN HART

CC: JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: EXECUTIVE ORDER ON RELIGIOUS EXPRESSION

I am attaching to this memo materials relating to a proposed executive order on religious expression in the workplace.

Work on this order began early this year when a coalition of religious groups -- the same coalition that sponsored the guidelines on religion in the public schools -- submitted a draft to this office. The members of the drafting committee were: Steve McFarland of the Christian Legal Society (who essentially has the proxy of all the evangelical groups); Eliot Minberg of People For the American Way; Rabbi David Saperstein of the Union of American Hebrew Congregations; Marc Stern of the American Jewish Congress; Buzz Thomas of the National Council of Churches; and Brent Walker of the Baptist Joint Committee.

The principal purpose of the order is to make clear the extent to which the law permits religious expression in the federal workplace. (While the Order, of course, applies only to the federal workplace, the religious groups hope that it will serve as a kind of model for private employers.) The order recognizes constraints on such expression, imposed by the government's interests in workplace efficiency and the Establishment Clause's prohibition on endorsement of religion. But the order tries to show (much as the guidelines on religion in the public schools tried to show) that within these constraints, there is substantial room for discussion of religious matters.

Although it is our understanding that the Office of Legal Counsel has approved the version of the executive order attached here for "form and legality," the Department of Justice as a whole is quite negative about the order. DOJ believes that the document does not give enough weight to establishment clause concerns. DOJ also believes that the document does not give enough weight to what it has called "sound employment policy," including interests in workplace efficiency. In sum, DOJ

believes the document conveys a tone that is too permissive of employee religious expression.

We are trying to arrange a meeting for Monday at which members of the Counsel's Office, other interested offices in the White House, and the Department of Justice can discuss these issues. The attached materials provide some background for that meeting. They are:

- A draft of the proposed executive order, approved by the religious groups and (as we understand it, though there may be some dispute on this point) approved for form and legality by OLC. (I apologize for the redlining on this draft, which you should ignore.)
- An alternative document offered by the Justice Department, which it views as better than the proposed EO, but still undesirable. It is our understanding that this document would be unacceptable to the religious groups. Indeed, another Justice Department-prepared document that was much more similar to the proposed EO, raised howls of protest.
- A recent case indicating the kind of workplace policies the religious groups are trying to combat. The case involves a workplace rule, issued by the California Department of Education, flatly banning religious advocacy and severely curtailing the display of religious materials. The Court struck the rule down as violating employees' First Amendment rights.

If you need anything else, please let me know.

THE EXERCISE OF RELIGION AND RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE

The Constitution and federal statutory law permit a greater degree of religious expression in the federal workplace than many Americans may now understand. The government may not discriminate in the workplace against private religious expression during the workday. Federal employers and supervisors also may not use the workplace to coerce the consciences of our employees, or to convey official endorsement or disparagement of religion to the public. Although application of the law might be complicated in specific factual contexts and will require careful consideration in particular cases, certain principles are clear, and permit the establishment of guidelines to apply to religious expression in the federal workplace.

Accordingly, I am ordering that executive branch agencies, officials and employees apply the following guidelines in the federal workplace. These guidelines principally address employees' exercise of religion and its expression when acting in their personal capacity within the federal workplace, in situations where the public has no regular exposure to that workplace. The Guidelines do not address whether and when governmental employers may, in their official capacity, engage in religious speech or other activities directed at, or in the presence of, the public. Nor do these Guidelines purport to address in any definitive manner the rights and responsibilities of non-governmental employers -- including religious employers -- and their employees. These Guidelines also do not apply to the conduct of business by chaplains employed by the federal government.

NOW, THEREFORE, by the authority vested in me by the Constitution and the laws of the United States, including 5 U.S.C. ____, it is hereby ordered as follows:

Section 1. Guidelines for Religion and Religious Expression in the Federal Workplace. Each department and agency of the executive branch shall apply the following guidance in the federal workplace.

A. Religious Discrimination. Federal agencies may not discriminate against employees on the basis of their religion, religious beliefs or views concerning religion.

(1) Discrimination in Terms and Conditions. No agency within the executive branch may promote, refuse to promote, hire, refuse to hire, or otherwise favor or disfavor, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion.

Examples

- (a) A federal agency may not refuse to hire Buddhists, or impose more onerous requirements on applicants for employment who are Buddhists.
- (b) An agency may not impose, explicitly or implicitly, stricter promotion requirements for Christians, or impose stricter discipline on Jews than on other employees, based on their religion. Nor may federal agencies give advantages

to Christians in promotions, or impose lesser discipline on Jews than on other employees, based on their religion.

- (c) A supervisor may not impose more onerous work requirements on an employee who is an atheist because that employee does not share the supervisor's religious beliefs.

(2) Coercion, or "Quid Pro Quo" Discrimination. A person holding supervisory authority over an employee may not, explicitly or implicitly, insist that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment. Nor may a supervisor insist that an employee refrain from participating in religious activities as a condition of any terms of employment, except pursuant to reasonable time, place and manner restrictions applicable to all employee expression or conduct, regardless of its content or point of view.

Not all forms of supervisors' religious speech or expression about religion is inappropriate. Where a supervisor's religious expression does not carry coercive overtones, and is understood as his or her personal view, that expression is protected in the federal workplace in the same way, and to the same extent, as other constitutionally valued speech: like all such speech, it must be permitted except where the government's interest in workplace efficiency demands otherwise. For example, if surrounding circumstances indicate that employees are free to reject or ignore the supervisor's point of view or invitation without any harm to their careers or professional lives, such expression is so protected.

Nevertheless, because supervisors have the power to hire, fire or promote, the possibility exists that some employees may perceive their supervisors' religious expression as coercive, even if it was not intended as such. Supervisors should assess their religious conduct to ensure that employees do not perceive an unintended quid pro quo, and should, where necessary, take appropriate steps to dispel such misperceptions.

Examples

- (a) A supervisor may invite co-workers to a son's confirmation in a church, a daughter's bat mitzvah in a synagogue, or to his own wedding at a temple.
- (b) On a bulletin board on which personal notices unrelated to work regularly are permitted, a supervisor may post a flyer announcing an Easter musical service at her church, with a handwritten notice inviting co-workers to attend.

- (c) A supervisor wears religious jewelry or garb, or wears a button carrying a generalized religious or anti-religious message. Such conduct or expression typically is not coercive.
- (d) During a wide-ranging discussion in the cafeteria about various non-work-related matters, a supervisor states to an employee her belief that religion is important in one's life. Without more, this is not coercive, and the statement is protected in the federal workplace in the same way, and to the same extent, as other constitutionally valued speech.
- (e) At a lunch-table discussion about religious views on abortion, during which a wide range of views are vigorously expressed, a supervisor shares with those he supervises his belief that God demands full respect for unborn life, and that he believes it is appropriate for all persons to pray for the unborn. Another supervisor expresses the view that abortion should be kept legal because God teaches that women must have control over their own bodies. Without more, neither of these comments should reasonably be perceived as coercing employees' religious conformity or conduct. Therefore, unless the supervisors take further steps to coerce agreement with their views, their expressions are not improper; indeed, they are protected in the federal workplace in the same way, and to the same extent, as other constitutionally valued speech.
- (f) A supervisor who is an atheist has made it known that he thinks that anyone who attends church regularly should not be trusted with the public weal. Over a period of years, the supervisor regularly awards merit increases to employees who do not attend church routinely, but not to employees of equal merit who do attend church. This course of conduct would reasonably be perceived as coercive, and should be prohibited.
- (g) A supervisor should not announce that those employees who want to succeed at work will seek God's blessings at the temple she attends.
- (h) A supervisor should not circulate a memo announcing that he will be leading a lunch-hour Talmud class that employees should attend in order to participate in a discussion of career advancement that will convene at the conclusion of the class.
- (i) A supervisor should not say to an employee: "I didn't see you in church this week. I expect to see you there this Sunday."

(3) Hostile Work Environment and Harassment. No one in the federal workplace should be subjected to a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers. Whether particular conduct gives rise to a

hostile environment, or constitutes impermissible religious harassment, will usually depend upon its frequency or repetitiveness, as well as its severity. The use of derogatory language in an assultive manner can constitute religious harassment if it is severe or invoked repeatedly. A single incident, if sufficiently abusive, might also constitute harassment. A hostile environment is not created by the bare expression of speech with which some employees might disagree. In a country where freedom of speech and religion are guaranteed, citizens should expect to be exposed to ideas with which they disagree. (Even if particular conduct gives rise to a hostile environment, or constitutes impermissible religious harassment, the question whether the Federal Government would be subject to legal liability for such conduct would depend on the circumstances of the particular situation, including, among other things, the extent to which the agency was aware of the harassment, and the actions taken to address the harassment. The examples set forth below are intended to provide guidance on when conduct or words constitute religious harassment that should not be tolerated in the federal workplace. In a particular case, the question of employer liability would require consideration of additional factors.)

Examples

- (a) Every time an employee is assigned to work with devout Christians, she makes a derogatory remark to those persons about Jesus. This typically will constitute religious harassment, and an agency should not tolerate such conduct.
- (b) A group of employees should not subject a fellow employee to a barrage of comments about his sex life, knowing that the targeted employee would be discomfited and offended by such comments because of his religious beliefs.
- (c) A group of employees that shares a common faith decides that they want to work exclusively with people who share their views. They engage in a pattern of verbal attacks on other employees who don't share their views, calling them heathens, sinners, and the like. This conduct should not be tolerated.
- (d) Two employees have an angry exchange of words. In the heat of the moment, one makes a derogatory comment about the other's religion. When tempers cool, no more is said. Unless the words are sufficiently severe or pervasive to alter the conditions of the insulted employee's employment or create an abusive working environment, this is not religious harassment.
- (e) A majority of employees wear religious jewelry and medallions in a manner that is visible. This conduct alone is not religious harassment of atheist workers or those of different faiths.
- (f) In her private work area, a federal worker keeps a Bible on her private desk and reads it during breaks. Another employee displays a picture of Jesus and the text

of the Lord's Prayer in her private work area. This conduct, without more, is not religious harassment, and does not create an impermissible hostile environment with respect to employees who do not share those religious views, even if they are upset or offended by the conduct.

- (g) During their lunch hour, a group of employees gather on their own time for prayer and Bible study in an empty conference room that employees are generally free to use on a first-come, first-served basis. An agency that accords other groups the same privileges should permit such a gathering, even if other employees might feel excluded or ask that the group be disbanded because the group does not accept their views on how to pray.

B. Accommodation of Religious Exercise. An agency should accommodate employees' exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that will result in more than a de minimis cost to the agency, that cost or hardship nevertheless must be real rather than speculative or hypothetical: the accommodation should be made unless it would cause an actual cost to the agency or to other employees or an actual disruption of work, or unless it is otherwise barred by law.

In addition, religious accommodation cannot be disfavored vis a vis other, nonreligious, accommodations. Therefore, a religious accommodation cannot be denied if the agency regularly permits similar accommodation for nonreligious purposes.

Examples

- (a) An agency should adjust work schedules to accommodate an employee's religious observance -- for example, Sabbath or religious holiday observance -- if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency.
- (b) An employee should be permitted to wear religious garb, such as a crucifix, a yarmulke, a head scarf, or hijab, if wearing such attire during the work day is part of the employee's religious practice, so long as the wearing of such garb does not unduly interfere with the functioning of the workplace.
- (c) An employee should be excused from a particular assignment if performance of that assignment would contravene the employee's religious beliefs and the agency would not suffer undue hardship in reassigning the officer to another detail.

In those cases where an agency's neutral work rule imposes a substantial burden on a particular employee's exercise of religion, the agency must go further: an agency should grant the employee an exemption from that neutral rule, unless the agency has a compelling interest in denying the exemption and there is no less restrictive means of furthering that interest.

Examples

- (a) A corrections officer whose religion compels hair to be worn long should be granted an exemption from a neutral hair-length policy unless denial of an exemption is the least restrictive means of preserving will detrimentally affect safety, discipline or other important interests.
- (b) An applicant for employment in a governmental agency who is a Jehovah's Witness should not be compelled, contrary to her religious beliefs, to sign an oath to "bear true faith and allegiance" to the Constitution unless the signing of such an oath is the least restrictive means of ensuring absolutely necessary to ensure the putative employee's loyalty and trustworthiness.

C. Religious Expression in the Workplace. The federal government generally has the authority to regulate an employee's private speech where the employee's interest in that speech is outweighed by the government's interest in promoting the efficiency of the public services it performs. Agencies should exercise this authority even-handedly and with restraint, and with regard for the fact that Americans are used to expressions of disagreement on controversial subjects, including religious subjects. Agencies also may, in their discretion, reasonably regulate the time, place and manner of employee speech, provided such regulations do not discriminate on the basis of content or point of view.

Agencies should not, as a general rule, regulate employees' personal religious expression on the basis of its content. In other words, agencies generally may not suppress employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics. Agencies should not deny employees the right to talk to their colleagues about religious matters so long as their peers may discuss other subjects without special restriction, because to do so would be to engage in improper viewpoint discrimination.

Agencies are not required to permit employees to use work time to pursue religious or ideological agendas. Federal employees are paid to perform official work, not to engage in personal religious or ideological campaigns during work hours.

- (1) Expression in Private Work Areas. Employees should be permitted to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable and content-neutral time, place and manner restrictions: such religious expression should be permitted so long as it does not interfere with the employee's performance of his or her professional ability to carry out his or her responsibilities.

Examples

- (a) An employee may keep a Bible on her private desk and read it during breaks.
- (b) An agency may ban all posters, or posters of a certain size, in private work areas, or require that such posters be displayed facing the employee, and not on common walls; but the employer cannot single out religious or anti-religious posters for harsher treatment.

(2) Expression Among Fellow Employees. Employees should be permitted to engage in private religious expression amongst fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral ~~time, place and manner~~ restrictions: such expression should not be infringed so long as it does not interfere with workplace efficiency. Though agencies are entitled to regulate such employee speech based on reasonable predictions of disruption, they should not restrict speech based on merely hypothetical concerns, having little basis in fact, that the speech will have a deleterious effect on workplace efficiency.

Examples

- (a) In informal settings, such as cafeterias and hallways, employees are entitled to discuss their religious views with one another, subject to the same rules of order as apply to other employee expression. If an agency permits unrestricted nonreligious expression of a controversial nature, it should likewise permit equally controversial religious expression.
- (b) Employees are entitled to display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Insofar as they do not convey to the public any governmental endorsement of religion, religious messages may not be singled out for suppression; rather, they are protected to the same extent as, and should be subject to the same rules as generally apply to, messages that will have a comparable effect on the workplace.
- (c) A majority of employees wear religious medallions over their clothes or wear them so that they are otherwise visible. Typically this alone should not affect workplace efficiency, and therefore is protected.

(3) Expression Directed at Fellow Employees. Employees are permitted to engage in private religious expression directed at ~~discuss religious topics with~~ fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent that those employees may engage in comparable speech not involving religion. Some religions strongly encourage adherents to spread the faith at every opportunity, a duty that can encompass the adherents' workplace. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech. Employees may urge a colleague to participate or not to participate in religious activities to the same extent they may urge their colleagues to engage or refrain from

other personal endeavors. But employees also should respect the prerogative of fellow employees to ask that the discussion stop. When an employee asks that the discussion directed at him or her stop, it should be stopped. The discussion may resume if the unwilling listener indicates a desire to resume the conversation. This general rule, reflecting a principle of civility in the federal workplace, should apply equally to religious and nonreligious speech.

Examples

- (a) During a coffee break, one employee engages another in a polite discussion of why his faith should be embraced. The other employee disagrees with the first employee's religious exhortations, but does not ask that the conversation stop. Under these circumstances, agencies should not restrict or interfere with such speech.
- (b) One employee invites another employee to attend worship services at her church, though she knows that the invitee is a devout adherent of another faith. The invitee is shocked, and asks that the invitation not be repeated. The original invitation is protected (and does not constitute harassment), but the employee should honor the request that no further invitations be issued.
- (c) In a parking lot, a non-supervisory employee hands another employee a religious tract urging that she convert to another religion lest she be condemned to eternal damnation. The proselytizing employee says nothing further and does not inquire of his colleague whether she followed the pamphlet's urging. This speech typically should not be restricted.

Though religious expression such as that described in these examples will, standing alone, be protected in the same way, and to the same extent, as other constitutionally valued speech in the federal workplace, such expression should not be permitted to escalate to the point where it becomes part of a larger pattern of verbal attacks on fellow employees (or on a specific employee), which could give rise to a hostile work environment. For example, if a group of employees sharing a common faith engage in a pattern of attacks on employees who do not share their views -- persistently calling them derogatory names -- this could constitute religious harassment, and an agency should not tolerate such a pattern of conduct.

(4) Expression in Areas Accessible to the Public. Where the public has access to the federal workplace, supervisors and employees must refrain from any religious expression that would leave the public with the reasonable impression that the government is sponsoring, endorsing, disparaging or disfavoring, religion. This is particularly important in agencies with adjudicatory functions. However, not all private employee religious expression is forbidden, even in workplaces open to the public. For example,

federal employees may wear personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry. Employees may also display religious art and literature in their personal work areas to the same extent other art and literature may be displayed, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in her personal capacity, and not that of the government itself. Similarly, employees may discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities.

Sec. 2. Guiding Legal Principles. In applying the guidance set forth in section 1 of this order, executive branch departments and agencies should consider the following legal principles.

A. Religious Discrimination and Burdening the Exercise of Religion. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for employers, both private and public, to "fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). The federal government also is bound by the Equal Protection component of the Due Process Clause of the Fifth Amendment, which bars intentional discrimination on the basis of religion.¹ Moreover, the prohibition on religious discrimination in employment applies with particular force to the federal government, for Article VI, clause 3 of the Constitution bars the government from enforcing any religious test as a requirement for qualification to any Office.² In addition, if a government law, regulation or practice facially discriminates against employees' private exercise of religion or is intended to infringe upon or restrict private religious exercise, then that law, regulation or practice implicates the Free Exercise Clause of the First Amendment, and, at least insofar as the governmental action substantially burdens the private party's exercise of religion, it can be enforced only if it is justified by a compelling interest and is narrowly tailored to advance that interest.³

Moreover, the Religious Freedom Restoration Act of 1993 provides that the government may not substantially burden the exercise of a person's religion unless the government has a compelling interest for doing so and has employed the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1.

B. Coercion and "Quid Pro Quo" Discrimination. The ban on religious discrimination is broader than simply guaranteeing nondiscriminatory treatment in formal employment decisions such as hiring and promotion. It applies to all terms and conditions of employment. It follows

¹ See United States v. Armstrong, 116 S. Ct. 1480, 1486 (1996) (citing Ostley v. Boles, 368 U.S. 448, 456 (1962)).

² See, e.g., Feminist Women's Health Center v. Codispoti, 69 F.3d 399 (9th Cir. 1995) (Noonan, J.).

³ See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 532-33 (1993); McDaniel v. Paty, 435 U.S. 618 (1978).

that the federal government may not require or coerce its employees to engage in religious activities.⁴ For example, a supervisor may not demand attendance at (or a refusal to attend) religious services as a condition of continued employment or promotion, or as a criterion affecting assignment of desirable job duties. Quid pro quo discrimination of this sort is illegal. Indeed, wholly apart from the legal prohibitions against such coercion, supervisors may not insist upon employees' conformity to religious behavior in their private lives any more than they can insist on conformity to any other private conduct unrelated to employees' ability to carry out their duties.

C. Discriminatory Harassment. Employers violate Title VII's ban on discrimination by creating or tolerating a "hostile environment" in which an employee is subject to discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.⁵ This statutory standard can be triggered (at the very least) when an employee, because of her or his religion or lack thereof, is exposed to intimidation, ridicule, and insult to which persons of other religions are not exposed.⁶ The hostile conduct -- which may take the form of speech -- need not come from supervisors or from the employer. Fellow employees can create a hostile environment through their own words and actions. ~~An employer's knowing failure to stop such conduct when it is, or should be, aware of it, can be unlawful under Title VII.~~

The existence of some offensive workplace conduct does not necessarily constitute harassment under Title VII. Occasional and isolated utterances of an epithet that engenders offensive feelings in an employee typically would not affect conditions of employment, and therefore would not in and of itself constitute harassment. A hostile environment, for Title VII purposes, is not created by the bare expression of speech with which one disagrees. For religious harassment to be illegal under Title VII, it must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Whether conduct can be the predicate for a finding of religious harassment under Title VII depends on the totality of the circumstances, such as the nature of the verbal or physical conduct at issue and the context in which the alleged incidents occurred. As the Supreme Court has said in an analogous context:

[W]hether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes within an employee's work performance. The effect on the employee's

⁴ See, e.g., EEOC v. Townley Eng'g & Mfg. Co., 859 F.2d 610 (9th Cir. 1988); Young v. Southwestern Savings & Loan Ass'n, 509 F.2d 140 (5th Cir. 1975). In addition to Title VII, such coercion would raise concerns under the Free Speech, Free Exercise, and Establishment Clauses of the First Amendment. See generally Torcaso v. Watkins, 367 U.S. 488 (1961). Cf. Lee v. Weisman, 505 U.S. 577 (1992).

⁵ Harris v. Forklift Systems, Inc., 114 S. Ct. 367, 370 (1993).

⁶ Cf. id. at 372 (Ginsburg, J., concurring) (in context of sexual harassment).

psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. [Harris v. Forklift Systems, Inc., 114 S. Ct. 367, 371 (1993).]

The use of derogatory language directed at an employee can rise to the level of religious harassment if it is severe or invoked repeatedly. In particular, repeated religious slurs and negative religious stereotypes, or continued disparagement of an employee's religion or ritual practices, can constitute harassment. It is not necessary that the harassment be explicitly religious in character or that the slurs reference religion: it is sufficient that the harassment is directed at an employee because of the employee's religion. That is to say, Title VII can be violated by employer tolerance of repeated slurs, insults and/or abuse not explicitly religious in nature if that conduct would not have occurred but for the targeted employee's religion.⁷

D. Accommodation. Title VII requires employers "to reasonably accommodate . . . an employee's or prospective employee's religious observance or practice" unless such accommodation would impose an "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).⁸ For example, by statute, if an employee's religious beliefs require her to be absent from work, the federal government must grant that employee compensation time for overtime work, to be applied against the time lost, unless to do so would harm the ability of the agency to carry out its mission efficiently. 5 U.S.C. § 5550a.⁹

Though an employer need not incur more than de minimis costs in providing an accommodation,¹⁰ the employer hardship nevertheless must be real rather than speculative or hypothetical.¹¹ Religious accommodation cannot be disfavored relative to other, nonreligious, accommodations. If an employer regularly permits accommodation for nonreligious purposes, it cannot deny comparable religious accommodation: "Such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 71 (1986).¹²

In the government workplace, if neutral workplace rules -- that is, rules that do not single out religious or religiously motivated conduct for disparate treatment -- impose a substantial burden on a particular employee's exercise of religion, the Religious Freedom Restoration Act

⁷ See, e.g., Turner v. Barr, 811 F. Supp. 1, 4 (D.D.C. 1993); Finnemore v. Bangor Hydro-Electric Co., 645 A.2d 15, 17 (Maine 1994).

⁸ See generally 29 C.F.R. Part 1605.

⁹ See 5 C.F.R. § 550.1002.

¹⁰ See Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977).

¹¹ See, e.g., Brown v. Polk County, 61 F.3d 650, 655 (8th Cir. 1995) (en banc).

¹² If Title VII required accommodation for religious observance and practice greater than accommodation provided for non-religious reasons, it would raise serious Establishment Clause questions. See Estate of Thornton v. Calder, 472 U.S. 703, 711-12 (1985) (O'Connor, J., concurring).

would require the employer to grant the employee an exemption from that neutral rule, unless the employer has a compelling interest in denying an exemption and there is no less restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1.

E. Religious Expression. It is well-established that, under the Free Speech Clause of the First Amendment, the government in its role as employer has broader discretion to regulate its employees' speech in the workplace than it does to regulate speech among the public at large.¹³ Employees' expression on matters of public concern can be regulated if the employee's interest in the speech is outweighed by the interest of the government, as an employer, in promoting the efficiency of the public services it performs through its employees.¹⁴ Governmental employers also possess substantial discretion to impose time, place and manner rules regulating private employee expression in the workplace (though they may not structure or administer such rules to discriminate against particular viewpoints). Furthermore, employee speech can be regulated or discouraged if it impairs discipline by superiors, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise,¹⁵ or demonstrates that the employee holds views that could lead his employer or the public reasonably to question whether he can perform his duties adequately.¹⁶

The Free Speech Clause prohibits the government from singling out religious expression for disfavored treatment: "[P]rivate religious speech, far from being a First Amendment orphan,

¹³ See Wabaunsee County Board of County Commissioners v. Umbehr, 116 S. Ct. ____, ____, 1996 WL 354032, at *6 (June 28, 1996); Waters v. Churchill, 114 S. Ct. 1878, 1888 (1994); Rankin v. McPherson, 483 U.S. 378, 384 (1987); Connick v. Myers, 461 U.S. 138 (1983); Pickering v. Board of Educ., 391 U.S. 563 (1968).

¹⁴ Waters, 114 S. Ct. at 1884 (citing Connick, 461 U.S. at 142).

¹⁵ Rankin, 483 U.S. at 388.

¹⁶ See, e.g., Lumpkin v. Jordan, 1994 WL 669852, at *4-*5 (N.D. Cal. 1994) (member of city human rights commission could be discharged for religious speech condemning homosexuals, where that speech called into question his ability to enforce the policies of the mayor); See also, e.g., Rankin, 483 U.S. at 389 (employee speech could be restricted if it "demonstrated a character trait that made [the employee] unfit to perform her work"); Branti v. Finkel, 445 U.S. 507, 517 (1980) ("First Amendment rights may be required to yield to the State's vital interest in maintaining governmental effectiveness and efficiency . . . [where] an employee's private . . . beliefs would interfere with the discharge of his public duties"); Sims v. Metropolitan Dade County, 972 F.2d 1230, 1237-38 (11th Cir. 1992) (permissible to suspend community affairs employee whose job it was to build racial rapport and harmonious community relations, as result of his statements in private sermon criticizing widespread use of Spanish in public facilities and imploring blacks to stop doing business with Hispanic establishments); Mings v. Department of Justice, 813 F.2d 384, 389 (Fed. Cir. 1987) (permissible to fire INS employee whose job it was to deal with numerous Hispanic and Catholic aliens and fellow employees, because letter he wrote with virulent anti-Hispanic, anti-Catholic epithets demonstrated a strong bias calling into question his ability to perform his duties in fair and unbiased manner).

is as fully protected under the Free Speech Clause as secular private expression."¹⁷ Accordingly, in the government workplace religious expression should be treated like expression on issues of public concern: in a particular case, an employer can discipline an employee for engaging in speech if the value of the speech is outweighed by the employer's interest in promoting the efficiency of the public services it performs through its employees,¹⁸ but religious expression cannot be regulated because of its religious character content,¹⁹ and religious speech cannot be singled out for harsher treatment than other comparable expression.

Many religions strongly encourage their adherents to spread the faith by persuasion and example at every opportunity, a duty that can extend to the adherents' workplace. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech.²⁰ Therefore, in the governmental workplace, proselytizing should not be singled out because of its content for harsher treatment than nonreligious expression.

F. The Establishment Clause. The Establishment Clause of the First Amendment prohibits plays a role in the regulation of government employees' religious expression in cases where the public has access to the federal workplace: the government -- including its employees -- from acting in a manner that would lead a reasonable observer to conclude that the government is sponsoring, endorsing, disparaging, or disfavoring, religion.²¹ For example, where the public has access to the federal workplace, employee religious expression should be

¹⁷ Capitol Square Review & Advisory Board v. Pinette, 115 S. Ct. 2440, 2446 (1995). See also, e.g., Cantwell v. Connecticut, 310 U.S. 296 (1940); Widmar v. Vincent, 454 U.S. 263 (1981); Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384 (1993); Rosenberger v. Rector and Visitors of the Univ. of Virginia, 115 S. Ct. 2510, 2516-20 (1995).

¹⁸ Cf., e.g., Brown v. Polk County, 61 F.3d 650, 658 (8th Cir. 1995) (en banc) (religious expression in public workplace analyzed pursuant to Connick/Rankin analysis); Baz v. Walters, 782 F.2d 701, 708 (7th Cir. 1986) (same). In virtually every case, such Waters/Connick protection will be broader than Title VII's protection of religious expression: accordingly, if an employer can prevail under Waters/Connick by demonstrating a harm to workplace efficiency, then it will easily satisfy the "undue burden" test of Title VII. Moreover, RFRA does not provide any greater protection for religious expression than the Waters/Connick test: Congress indicated clearly that it did not intend RFRA's protections for religious expression to extend beyond the content-neutrality guarantee of the Free Speech Clause. See H.R. Rep. No. 88, 103d Cong., 1st Sess. 9 (1993); S. Rep. No. 111, 103d Cong., 1st Sess. 13 (1993), reprinted in 1993 U.S.C.C.A.N. 1892, 1903. Congress's measured conclusion in this regard was well-considered, because if RFRA had provided religious speech any protections not given to comparable nonreligious employee speech, it would have implicated serious Establishment Clause and Free Speech Clause questions. See, e.g., Rosenberger, 115 S. Ct. at 2516; Turner Broadcasting Sys., Inc. v. FCC, 114 S. Ct. 2445, 2458-59 (1994); Police Dept. of Chicago v. Mosley, 408 U.S. 92, 96 (1972).

¹⁹ Rankin, 483 U.S. at 390.

²⁰ See, e.g., Rosenberger; Lamb's Chapel; Cantwell v. Connecticut, 310 U.S. 296 (1940).

²¹ See, e.g., Pinette, 115 S. Ct. at 2454-56 (O'Connor, J., concurring); id. at 2457-62 (Scouter, J., concurring); Allegheny County v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 620 (1989); id. at 630-35 (O'Connor, J., concurring).

prohibited where the public reasonably would perceive that the employee is acting in an official, rather than a private, capacity, or under circumstances that would lead a reasonable observer to conclude that the government favors or disfavors private religious speech.²² The Establishment Clause also forbids federal employees from using government funds or resources for private religious uses.²³

Sec. 3. General. This order is intended to be consistent with and informed by the Constitution and existing laws of the United States. This order is intended to govern the internal management of the executive branch. It is not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

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²² See, e.g., Langlotz v. Picciano, 683 F. Supp. 1041 (E.D. Va. 1988) (county outreach counselor could be discharged for engaging in religious counseling with clients), aff'd mem., 905 F.2d 1530 (4th Cir. 1990); Kelly v. Municipal Court of Marion County, 852 F. Supp. 724, 733-35 (S.D. Ind. 1994) (bailiff could be discharged for failing to heed judge's admonitions not to read bible in reception area of court and not to discuss his religious beliefs with visitors to the court).

²³ Cf., e.g., Brown, 61 F.3d at 655 (director of county department appropriately disciplined for directing a secretary to type his bible study notes). See generally Rosenberger, 115 S. Ct. at 2525 (O'Connor, J., concurring); Bowen v. Kendrick, 487 U.S. 589, 611-12, 621 (1988); id. at 623 (O'Connor, J. concurring); id. at 624 (Kennedy, J., concurring, joined by Scalia, J.); id. at 634-35 (four dissenting Justices); Grand Rapids School Dist. v. Ball, 473 U.S. 373, 381; Tilton v. Richardson, 403 U.S. 672, 683 (1971).

THE EXERCISE OF RELIGION AND RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE

The Constitution and federal statutory law permit a greater degree of religious exercise and expression in the federal workplace than many Americans may understand. The government may not discriminate in the workplace against private religious expression during the workday. Although application of the law might be complicated in specific factual contexts and will require careful consideration in particular cases, certain principles are clear and permit the establishment of guidelines with respect to the role of private religious exercise and religious expression in the federal workplace.

The following are guidelines for civilian Executive Branch agencies, officials, and employees in the federal workplace. These guidelines address employees' exercise of religion and religious expression when the employees are acting in their personal capacity within the federal workplace. The Guidelines are principally concerned with situations where the public has no regular exposure to the workplace.¹

I. LEGAL PRINCIPLES

A. Prohibition on Governmental Religious Discrimination

Executive Branch agencies and supervisors in such agencies may not discriminate against persons because of their religion or lack thereof in matters of hiring or discharge, or in imposing other terms, conditions, and privileges of employment. Nor may they explicitly or implicitly require or coerce federal employees or applicants for employment to engage in religious activities.

Executive Branch agencies and supervisors in such agencies may not require federal employees to work in a discriminatorily hostile or abusive environment, whether that environment is created by supervisors or fellow employees. In the context of religious harassment, a discriminatorily hostile or abusive environment exists only if, at a minimum, a reasonable person would perceive the work environment as hostile or abusive in a manner that discriminates against employees on the basis of their religion or lack thereof. A hostile or abusive environment, for purposes of statutory law, is not created by an isolated utterance that engenders offense in an employee.²

¹ The Guidelines do not address whether and when government employers may, in their official capacity, engage in religious speech or other activities directed at the public. They also do not address the exercise of religion and religious expression in the military. Nor do these Guidelines define the rights and responsibilities of non-government employers -- including religious entities -- and their employees. Finally, these Guidelines also do not address the conduct of business by chaplains employed by the federal government.

² Whether a hostile environment exists for purposes of statutory law depends upon consideration of all of the pertinent circumstances, including: the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes within an employee's work performance. The unlawful conduct need not be explicitly religious in character; it is sufficient that the harassment be directed at an employee because of the employee's religion or lack thereof.

B. Accommodation of Employees' Exercise of Religion

All Executive Branch agencies must reasonably accommodate an employee's religious observance or practice unless such accommodation would impose an undue hardship -- that is, more than de minimis costs -- on the conduct of the employer's business. What is more, if an agency's rules or regulations impose a substantial burden on a particular employee's exercise of religion, the agency must grant the employee an exemption from that rule or regulation, unless the agency has a compelling interest in denying an exemption and there is no less restrictive means of furthering that interest. An agency may not disfavor religious accommodation relative to other, nonreligious, personal accommodations that impose a comparable burden on the agency.

C. Employees' Religious Expression in the Workplace

Personal religious speech, including proselytizing, is as entitled to constitutional protection as secular private expression. As a general matter, an employee's personal expression in the government workplace on matters of public concern or on religious matters can be regulated or sanctioned by the federal government only if the employee's interest in making the speech is outweighed by any injury the speech predictably could cause to the interest of the government, as an employer, in promoting the efficiency of the public services it performs through its employees.³ The federal government also has substantial discretion to impose time, place and manner rules regulating its employees' personal expression in the workplace, though the government may not structure or administer such rules in order to discriminate against disfavored viewpoints or in favor of preferred viewpoints.

D. Prohibition on Governmental Endorsement of Religion

The federal government may not act in a manner that would lead a reasonable observer to conclude that the government is endorsing a particular religion or religion in general. Therefore, while federal employees typically may engage in personal religious expression in the workplace on their own time (subject to the government's limited authority as an employer, described in section C, above, to regulate its employees' workplace expression), agencies and supervisors must take steps sufficient to ensure that such personal employee expression would not, under the circumstances, cause a reasonable observer to conclude that the expression is the government's own, or that the government favors or endorses the employee's private religious speech. In addition, federal employees may not use government funds or resources for private religious uses.

³ For purposes of this balancing test, the government's legitimate interests could be implicated if, for example, a particular instance of employee religious expression in the workplace: impairs discipline by superiors or harmony among co-workers; has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary; impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise; or demonstrates that the employee holds views that could lead his employer or the public reasonably to question whether he can perform his duties adequately.

II. APPLICATIONS TO EMPLOYER AND EMPLOYEE CONDUCT

A. Hiring, Promotion, Discharge, and Other Terms and Conditions of Employment

In hiring, promotion, discharge, compensation, work assignments, and other terms and conditions of employment, a federal employer cannot, explicitly or implicitly, favor or disfavor an employee because of his or her religion, religious beliefs, views concerning religion, or participation or nonparticipation in religious activities. For example, a supervisor may not recommend or give promotions or preferred office space to employees because they attend the supervisor's church or are of a particular faith. Similarly, a supervisor cannot give undesirable work assignments to an employee because the supervisor dislikes the employee's religion or objects to the employee's religious views.

B. Employee Leave for Religious Purposes

In a context in which an agency routinely permits employees to take leave for most nonreligious purposes, it should not deny comparable leave to employees for religious purposes. Federal employers should allow employees to take leave or otherwise adjust work schedules, to the extent reasonably practicable, to accommodate employees' ability to exercise their religion. For example, if an employee needs to be absent from work to attend religious services or to observe a religious holiday, an agency must allow the employee to do so in exchange for compensatory overtime work (or, if the employee prefers, by using accrued annual leave), unless that would disrupt or impede the agency's work. Similarly, if an employee requests an adjustment in work schedules so that she may avoid work on her Sabbath, an agency must permit such an adjustment if the employee's absence would not impose an undue burden on the agency -- for example, if a voluntary substitute with substantially similar qualifications is available. And, in all cases, if denial of leave for religious purposes would impose a substantial burden on an employee's religious exercise, such leave must be permitted unless denial of such leave is the most narrowly tailored way of satisfying a compelling agency interest.

C. Employee Prayer

Employees are permitted to pray at work on their own time. They also may use facilities such as an empty conference room for personal religious purposes, such as group prayer, to the same extent that employees may use the facilities for other purposes unrelated to work. However, where a reasonable observer would conclude that a particular case of employee prayer was officially endorsed, an agency should not allow that prayer unless it can take steps sufficient to prevent or dispel such perceived endorsement. Such steps might include, for example, clearly indicating that the prayer is private employee conduct not sanctioned by the government and that employees are free to dissociate themselves from it or, where such steps are insufficient to dispel the reasonable perception of government endorsement, requiring that employees confine their prayer to settings where there is no such threat of perceived endorsement. A person holding supervisory authority over another

employee may not explicitly or implicitly require or coerce the employee to pray or engage in other religious activities, whether at work or outside of work.

D. Employees' Religious Attire, Jewelry, and Buttons

Absent special circumstances, employees may wear religious attire, jewelry, or medallions, since such conduct typically will not impair workplace efficiency. Employees also may display religious messages, such as on buttons, to the same extent that they are permitted to display other personal messages that would have a comparable effect on the workplace, as long as that display does not convey any governmental endorsement of religion. What is more, where workplace restrictions on employees' religious attire, jewelry or display would substantially burden such employees' religious exercise, the employing agency must relax such restrictions unless the agency has a compelling interest that cannot be advanced in any manner less restrictive than by imposing the restrictions.

E. Employees' Religious Expression in their Private Work Areas

Employees may engage in personal religious expression in private work areas to the same extent that they may engage in nonreligious personal expression in those areas: subject to reasonable and content-neutral standards and restrictions, such religious expression should be permitted so long as it does not interfere with the employee's productivity or performance of his or her responsibilities or convey to the reasonable observer a message of governmental endorsement of the religious expression. For example, an employee may keep a Bible on her private desk and read it during breaks. On the other hand, an agency may, for example, ban all personal posters of a certain size in private work areas or require that posters be displayed facing the employee, and not on common walls; but the employer cannot single out religious or anti-religious posters for harsher or preferential treatment.

F. Informal Religious Expression Among Employees

In informal, non-work-related discussions among employees, an employee may discuss religion, or bring religious perspectives to bear on other topics, to the same extent that the employee may engage in comparable nonreligious private expression: subject to reasonable and content-neutral standards and restrictions, such expression should not be infringed so long as it does not interfere with workplace efficiency. Though agencies are entitled to regulate employees' personal speech based on reasonable predictions of disruption, they should not restrict religious speech based on merely hypothetical concerns, having little basis in fact, that the speech will have a deleterious effect on workplace efficiency. For example, in informal settings, such as cafeterias and hallways, employees are entitled to discuss their religious views with one another in the same manner that they are permitted to engage in other personal expression.

Employees may even attempt to persuade fellow employees of the correctness of their religious views on the same terms as they are permitted to approach fellow employees regarding other matters unrelated to work activities. Some religions strongly encourage adherents to attempt to spread the faith to fellow employees. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech: it should be permitted in the government workplace unless it would interfere with workplace efficiency. However, employees should respect the prerogative of fellow employees to ask that a discussion stop, and they should be sensitive to fellow employees' indications that they do not welcome such discussions. This general rule, reflecting a principle of civility in the federal workplace, should apply equally to religious and nonreligious expression. Moreover, under circumstances where a reasonable observer would interpret employees' proselytizing or other religious activities as official government endorsement of religion, agencies must restrict such activities, unless they are able to take steps sufficient to dispel or prevent such perceived endorsement.

G. Derogatory Language and Insults

Religious epithets and personal insults, like other epithets and insults, are inconsistent with, and antithetical to, the mission of the federal government, and therefore are never appropriate in the federal workplace. Derogatory language directed at a fellow employee because of his or her religion or lack thereof also has no proper place in the federal workplace.

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evidence in the record to support determination that restriction is reasonable).

We conclude that it is not reasonable to allow employees to post materials around the office on all sorts of subjects, and forbid only the posting of religious information and materials. The challenged ban not only prevents employees from posting non-controversial information that might interest some or all employees--such as bulletins announcing the time and location of church services, invitations to children of employees to join a church youth group, and newspaper clippings praising Billy Graham, Mother Theresa or Cardinal Bernardin--it would also ban religious messages on controversial subjects such as abortion, abstinence of various types, family values, and the v-chip. Material that addresses controversial topics from a non-religious viewpoint would, however, be permissible, as would signs inviting employees to motorcycle rallies, swap meets, x-rated movies, beer busts, burlesque shows, massage parlors or meetings of the local militia. The prohibition is unreasonable not only because it bans a vast amount of material without legitimate justification but also because its sole target is religious speech.

*10 The state's strongest argument is that allowing the posting of religious material on the interior space of the building in question would give the appearance of government endorsement of religious messages. Such endorsement would, of course, be unconstitutional. *County of Allegheny v. ACLU*, 492 U.S. 573, 592-601, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989). [FN7] Even considering the government's greater interest in its wall-space, we find the rationale it offers for the order unpersuasive. Although the government states that "CDE's [California Department of Education's] facilities are public facilities," there is nothing in the record that would indicate that the public has access to or ever goes into the office areas where Tucker and the other employees of the Child Nutrition and Food Distribution Division do their work. Even if there were, the sweeping ban on the posting of all religious information would clearly be

unreasonable. Reasonable persons are not likely to consider all of the information posted on bulletin boards or walls in government buildings to be government-sponsored or endorsed. Certainly a total ban on posting religious information of any kind is an unreasonable means of obviating such a concern. This case is different from *Monterey Cty. Democratic Central Comm. v. U.S. Postal Serv.*, 812 F.2d 1194 (9th Cir.1987), where we upheld a narrow ban on partisan political activity on the walkway area around a post office--an area we determined was a non-public forum, although it was widely used by the public. There, we had reason to be concerned that the public might believe that the government endorsed the particular activity sought to be carried on. Here, that is simply not the case. [FN8]

The government need not choose the least restrictive alternative when regulating speech in a nonpublic forum. *Swanner v. United States*, 937 F.2d 1478, 1482 (9th Cir.1991). However, "its failure to select ... simple available alternative[s] suggests" that the ban it has enacted is not reasonable. *Multimedia Publishing*, 991 F.2d at 161. The state has simpler and far less restrictive alternatives available to it, such as setting up employee bulletin boards and limiting all employee postings to those sites, or permitting postings generally in the parts of the building not ordinarily visited by the public. Reasonable content-neutral restrictions on the space to be used and the duration of the posting would not be inconsistent with the first amendment. Any regulations would of course be subject to the principles governing content and viewpoint discrimination. The state might also, in a properly drawn order, ban the exhibition of religious symbols, artifacts or other similar items, which might reasonably convey an impression of state endorsement--or at least it might do so in areas outside of the employees' private office space. The constitutionality of any such order would depend of course on all of the circumstances involved in the particular case. Nevertheless, the availability of simple alternatives which infringe much less on the First Amendment rights of employees further supports our

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conclusion that the challenged order is unreasonable. *Id.*

*11 Finally, although the line between content and viewpoint discrimination is a difficult one to draw, [FN9] we are also concerned that the order may constitute viewpoint discrimination because it has the effect of preventing not only messages that discuss religion generally, but also of silencing religious perspectives on controversial subjects in general. For example, as we have suggested above, the ban would appear to prevent a sign stating that "gay marriage is a sin," and quoting passages from the Bible to support that position. However, an employee could post a sign advocating a person's right to choose whatever mate he or she wishes, if he omitted any reference to biblical or other religious support for that position. While we hold the order unreasonable for other reasons, we note that Tucker has raised a colorable claim that it constitutes impermissible viewpoint based discrimination. See, e.g., *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384, 113 S.Ct. 2141, 2147, 124 L.Ed.2d 352 (1993) (holding that "permit[ting] school property to be used for the presentation of all views about family issues and child-rearing except those dealing with the subject matter from a religious viewpoint," was impermissible viewpoint discrimination.); *Cornelius*, 473 U.S. at 812 (viewpoint discrimination unreasonable even in a non-public forum).

We should note that there is a legitimate state interest in preventing displays of religious objects that might suggest state endorsement of religion. The state has a legitimate interest, for example, in preventing the posting of Crosses or Stars of David in the main hallways, by the elevators, or in the lobbies, and in other locations throughout its buildings. Such a symbol could give the impression of impermissible government support for religion. See *County of Allegheny v. ACLU*, 492 U.S. 573, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989). For the same reasons, the state may have a legitimate interest in regulating, or perhaps banning displays of religious artifacts and symbols in various

parts of its office buildings. However, banning the posting of all religious materials and information in all areas of an office building except in employees' private cubicles simply goes too far. It is not a reasonable means of achieving the state's legitimate ends.

OVERBREADTH

Tucker contends that the order banning religious advocacy and the order banning religious postings are overbroad. [FN10] We will not hold provisions facially overbroad where a suitable limiting construction is possible or where the overbreadth is not both "real, [and] substantial as well, judged in relation to the [provision's] plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 600, 613, 615 (1973).

We will discuss each order in turn, briefly. In the case of the order banning religious advocacy, we conclude that the overbreadth is real and substantial. The order prevents free expression by employees, whenever they are in the workplace, even during lunch breaks, coffee breaks, and after-hours. [FN11] Moreover, the undefined term "religious advocacy" encompasses a wide range of speech, much of it permissible. We need not repeat the illustrations here.

*12 The state has pointed to no narrowing construction of this order or of similar enactments by its courts or any state official. While we attempt to interpret state enactments to avoid constitutional problems, e.g., *Knapp v. Cardwell*, 667 F.2d 1253, 1260 (9th Cir.1982), cert. denied, 459 U.S. 1055, 103 S.Ct. 473, 74 L.Ed.2d 621 (1982), we can discern no obvious interpretation of the order that will eliminate its overbreadth. We also see no way to sever the order or excise certain words from it in order to leave a legitimate portion in place, see *Brockett v. Spokane Arcades*, 472 U.S. 491, 504-05, 105 S.Ct. 2794, 86 L.Ed.2d 394 (1985), and it is not within the province of this court to "rewrite" the order to cure its substantial constitutional infirmities. See *Treasury Union*, --- U.S. at --- and n. 26, 115 S.Ct. at 1019 and n. 26; *Chapman v. United States*, 500 U.S. 453, 465, 111 S.Ct.



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1919, 114 L.Ed.2d 524 (1991).

Our analysis as to the second order is similar; the order covers the posting on bulletin boards of a wide range of materials, from notices of church services to articles about all sorts of topics from a religious perspective. There appears to be no possible narrowing construction, and were we to attempt to sever the order in a manner that might minimize its constitutional deficiencies--so that, for example, it prohibited only the posting or display of religious artifacts--we would inevitably strip it of a substantial part of its purpose and effect. The state has not asked us to take any such step and we question whether it would be appropriate for us to do so. Here, unlike a case in which a statute is declared overbroad, the state can easily promulgate a new order that complies with the Constitution if it so wishes.

CONCLUSION

Although we recognize that the state has a legitimate interest in avoiding the appearance of supporting religion and in furthering the efficiency of the workplace, the state interests here are insufficient to support the ban on religious advocacy, and the order prohibiting the posting of religious materials is clearly unreasonable. Moreover, both orders are overbroad. The order granting summary judgment for the defendant-appellees is reversed with directions to enter summary judgment for plaintiff-appellant and to afford such relief as may be appropriate.

REVERSED AND REMANDED.

FN* The Honorable Samuel P. King, United States District Judge for the District of Hawaii, sitting by designation.

FN1. Tucker does not challenge the February 7, 1989 order banning the use of acronyms on official department work or any of the June 9, 1988 orders. He apparently accepts the February 7, 1989 acronym ban, and the state has represented that it will not seek to enforce the June 9, 1988 orders if we invalidate the orders appealed here. Tucker's complaint raises a federal question and the district

court had jurisdiction under 28 U.S.C. § 1343. He is challenging the substance of the April 1991 grant of partial summary judgment. While partial summary judgment is generally not a final appealable order, we have jurisdiction under 28 U.S.C. § 1291 because the July 22, 1994 district court order dismissing the remaining adjudicated claims and entering final judgment constitutes an appealable final judgment.

FN2. The determination of whether public employee speech is protected under the First Amendment is a question of constitutional law that we review de novo. *Hyland v. Wonder*, 972 F.2d 1129, 1134 (9th Cir.1992), cert. denied, 508 U.S. 908, 113 S.Ct. 2337, 124 L.Ed.2d 248 (1993). When the district court upholds a restriction on speech as constitutional, we conduct a de novo review of the facts. *Daily Herald Co. v. Munro*, 838 F.2d 380, 383 (9th Cir.1988).

FN3. The government has not set forth facts tending to show that Tucker spent more time than other employees in non-work related conversation, or that "advocacy" or use of religious acronyms diverted him from doing his job effectively. If the government had made such a showing, it might provide the basis for disciplinary action against Tucker but still not the broad orders challenged here.

FN4. The Supreme Court faced a similar issue in *Widmar v. Vincent*. 424 U.S. at 275-76. The Court did not reach the broad question of whether a state interest derived from its constitution could "ever outweigh free speech interests protected by the Constitution." It simply held that in the case before it, where the Missouri courts had never ruled that an "open-forum" policy violated Missouri's Constitution, the state's interest was not sufficient to overcome the students' First Amendment rights. *Id.*

FN5. Section 4 of article I guarantees "[f]ree exercise and enjoyment of religion without discrimination or preference."

FN6. The only case it cites concerning the California Constitution is *Vernon v. City of Los Angeles*, 27 F.3d 1385 (9th Cir.1994), which stands for the laudable but general proposition that the California Constitution protects religious liberty even more strongly than the United States



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Constitution. It tells us nothing that could be of assistance to the state in this proceeding.

FN7. In *Capitol Square Review & Advisory Bd. v. Pinette*, — U.S. —, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995), the endorsement test was supported, once again, by five of the justices. See Kathleen M. Sullivan, *Parades, Public Squares and Voucher Payments: Problems of Government Neutrality*, 28 *Conn.L.Rev.* 243, 253 (1996).

FN8. There is also nothing in the record to indicate that religious materials are more likely to disrupt harmony in the workplace than any other materials on potentially controversial topics such as same-sex marriage, labor relations, and even in some instances sports. Thus, this case is unlike *Cornelius* where there was evidence in the record—thousands of letters complaining about the inclusion of advocacy groups in the fund drive—that supported the inference that the restriction in question would serve the government's legitimate concern about disruption in the workplace. 473 U.S. at 810-11.

FN9. Compare *Rosenberger v. Univ. of Virginia*, — U.S. —, — — —, 115 S.Ct. 2510, 2516-18, 132 L.Ed.2d 700 (1995) with *id.* at 2547-51 (Souter, J., dissenting).

FN10. Overbreadth challenges are a form of facial challenge that applies specifically to the First Amendment. In First Amendment cases, unlike in other areas of the law, a party may challenge a statute or order on the ground that it is unconstitutional as applied to someone else, even if it could be constitutionally applied to the party before the court. See generally Richard H. Fallon, Jr., *Making Sense of Overbreadth*, 100 *Yale L.J.* 853, 859-60 (1991). In addition, a party whose speech may not be constitutionally prohibited may also challenge a statute as overbroad if the speech of others would be chilled. *Lind v. Grimmer*, 30 F.3d 1115, 1122 (9th Cir.1994), cert. denied sub nom *Wang v. Lind*, — U.S. —, 115 S.Ct. 902, 130 L.Ed.2d 786 (1995). One of the purposes of the doctrine is to prevent the "chilling" of the speech of others who are not before the court. See *Board of Airport Comm'rs. v. Jews for Jesus*, 482 U.S. 569, 574, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987).

FN11. The district court concluded that the order

only prohibited religious advocacy during work hours. The order prohibits religious advocacy "during work hours or in the workplace." (emphasis added). We interpret this to mean that the ban applies at any time in the workplace.

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interpreted the no preference clause ... to require that not only may a governmental body not prefer one religion over another, it also may not appear to be acting preferentially." *Hewitt v. Joyner*, 940 F.2d 1561, 1567 (9th Cir.1991), cert. denied, 502 U.S. 1073, 112 S.Ct. 969, 117 L.Ed.2d 134 (1992). The highest state court has interpreted article XVI, § 5 to prohibit any official involvement that promotes religion. *Morongo*, 281 Cal.Rptr. 34, 809 P.2d at 820. While the California Constitution imposes stricter prohibitions on government support of religion than does the Federal Constitution, id., we find that difference of no consequence here.

The state has cited no case that supports its argument that the California Constitution justifies the Department of Education's banning the advocacy of religion in private discussions between co-workers in the Child Nutrition and Food Distribution Division. [FN6] And, because it appears to us that it would be unreasonable to do so, we do not believe that the California courts would so interpret the constitution. Based on the analysis that we have already explicated, we conclude that allowing employees to write or speak favorably in the workplace about religion would, at least in the large majority of instances, not be inconsistent with any of the state's duties under its constitution.

Conclusion

Because the state's justifications for the ban are meritless, we hold that its asserted interests do not outweigh "the interests of both potential audiences and a vast group of present and future employees in a broad range of present and future expression". *Treasury Employees*, --- U.S. at ---, 115 S.Ct. at 1014. Nor does the banned expression have a "necessary [adverse] impact on the actual operation of the Government." *Id.* (quoting *Pickering*, 391 U.S. at 571). Accordingly, we hold that the order violates the free speech clause of the Constitution.

II. THE ORDER BANNING THE STORAGE OR DISPLAY OF ANY

RELIGIOUS ARTIFACTS, TRACTS, INFORMATION, AND MATERIALS

*9 Our analysis of the second challenged order, which prevents the display of religious materials outside employees' cubicles or offices, is similar to our analysis of the restrictions on religious advocacy. There are, however, important distinctions between restricting employees' speech at the workplace and prohibiting employees from using the state's walls, tables or other space to post messages or place materials. The government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it, especially when its employees are engaged in private conversation among themselves. There is a greater likelihood that materials posted on the walls of the corridors of government offices would be interpreted as representing the views of the state than would private speech by individual employees walking down those same corridors.

The interior walls of the offices of the Child Nutrition and Food Distribution Division are neither a public forum, nor a limited purpose public forum. See *Cornelius v. NAACP Legal Defense Fund*, 473 U.S. 788, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985); *Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). "Control over access to a non-public forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purposes served by the forum and are viewpoint neutral." *Cornelius*, 473 U.S. at 806. We have applied the "reasonableness" test on a number of occasions. E.g., *Jacobsen v. Postal Serv.*, 993 F.2d 649, 657 (9th Cir.1992). The test requires more of a showing than does the traditional rational basis test; i.e., it is not the same as "establish[ing] that the regulation is rationally related to a legitimate governmental objective, as might be the case for the typical exercise of the government's police power." *Multimedia Pub. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 159 (4th Cir.1993); see also *Searcey v. Harris*, 888 F.2d 1314, 1322 (11th Cir.1989) (requiring



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Monte D. TUCKER, Plaintiff-Appellant,
v.
STATE OF CALIFORNIA DEPARTMENT
OF EDUCATION; James L. Phillips;
Maria R.
Balakshin; Terry Proschold, Defendant-
Appellees.

No. 94-16267.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Dec. 7, 1995.

Decided Oct. 4, 1996.

Appeal from the United States District
Court for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Steven R. Burlingham, Gary, Till &
Burlingham, Sacramento, California, for the
plaintiff-appellant.

Joyce O. Eckerm, California State
Department of Education, Sacramento,
California, for the defendant-appellees.

Before: **BOOCHEVER, REINHARDT,**
Circuit Judges, and **KING,** District Judge.
[FN*]

REINHARDT, Circuit Judge:

*1 Monte Tucker, the plaintiff-appellant, is a deeply religious man who works as a computer analyst in the California State Department of Education. He contends that orders promulgated by his supervisors that forbid employees in his division from engaging in any oral or written religious advocacy in the workplace and displaying any religious artifacts, tracts or materials outside their offices or cubicles violate his rights to freedom of speech guaranteed by the First Amendment. Although the government may have legitimate interests in preventing a number of the activities in which Tucker has engaged or wants to continue to engage, the challenged orders are overbroad and impermissibly infringe on First Amendment

rights. Accordingly we reverse the district court order granting summary judgment for the government and direct that summary judgment be issued in favor of Tucker.

FACTS AND PROCEDURAL HISTORY

Tucker has worked as a computer analyst for the State Department of Education since 1977. He is currently employed in the Child Nutrition and Food Distribution Division. His religious beliefs command him to give credit to God for the work he performs. In 1988, he decided to comply with this command by placing the phrase "Servant of the Lord Jesus Christ" and the acronym "SOTLJC" after his name on the label of a software program he was working on. The program, with the acronym, was distributed within the department. Tucker began placing the acronym on other material he was working on. Shortly thereafter, his supervisor, James Phillips, instructed him not to use the acronym. After a series of orders and warnings, Tucker was suspended for five days in May 1988.

On June 9, 1988 Tucker met with a number of his supervisors, including Phillips and Maria Balakshin, who gave him the following orders:

1. You are to refrain from using a name, acronym, or symbol with religious connotations on any document in the work place. This prohibition of the use of religious names, acronyms or symbols in the work place applies but is not limited to:
 - a). all written correspondence (letters/memorandums)[sic] prepared in either draft or final format on State letterhead or plain paper.
 - b). any written correspondence circulated within your work unit, division, branch or department.
 - c). all data keyed into the computer (including logos on computer software applications)
2. You are to refrain from initiating or promoting religious discussions during the course of your work day. Breaks and lunch periods are excluded, provided such prohibited activity takes place outside the



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work place.

3. You are to refrain from displaying or promoting religious books, pamphlets, tracts, brochures, pictures, etc., outside the inner perimeter surfaces of the partitions that define your office space.

On February 7, 1989 Balakshin issued the following orders to all employees of the Child Nutrition and Food Distribution Division, including Tucker, which provide that they may not:

- *2 1. Store or display any religious artifacts, tracts, information or other materials in any part of the workplace other than in their own closed offices or defined cubicles;
- 2. Engage in any religious advocacy, either written or oral, during the work hours or in the workplace.
- 3. Place any personal acronym, title, symbol, logo, or declaration unrelated to the business of the Department on any official communication or work product.

In May 1989 Tucker filed an action in federal district court against the California Department of Education and his supervisors alleging both constitutional and statutory (Title VII) causes of action. In 1990 the district court denied Tucker's motion for a preliminary injunction. In April 1991 the court granted partial summary judgment for the defendants on the question of Tucker's facial challenge to the constitutional validity of the department's orders and denied summary judgment on the Title VII claim. In 1994, the parties stipulated to the dismissal of Tucker's remaining unadjudicated claims under Federal Rule of Civil Procedure 41(a), and the court directed the clerk to enter judgment for the defendants. Tucker filed a timely appeal in which he challenges the validity of two of the February 7, 1989 orders. [FN1]

I THE ORDER BANNING RELIGIOUS ADVOCACY

We consider first the order banning religious advocacy, written or oral, in the workplace. [FN2] Both in their briefs and at oral argument the parties disagreed as to the relevant cases and doctrinal framework to be

applied to the issues before us. The parties both discuss areas of First Amendment jurisprudence that are of no relevance in addition to those that are directly applicable. Although we must look to the most appropriate precedent and doctrine, we are also aware of the dangers of reducing the First Amendment to a series of doctrinal cubbyholes and of warping different fact situations to fit into the boxes we have created. "First Amendment doctrines are manifold, and their diverse facts and analyses may reveal but one consistent truth with respect to the amendment--each case is decided on its own merits." *Bishop v. Aronov*, 926 F.2d 1066, 1070 (11th Cir.1991), cert. denied, 505 U.S. 1218, 112 S.Ct. 3026, 120 L.Ed.2d 897 (1992).

Our first step is to try to separate the doctrines that are applicable here from those that are not. Tucker contends that the orders must pass strict scrutiny because the government has created a limited purpose public forum in its offices by allowing its employees both to discuss "public questions when they assemble informally at their desks, drinking fountains, lunch rooms, copy machines, etc." and to display written materials in and around their offices and cubicles. We reject that argument. In *Cornelius v. NAACP Legal Defense Fund*, 473 U.S. 788, 802, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985), the Court stated, "[t]he government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." (emphasis added). Assuming that Tucker and his co-workers talked about whatever they wanted to at work (before the passage of the challenged order), and that they posted all sorts of materials on the walls, that still would not show that the government had intentionally opened up the workplace for public discourse.

*3 We also reject the state's argument that the orders should be considered time, place and manner restrictions. The time, place and manner test is only applicable to speech regulations that are content neutral. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221



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(1984). Because the orders here regulate only a certain type of expression, based on its content-religious expression-they are not content neutral. *Id.* (stating that restrictions on expression are content neutral if they are "justified without reference to the content of the regulated speech").

The state also cites cases that concern the Free Exercise Clause and appears to argue that we should analyze the orders as generally applicable restrictions that incidentally restrict Tucker's religious practice. This argument is also obviously wrong. These orders are no more "generally applicable" regulations that incidentally burden Tucker's exercise of religion than they are content neutral speech regulation: they specifically target religious speech and no other.

Finally, we reject the state's contention, which it makes without citing any supporting cases, that employee speech about religion is not on matters of public concern and thus is not protected workplace speech. This circuit and other courts have defined public concern speech broadly to include almost any matter other than speech that relates to internal power struggles within the workplace. *E.g.*, *Gillette v. Delmore*, 886 F.2d 1194, 1197 (9th Cir.1989) ("Speech that can fairly be considered as relating to any matter of political, social, or other concern to the community is constitutionally protected.") In *National Treasury Employees Union v. United States*, 990 F.2d 1271 (D.C.Cir.1993), *aff'd* in relevant part, *rev'd* in part on other grounds, --- U.S. ---, 115 S.Ct. 1003, 130 L.Ed.2d 964 (1995), the D.C. Circuit wrote:

The contrast, [between public concern speech and non-public concern speech], then was between issues of external interest as opposed to ones of internal office management. Accordingly, we read the "public concern" criterion as referring not to the number of interested listeners or readers but to whether the expression relates to some issue of interest beyond the employee's bureaucratic niche.

Id. at 1273 (citation omitted); see also *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir.1983) ("Speech by public employees

may be characterized as not of 'public concern' when it is clear that such speech deals with individual personnel disputes and grievances.") (citations omitted) The Supreme Court has also made it clear that an employee need not address the public at large, for his speech to be deemed to be on a matter of public concern. See *Rankin v. McPherson*, 483 U.S. 378, 384-87, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987) (employee statement made only to co-worker concerning President Reagan was speech on a matter of public concern). Here, the speech is religious expression and it is obviously of public concern.

*4 Casting these red herrings aside, we look instead to applicable doctrine, which is found in the case law governing employee speech in the workplace. In *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), the Court made it clear that employees could not be forced to relinquish their First Amendment rights simply because they had received the benefit of public employment. Nevertheless, the Court recognized that "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." *Id.* at 568. Despite the government's greater interest in regulating workplace speech, when it restricts such speech it bears the burden of justifying its action, *Johnson v. Multnomah County*, 48 F.3d 420, 422 (9th Cir.), *cert. denied*, 115 S.Ct. 2610 (1995), and its interests must outweigh those of the employee. *Id.*

Most of the workplace speech cases involve disciplinary action taken by an employer in response to statements by employees. Here, however, Tucker challenges the validity of orders that apply to all the employees of the division and ban all speech on a broad and important topic. It is clear that the government's burden when seeking to justify a broad deterrent on speech that affects an entire group of its employees is greater than when it is defending an individual disciplinary decision. *National Employees Treasury Union*, --- U.S. ---, ---, 115 S.Ct. 1003, 1014,



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130 L.Ed.2d 964 (1995) ("[U]nlike an adverse action taken in response to actual speech, this ban chills potential speech before it happens."); see also NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963) ("Broad prophylactic rules in the area of free expression are suspect.") (citations omitted). In cases involving a broad ban on group speech, "[t]he Government must show that the interests of both potential audiences and a vast group of present and future employees in a broad range of present and future expression are outweighed by that expression's 'necessary impact on the actual operation' of the Government." Treasury Employees, --- U.S. at ---, 115 S.Ct. at 1014 (quoting Pickering, 391 U.S. at 571). This is indeed an exacting standard.

The State's Asserted Interests

The state asserts a number of interests to justify its order prohibiting religious advocacy: (i) promoting the efficiency of the workplace, (ii) protecting the "liberty interests" of other employees not to be subjected to religious advocacy, (iii) "meeting the expectations of the taxpayers that their tax dollars are being used to support legitimate State business and not to promote religion,"; (iv) fulfilling its duty to comply with the Establishment Clause of the United States Constitution; and (v) fulfilling its duty to comply with the religion clauses of the California Constitution. We conclude that the state has failed to demonstrate that its "interests" are substantial, individually or in combination, or that they outweigh the employees' interests in free expression. Nor has it made any showing that the expression to be prohibited has a "necessary [adverse] impact on the actual operation of the government."

i. The State's Asserted Efficiency Interest

*5 We first consider the state's asserted interest in "efficiency." The government has failed to show that its broad ban on religious advocacy is necessary to further its interest in discipline and efficiency. In the first place, it makes at most only a minimal showing that one individual's speech has disrupted the

workplace, or threatens to do so. Roth v. Veteran's Admin., 856 F.2d 1401, 1407 (9th Cir.1988). The district court based its efficiency decision in large part if not entirely on the fact that Phillips, Tucker's immediate supervisor, "has had to devote" "hundreds of hours to plaintiff's religious conduct," principally to the acronym issue. The only other evidence in the record going to real or threatened disruption in the workplace is Phillips' statements that only he had "been impacted" by Tucker's use of a religious acronym and that the orders were handed down in response to "what might occur in the future, what Monte [Tucker] might do."

We conclude that the time spent by Tucker's supervisor trying to restrict his religious speech does not constitute disruption. It affected only the supervisor himself, did not threaten morale in the department generally and for the most part did not concern the issues involved in the two orders before us. The separate order regarding acronyms remains in effect and is not challenged in this appeal. [FN3] In addition, it was part of the supervisor's regular functions to deal with problems of this nature. In any event, the time Phillips spent dealing with Tucker's expressive behavior cannot justify imposing a ban on religious advocacy by all employees. There is not only no evidence of disruption in general, but there is no evidence that any employee other than Tucker ever engaged in any kind of "religious advocacy." In short, the government has utterly failed to justify its broad prohibition on efficiency grounds. See Roth, 856 F.2d at 1407; cf. National Treasury Employees, --- U.S. at ---, 115 S.Ct. at 1017-18 and ns. 11 and 21.

ii. The State's Asserted Interest in Protecting Its Employees' Interests

The state asserts that it has an interest in protecting the liberty interests of its employees, but it never explains exactly what these liberty interests are. Nor does the state cite cases that speak to the existence of such an interest, much less cases that support its claim that this interest justifies restricting employee speech in advance by a flat ban

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against an entire category of speech. Moreover, there is no evidence in the record that any of his co-employees have complained about Tucker's speech, that any have complained about religious advocacy generally, or that any have asserted that their liberty interests have been affected in any way.

iii. The State's Asserted Interest in Protecting the Taxpayers

There is no basis in the record or otherwise for the state's asserted interest in protecting the public weal. Nor is there any evidence that the taxpayers' expectations that government money will be spent on the government's business, not on supporting religion, have been frustrated. There is no showing that any members of the public have been exposed to any religious speech or displays or expressed any concern or complained about Tucker or any other employee's conversations about religion or display of religious materials. Only Phillips, a supervisor, has spent any significant amount of the government's time dealing with Tucker's activities (and he, of course, was dealing mainly with the acronym issue.) Therefore, as in the case of the other assertions of the state's interests, the government has failed to meet its burden of showing that there is anything more than speculation or fancy to support its order banning religious advocacy. Johnson, 48 F.3d at 422 (government bears the burden of justifying a restriction on employee speech).

iv. The State's Asserted Interest in Avoiding the Establishment of Religion.

*6 The state primarily relies on its contention, which the district court found persuasive, that the order serves the state's compelling interest in remaining neutral on religious matters and avoiding the establishment of religion. It also argues that because the order concerns the Department of Education it is justified in light of the Supreme Court's special concern for maintaining church-state separation in public schools. The last point, which the state

pressed vigorously at oral argument, is entirely specious.

While the Supreme Court has not considered the constitutionality of a flat ban on religious speech by and among employees who work in a government office, we have little doubt as to how it would rule. In a far more difficult case, the Court rejected the argument that allowing all student groups, including religious groups, to hold meetings on the campus of a public university has a primary effect of advancing religion. The Court stated such an "open-forum" policy does not confer any "imprimatur of state approval on religious sects or practices." *Widmar v. Vincent*, 454 U.S. 263, 273, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981). In *Rosenberger v. University of Virginia*, --- U.S. ---, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995), the Court said that there must be a "plausible fear" that the speech in question would be attributed to the state, and rejected an Establishment Clause argument because there was "no real likelihood" that the speech would seem to be "either endorsed or coerced by the State." *Id.* at 2523. The challenged regulation here prohibits all sorts of employee speech that could in no way create the impression that the state has taken a position in support of a religious sect or of religion generally. For example, if one employee suggested to another during the course of a private conversation at the office that he should consider being baptized or circumcised, or, while at his work station, wrote a letter to his sister suggesting that she enter a convent or convert to Judaism, his conduct would not carry or give the impression of carrying the impermissible "imprimatur of state approval on religious sects or practices." In fact, most of the conduct covered by the orders is speech that could in no way cause anyone to believe that the government endorsed it.

The state contends that as a result of the Supreme Court's particular concern about church-state separation in schools, the order is justified because it applies to employees in the Department of Education. The truth is that the state has adopted a rule that might have some basis in reason if it applied to teachers acting in their role as teachers, or to



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department employees addressing the public in their official capacities; instead the state has made it applicable exclusively to the employees of a division that performs no educational function whatsoever. Quite plainly, the order does not apply to those persons in the department whose performance of their official duties has the most potential for creating public misperception of the state's role.

*7 A teacher appears to speak for the state when he or she teaches; therefore, the department may permissibly restrict such religious advocacy. See *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir.1994), cert. denied, --- U.S. ---, 115 S.Ct. 2640, 132 L.Ed.2d 878 (1995); accord *Bishop v. Aronov*, 926 F.2d at 1076. Similarly, the department may, at least under some circumstances, prevent at least some of its employees from advocating religion in the course of making public speeches on education. However, as the Fifth Circuit has recognized, speech by a public employee, even a teacher, does not always represent, or even appear to represent, the views of the state. *Texas State Teachers Assoc. v. Garland Indep. Sch. Dist.*, 777 F.2d 1046 (5th Cir.1985), aff'd 479 U.S. 801, 107 S.Ct. 41, 93 L.Ed.2d 4 (1986). In *Garland*, the court struck down a policy that prevented teachers from discussing the teachers' organization during non-class time. The court found no merit in the government's contention that the restriction was necessary to uphold the Texas Education Code's policy of "neutrality" towards groups and organizations. *Id.* at 1055.

What Tucker, a computer analyst in the Child Nutrition and Food Distribution Division, discusses in his cubicle or in the hallway with other computer analysts, clearly would not appear to any reasonable person to represent the views of the state. Certainly, nothing Tucker says about religion in his office discourse is likely to cause a reasonable person to believe that the state is speaking or supports his views. Allowing employees of the Child Nutrition and Food Distribution Division to discuss whatever subject they choose at work, be it religion or football, may

incidentally benefit religion (or football), but it would not give the appearance of a state endorsement. There is simply no legitimate basis for the state's singling out the employees of the Child Nutrition and Food Distribution Division and subjecting them alone to an order prohibiting all advocacy of religion in the workplace on the ground that it is necessary to avoid the appearance that the state is favoring religion.

v. The State's Asserted Interest in Complying with the Religion Clauses of the California Constitution.

The government also contends that its interest in meeting the California Constitution's command of "strict neutrality by public officials on matters of religion" justifies the orders. If the California courts had held that limitations on speech such as those challenged here are necessary in order to insure compliance with the California Constitution, we might be required to address the question whether a state interest derived from its constitution provides a legitimate justification to restrict employee speech protected under the First Amendment, or whether the Supremacy Clause precludes reliance on the state constitution. [FN4] We do not need to reach that issue, however, because we conclude that the state constitution neither requires nor justifies the ban at issue.

*8 The California Constitution contains an establishment clause akin to that in the United States Constitution. In *Sands v. Morongo Unified Sch. Dist.*, 53 Cal.3d 863, 281 Cal.Rptr. 34, 809 P.2d 809 (Cal.1991), cert. denied, 505 U.S. 1218, 112 S.Ct. 3026, 120 L.Ed.2d 897 (1992), the California Supreme Court stated that federal cases interpreting the federal Establishment Clause provide guidance for interpreting the California Establishment Clause, but that the state courts must "independently determine its scope." *Id.* at 820. The state constitution also contains a "no preference clause" [FN5] and a clause prohibiting any government appropriation for religion. Cal. Const. art. XVI, § 5. "The California courts have

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001a. form	White House Separation Action [partial] (1 page)	06/18/1999	P6/b(6)
001b. form	White House Separation Action [partial] (1 page)	06/18/1999	P6/b(6)
001c. form	Employee Check Out (2 pages)	06/18/1999	b(2), P6/b(6)
002. form	White House Change in Employee Status [partial] (1 page)	01/06/1997	P6/b(6)
003a. form	White House Office Supplemental Information Sheet for Personnel Action [partial] (1 page)	06/05/1995	P6/b(6)
003b. form	White House Pre-Employment Information [partial] (1 page)	06/05/1995	P6/b(6)
003c. form	Form re: appointment subject to drug testing [partial] (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
 Management and Administration
 McClure
 OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F

rc86

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. form	White House Separation Action [partial] (1 page)	06/18/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F
rc86

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

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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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The White House
Separation Action

Name of Employee: KAGAN ELENA
Last First Middle
[001a]

Social Security Number: P8/(b)(6)

Office/Department/Agency: OPD/DPC - White House

Check the Appropriate Action:

- Resignation (state reason below)
- Transfer to another government agency (indicate agency)
- Retirement

Effective Date: 6/18/99

Signature of Departing Employee: Elena Kagan

Forwarding Address: Harvard Law School | 44 Shepard St., Apt 2
Hauser Hall 412 | Cambridge, MA 02138
Cambridge, MA 02138 | (617) 868-4544
Forwarding Telephone Number: (617) 495-1000

Reason for Resignation: Going back to academia

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. ANDTYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. form	White House Separation Action [partial] (1 page)	06/18/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F

rc86

RESTRICTION CODES

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

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

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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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]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001c. form	Employee Check Out (2 pages)	06/18/1999	b(2), P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F

rc86

RESTRICTION CODES

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

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. form	White House Change in Employee Status [partial] (1 page)	01/06/1997	P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F

rc86

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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

- b(1) National security classified information [(b)(1) of the FOIA]
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The White House
Change in Employee Status
To be completed by requesting office

Section I: Complete all data

Name of Employee: KAGAN ELENA
Last [002] First Middle
Social Security Number: P6/(b)(6)
Office/Department/Agency: DOMESTIC POLICY COUNCIL

Section II: Check the Appropriate Box(es):

- Reassignment within the White House Office (complete Section III below)
- Change in title
- Change in salary (complete Section III below)
- Change in work schedule (complete Section III below)
- Extension of temporary appointment (enter new ending date below)
- Change in category (complete Section III below)
- Other: _____

Section III: Complete all sections as appropriate

New Position Title: DEPUTY ASST. TO PRESIDENT FOR DOMESTIC POLICY Requested by: BRUCE REED

Current Salary: ~~94,000~~ 92,000 PERM New Salary: 110,000

Proposed effective date of change: 1/3/97 Ending date: —

Work Schedule (circle new schedule) Full Time Part Time Intermittent

Category (circle new category) Permanent Temporary New ending date _____

Approvals: 
Bruce Reed Paul B. [Signature]
Assistant to the President Office of Management & Administration
Date 1/6/97 Date 1/6/97

Upon approval or disapproval please return to:

Name _____ Room _____ Extension _____

JODIE R. TORKELSON

John -

Attached is a request from Bruce Reed to hire Elena Kagan as Deputy Asst to the Pres. in DPC.

The request is for \$110,000 salary. She is replacing Jeremy Ben-Ami who earned \$100,000.

It's a White House hire, thus it's \$10,000 more than originally budgeted for DPC's White House staff.

Have you had a chance to talk to Bruce yet about his staffing?

How would you like this handled?

Jodie

Kelli
OK at 110,000 *John*

THE WHITE HOUSE
WASHINGTON

January 6, 1997

MEMORANDUM FOR JODIE TORKELSON

FROM: Bruce Reed *BR*

SUBJECT: Appointment of Elena Kagan

I intend to hire Elena Kagan as Deputy Assistant to the President for Domestic Policy, to fill the position recently vacated by Jeremy Ben-Ami.

In order to make sure that Elena does not face a break in her government service and salary, I would very much appreciate your help in making this appointment effective as quickly as possible.

Thank you for your assistance.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Jul-1995 05:47pm

TO: JuanCara Bennett
FROM: Kelli R. McClure
Office of Administration, PMD
CC: Christopher Baron
SUBJECT: Elena Kagan

Please change the start date for Elana Kagan from 7/3/95 to 7/10/95, per Marna Madsen of Counsel's Office.

Thank you.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003a. form	White House Office Supplemental Information Sheet for Personnel Action [partial] (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F
rc86

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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

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

White House Office
Supplemental Information Sheet for Personnel Action
(To be completed by all persons tentatively selected for employment)

SECURITY INTERVIEW REQUIRED

Date: 6/15/95

Name: Elena Kagan

Social Security Number: _____

P6/(b)(6)

50039

Date of Birth: 4/28/60

Place of Birth: New York City

Local Address: 3133 Connecticut Ave
Washington DC 20008

Last Permanent Address: 605 W. Arlington St
Chicago IL 60614

In case of emergency notify: Mother - Gloria Kagan

P6/(b)(6)

Phone Number: 312-702-0350

Marital Status: Single Married Widowed Separated Divorced

Spouse's Name: _____ Spouse's Employer: _____

Department/Office/Agency: Council's Office

Reporting to: Abner Mikva

Office Phone Number: 202-456-2632

Personnel Status: White House Employee Other Government Employee (please specify):

- Reimbursable Detail Non-reimbursable detail Volunteer
- Assignee White House Fellow Presidential Management Intern
- Historically Provided Service Intergovernmental Personnel Agreement Intern

Other: _____

(For all Other Government Employees, please attach a brief description of the individual's role and responsibilities)

Effective Date: 7/1/95

Ending Date (if applicable): _____

Current or Most Recent Place of Employment: Univ. of Chicago Law School

Address: 1111 E 60th St Chicago IL 60637

Supervisor: Douglas Baird Phone Number: 312-702-0350

Military Service: Yes No Service Branch: _____ Date of Discharge: _____

Prior EOP Service: Yes No Agency: _____ Dates of Employment: _____

Have you ever been fired from any job for any reason, quit after being told you would be fired, or left by mutual agreement because of specific problems? Yes No (If yes, please explain on the back of this form.)

Are you now under any charge, or have you ever been convicted of, or forfeited collateral for any violation of law? Yes No (If yes, please explain on the back of this form.)

To Be Completed By Requesting Official:

Type of Pass or Access requested:

- WH Badge WH Vol WH Access Other (OGA, NGS, CON)
- EOP Badge EOP Vol EOP Access

James E. Costello
Signature of Requesting Office

John R. Sullivan
Approving Official 6-7-95

To be completed by all regular Employees and Other Government Employees:

I acknowledge that the information provided herein is true and correct to the best of my knowledge and further acknowledge that this information may be used to initiate a preliminary background investigation in preparation for my employment in the White House and the Executive Office of the President.

Elena Kagan
Signature

6/15/95
Date

To be Completed by Volunteers Only:

I acknowledge that the personnel data is correct and I am volunteering my services without compensation or promise of such.

Signature

Date

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003b. form	White House Pre-Employment Information [partial] (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F

rc86

RESTRICTION CODES

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

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RR. Document will be reviewed upon request.

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

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Replacement
for Beth No

THE WHITE HOUSE
PRE-EMPLOYMENT INFORMATION

Name: <u>KAGAN</u> <u>ELENA</u>	
Local	Middle Initial
SSN: <u>[REDACTED]</u> <u>[0036]</u>	
Current Local Address: <u>3133 Connecticut Ave.</u> <u>Washington DC</u> <u>20008</u>	
Local Address: <u>605 W. ARLINGTON</u> <u>CHICAGO</u> <u>IL</u> <u>60614</u>	
Street	City State Zip
Phone: <u>312-935-2989</u>	<u>312-702-0350</u>
Home	Work
Department: <u>COUNSEL'S OFFICE</u>	Requested By: <u>ARNER MIKVA</u>
Position Title: <u>ASSOCIATE COUNSEL</u>	Salary: <u>92,000</u>
Proposed Date of Employment: <u>7/3/95</u>	Ending Date, (if possible): <u>7/10/95</u>
Work Schedule (circle one):	
<input checked="" type="radio"/> Full Time	<input type="radio"/> Part Time <input type="radio"/> Intermittent
APPROVALS	
<u>[Signature]</u>	<u>[Signature]</u>
<u>James E. Carter</u>	<u>Office of Management and Administration</u>
<u>Assistant to the President</u>	
<u> </u>	<u>6-7-95</u>
Date	Date
Upon approval or disapproval, return to:	
Name	Room Ext.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003c. form	Form re: appointment subject to drug testing [partial] (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Management and Administration
McClure
OA/Box Number: CF 1923

FOLDER TITLE:

OPD Personnel Files: Kagan, Elena

2009-1006-F

rc86

RESTRICTION CODES

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

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

Appointment

Subject to Drug Testing

I hereby acknowledge that my appointment to a position in the Executive Office of the President (EOP) is subject to the applicant drug testing requirement as set forth in the EOP Drug-Free Workplace Plan. I also acknowledge that I am responsible to present myself for a drug test prior to my appointment at a place and time to be determined. Should it be determined, under the requirements of the Plan, that I have a verified positive test result for any of the prohibited drugs, I understand that my appointment will be terminated.

6/5/95

Date



Signature

COO3C3

P6(b)(6)

Social Security Number

ELENA KAGAN

Typed or Printed Name

COUNSEL'S OFFICE

Agency

CURRENT: 312-702-0350

Telephone Number

Elena Kagan

MANAGEMENT AND ADMINISTRATION
PERSONNEL ACTION TRACKING

	DATE
RECEIVED IN MANAGEMENT AND ADMINISTRATION	6/6
DRUG TEST COMPLETED, AWAITING RESULTS	6/9
PRE-EMPLOYMENT INTERVIEW COMPLETED	6/12
SENT TO CHIEF OF STAFF FOR APPROVAL	6/7
APPROVED BY MANAGEMENT AND ADMINISTRATION	6/7
SENT TO PMD FOR PROCESSING	6/14

Ret'd. to Kem 6/12
OK - within FTE count He to PMD
And dollars

COMMENTS:

Requested drug test 6/7/95
Requested security interview 6/7/95

NLWJC – Kagan

Staff & Office – Box 001-Folder 10

Kagan, Elena [Empty]

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Presidential Personnel

Series/Staff Member: Phillip Koh

Subseries:

OA/ID Number: 19295

FolderID:

Folder Title:

Kagan, Elena [Empty]

Stack:

S

Row:

46

Section:

7

Shelf:

10

Position:

1

NLWJC – Kagan

Staff & Office – Box 001-Folder 11

Kagan, Elena October 3, 1995

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:

Kagan, Elena

Staff Office-Individual:

Security Office-Easley

Original OA/ID Number:

CF 1326

Row:	Section:	Shelf:	Position:	Stack:
26	3	5	1	V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
012. form	Employee Check Out (2 pages)	06/18/1999	b(2), P6/b(6)
013. paper	SSN (Partial) (1 page)	08/31/1995	P6/b(6)
014. memo	Director, IRS Office of Disclosure to Abner Mikva re: taxes [26 USC 6103] (1 page)	05/11/1995	P3/b(3), P6/b(6)
015a. memo	Craig Livingstone and George Saunders to Christopher Cerf re: Memo for Security Interview (2 pages)	06/12/1995	P6/b(6)
015b. form	White House Office Supplemental Information Sheet for Personnel Action [partial] (1 page)	06/05/1995	P6/b(6)
016. memo	Abner Mikva to FBI, Liaison re: FBI investigations [partial] (1 page)	06/08/1995	P6/b(6)
017. memo	Memo re: Elena Kagan (4 pages)	09/13/1995	P6/b(6), b(7)(C)
018. memo	Abner Mikva to FBI, Liaison re: FBI investigations [partial] (1 page)	06/08/1995	P6/b(6)
019. memo	Director, IRS Office of Disclosure to Abner Mikva re: taxes [26 USC 6103] (1 page)	05/11/1995	P3/b(3), P6/b(6)
020. statement	Statement re: Elena Kagan background investigation (3 pages)	08/11/1995	P6/b(6), b(7)(C)
021. form	Personal Data Statement Questionnaire (1 page)	05/02/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
 Security Office
 Easley
 OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

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

RR. Document will be reviewed upon request.

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
OO1. form	Form SF 278 (6 pages)	04/19/1999	P6/b(6)
OO2. form	Form re: Security Determination (3 pages)	12/08/1995	P6/b(6)
OO3. memo	Charles Easley to Director White House Personnel Security Office re: Review of Security File [partial] (1 page)	12/08/1998	P6/b(6)
OO4. form	Form re: request for pass (1 page)	10/03/1995	b(2)
OO5. form	Form re: request for pass (1 page)	07/13/1995	b(2)
OO6. form	SSN and Phone number (Partial) (1 page)	06/05/1995	P6/b(6)
OO7. form	White House Office Supplemental Information Sheet for Personnel Action [partial] (1 page)	06/05/1995	P6/b(6)
OO8. memo	From Andrea Rutledge re: Key Authorization [partial] (1 page)	07/13/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
OO9a. memo	Abner Mikva to FBI, Liaison re: FBI Investigations [partial] (1 page)	07/13/1995	P6/b(6)
OO9b. form	Standard Form 86 (12 pages)	07/13/1995	P6/b(6)
O10. form	Standard Form 86 (12 pages)	05/02/1995	P6/b(6)
O11. form	Form re: tax records [partial] (1 page)	04/29/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

RESTRICTION CODES

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

- P1** National Security Classified Information [(a)(1) of the PRA]
- P2** Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3** Release would violate a Federal statute [(a)(3) of the PRA]
- P4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5** Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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

- 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]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	Form SF 278 (6 pages)	04/19/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. form	Form re: Security Determination (3 pages)	12/08/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

RESTRICTION CODES

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Charles Easley to Director White House Personnel Security Office re: Review of Security File [partial] (1 page)	12/08/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR DIRECTOR
WHITE HOUSE PERSONNEL SECURITY OFFICE

FROM: CHARLES C. EASLEY *CC*
EOP SECURITY OFFICER

SUBJECT: Review of Security File

This review is conducted for the sole purpose of granting access to national security information in accordance with Executive Order 12968. No information or materials were removed from the security file other than that information noted below:

NAME: KAGAN, ELENA NMN
(Last, first and middle)

POSITION: Associate Counsel

DATE OF BIRTH: 4-28-60

PLACE OF BIRTH: NY, NY

SSN:

P6/(b)(6)

[003]

DATE OF BI: 9-13-95

REMARKS: Unmanned

with Counsel

DATE REVIEW COMPLETED: 12-8-96

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. form	Form re: request for pass (1 page)	10/03/1995	b(2)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. form	Form re: request for pass (1 page)	07/13/1995	b(2)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. form	SSN and Phone number (Partial) (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

RESTRICTION CODES

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

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White House Office
Supplemental Information Sheet for Personnel Action
 (To be completed by all persons tentatively selected for employment)

SECURITY INTERVIEW REQUIRED

Date: 6/5/95

Name: Elena Kagan Social Security Number: P6(b)(6) **E006J**
 Date of Birth: 4/28/60 Place of Birth: New York City
 Local Address: 3133 Connecticut Ave Washington DC 20007 Last Permanent Address: 605 W. Arlington Pl Chicago IL 60614

In case of emergency notify: Mother - Glava Kagan P6(b)(6) Phone Number: 312-702-0350
 Marital Status: Single Married Widowed Separated Divorced
 Spouse's Name: _____ Spouse's Employer: _____

Department/Office/Agency: Council's Office
 Reporting to: Abeba Mikva Office Phone Number: 202-456-2632

Personnel Status: White House Employee Other Government Employee (please specify):
 Reimbursable Detail Non-reimbursable detail Volunteer
 Assignee White House Fellow Presidential Management Intern
 Historically Provided Service Intergovernmental Personnel Agreement Intern
 Other: _____

(For all Other Government Employees, please attach a brief description of the individual's role and responsibilities)
 Effective Date: 7/1/95 7/10/95 Ending Date (if applicable): _____
 per K.M.

Current or Most Recent Place of Employment: Univ. of Chicago Law School
 Address: 1111 E 60th St Chicago IL 60637
 Supervisor: Douglas Baird Phone Number: 312-702-0350

Military Service: Yes No Service Branch: _____ Date of Discharge: _____
 Prior EOP Service: Yes No Agency: _____ Dates of Employment: _____

Have you ever been fired from any job for any reason, quit after being told you would be fired, or left by mutual agreement because of specific problems? Yes No (if yes, please explain on the back of this form.)
 Are you now under any charge, or have you ever been convicted of, or forfeited collateral for any violation of law? Yes No (if yes, please explain on the back of this form.)

To Be Completed By Requesting Official:
 Type of Pass or access requested:
 WH Badge WH Vol WH Access Other (OGA, NGS, CON)
 EOP Badge EOP Vol EOP Access
 Signature of Requesting Office: [Signature] Approving Official: [Signature] 6/7/95

To be completed by all regular Employees and Other Government Employees:
 I acknowledge that the information provided herein is true and correct to the best of my knowledge and further acknowledge that this information may be used to initiate a preliminary background investigation in preparation for my employment in the White House and the Executive Office of the President.
 Signature: [Signature] Date: 6/5/95

To be Completed by Volunteers Only:
 I acknowledge that the personnel data is correct and I am volunteering my services without compensation or promise of such.
 Signature: _____ Date: _____

Elena will be in
DC around June 30.

Kelli

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. form	White House Office Supplemental Information Sheet for Personnel Action [partial] (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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White House Office

Personal Information Sheet for Personnel Action
(To be completed by all persons tentatively selected for employment)

SECURITY INTERVIEW REQUIRED

Date: 6/15/95

Name: Elena Kagan Social Security Number: P6(b)(6) [007]

Date of Birth: 4/28/60 Place of Birth: New York City

Local Address: 3133 Connecticut Ave Washington DC 20008 Last Permanent Address: 605 W. Arlington Pl Chicago IL 60614

In case of emergency notify: Mother - Gloria Kagan P6(b)(6) Phone Number: 312-702-0350

Marital Status: Single Married Widowed Separated Divorced

Spouse's Name: _____ Spouse's Employer: _____

Department/Office/Agency: Counsel's Office

Reporting to: Abner Mikva Office Phone Number: 202-456-2632

Personnel Status: White House Employee Other Government Employee (please specify):

Reimbursable Detail Non-reimbursable detail Volunteer

Assignee White House Fellow Presidential Management Intern

Historically Provided Service Intergovernmental Personnel Agreement Intern

Other: _____

(For all Other Government Employees, please attach a brief description of the individual's role and responsibilities)

Effective Date: 7/1/95 Ending Date (if applicable): _____

Current or Most Recent Place of Employment: Univ. of Chicago Law School

Address: 1111 E 60th St Chicago IL 60637

Supervisor: Douglas Baird Phone Number: 312-702-0350

Military Service: Yes No Service Branch: _____ Date of Discharge: _____

Prior EOP Service: Yes No Agency: _____ Dates of Employment: _____

Have you ever been fired from any job for any reason, quit after being told you would be fired, or left by mutual agreement because of specific problems? Yes No (If yes, please explain on the back of this form.)

Are you now under any charge, or have you ever been convicted of, or forfeited collateral for any violation of law? Yes No (If yes, please explain on the back of this form.)

To Be Completed By Requesting Official:

Type of Pass or access requested:

WH Badge WH Vol WH Access Other (OGA, NGS, CON)

EOP Badge EOP Vol EOP Access

James E. Costello Signature of Requesting Office

_____ Approving Official

To be completed by all regular Employees and Other Government Employees:

I acknowledge that the information provided herein is true and correct to the best of my knowledge and further acknowledge that this information may be used to initiate a preliminary background investigation in preparation for my employment in the White House and the Executive Office of the President.

Elena Kagan Signature

6/15/95 Date

To be Completed by Volunteers Only:

I acknowledge that the personnel data is correct and I am volunteering my services without compensation or promise of such.

_____ Signature

_____ Date

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. memo	From Andrea Rutledge re: Key Authorization [partial] (1 page)	07/13/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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THE WHITE HOUSE

WASHINGTON

July 13, 1995

MEMORANDUM FOR P6(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f) [008]
UNITED STATE SECRET SERVICE

FROM: ANDREA S. RUTLEDGE *ASR*
DIRECTOR, ADMINISTRATIVE OFFICE

SUBJECT: Key Authorization

Please add Ms. Elena Kagan to the access list for Room 125 OEOB, effective July 14, 1995. She is a new Associate Counsel to the President.

cc: USSS Control Center
Craig Livingstone

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009a. memo	Abner Mikva to FBI, Liaison re: FBI Investigations [partial] (1 page)	07/13/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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

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

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

COPY

July 13, 1995

TO: FBI, LIAISON
FROM: ABNER J. MIKVA
SUBJECT: FBI INVESTIGATIONS

SUBJECTS NAME KAGAN, ELENA SSN: P6/(b)(6) [009a]
DATE OF BIRTH 04/28/60 PLACE OF BIRTH New York, NY
PRESENT ADDRESS 3133 Conn.Ave.,NW,#615, Wash. D.C., 20008

WE REQUEST: Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation: Level I Level II Level III
(2 copies, please)
 Limited Update
 Other

The person named above is being considered for:

White House Staff Position
 Presidential Appointment

Attachments:

SF 86
 SF 87, Fingerprint Card
 SF 86, Supplement

Remarks/Special Instructions:

THE UNIVERSITY OF CHICAGO

THE LAW SCHOOL
1111 EAST 60TH STREET
CHICAGO • ILLINOIS 60637-2786

ELENA KAGAN
ASSISTANT PROFESSOR OF LAW

TELEPHONE: (312) 702-0350
FAX: (312) 702-0730

May 2, 1995

Mr. Craig Livingstone
Director, White House Personnel Security
Old Executive Office Building, Room 84
Washington, D.C. 20500

Dear Mr. Livingstone:

Enclosed please find my completed forms for a position in the White House Counsel's office. Please do not hesitate to call should you need anything else.

Sincerely,



Elena Kagan

RECEIVED
MAY 8 1995

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR PROSPECTIVE APPOINTEES

FROM: ABNER J. MIKVA
RE: CONSENT TO THE FBI FOR A BACKGROUND INVESTIGATION

This memorandum confirms in writing your express consent for the Federal Bureau of Investigation to investigate your background or conduct appropriate file reviews in connection with the consideration of your application for employment.

The FBI investigation will include the collection and use of relevant information concerning your personal history, and it is necessary that you authorize the disclosure of such information to the FBI. Information may be disseminated outside the FBI when necessary to fulfill obligations imposed by law.

By volunteering information concerning activities protected by the First Amendment, it will be assumed that you are expressly authorizing the maintenance of this information in the records of any Federal agency.

If you consent to such inquiries, please sign your name below and return this original memorandum of consent to me.

Name (please print or type) Elena Kagan

Signature *Elena Kagan* Date 4/29/95

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009b. form	Standard Form 86 (12 pages)	07/13/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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RR. Document will be reviewed upon request.

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5/3/95

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. form	Standard Form 86 (12 pages)	05/02/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

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

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TAX CHECK WAIVER

I am signing this waiver to permit the Internal Revenue Service to release information about me which would otherwise be confidential. This information will be used in connection with my appointment or employment by the United States Government. This waiver is made pursuant to #26 U.S.C. 6013(c).

I request that the Internal Revenue Service send the information to: President Clinton and the Office of the Counsel to the President, acting on behalf of the President.

The information I wish released is:

1. Have I failed to file any Federal income tax return which was required to be filed for any of the last three years?

If this waiver is received by the Internal Revenue Service before July 1, the "last three fiscal years" shall mean the latest three years for which information is available, since the return for the immediate last year may not yet have been processed.

2. Were any of these returns filed more than 45 days after the due date for filing (determined with regard to any extension of time for filing)?

3. Have I failed to pay any tax, penalty, or interest during the last three years within 45 days of the date on which the Internal Revenue Service gave notice of the amount due and demanded payments?

4. Has any penalty for negligence under section 6655(a) of the Internal Revenue Code been assessed against me this year or during the last three years?

5. Am I or have I ever been under investigation by the Internal Revenue Service for possible criminal offenses, and what were the results of such investigation(s)?

6. Has any civil penalty for fraud been assessed against me?

If the information which is to be released includes a "YES" answer to any of the above six questions, I authorize the Internal Revenue Service to release any information relative to that question.

PHOTOCOPY
PRESERVATION

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. form	Form re: tax records [partial] (1 page)	04/29/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

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

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

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

RR. Document will be reviewed upon request.

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

8 1985

THE WHITE HOUSE
WASHINGTON

To help the Internal Revenue Service find my tax records, I am voluntarily giving the following information:

MY NAME: Elena Kagan MY S.S.#: P6(b)(6) [011]

PHONE NUMBER(S), HOME: (312) 935-2989 WORK: (312) 702-0350

I. IF MARRIED AND FILED A JOINT RETURN:

HUSBAND/WIFE NAME: _____

HUSBAND/WIFE SS#: _____

II. CURRENT ADDRESS: 605 W. Arlington Place, Apt. 3
Chicago, IL 60614

III. NAMES AND ADDRESSES SHOWN ON RETURNS FOR THE LAST THREE FISCAL YEARS (IF DIFFERENT FROM ABOVE)

<u>YEAR</u>	<u>NAME</u>	<u>ADDRESSES</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

DATE: 4/29/85
(WAIVER INVALID UNLESS RECEIVED BY
IRS WITHIN 60 DAYS OF THIS DATE)

Elena Kagan
(SIGNATURE OF TAXPAYER AUTHORIZING THE
THE DISCLOSURE OF RETURN INFORMATION)

Before signing, please be sure that you have reviewed the terms of this agreement listed on the reverse side.

W

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
012. form	Employee Check Out (2 pages)	06/18/1999	b(2), P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

RESTRICTION CODES

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

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RR. Document will be reviewed upon request.

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NAME: KAGAN, ELENA

Following have been favorably completed:

Name Check: X 6/15/95

Authorization: X 6/15/95

Security Interview: X 6/12/95

IRS Check: X 5/12/95

Background Investigation

Agency: FBI Date: 9/13/95

Personal Data Statement: X

Security Briefing: X 8/31/95

Drug Tested: _____

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
013. paper	SSN (Partial) (1 page)	08/31/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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EOP SECURITY BRIEFING

ATTENDANCE RECORD ✓

NAME ELENA KAGAN
(Please Print)

AGENCY WHITE HOUSE

SSN P6/(b)(6) [013]

TODAY'S DATE August 31, 1995

Elena Kag
(Signature)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014. memo	Director, IRS Office of Disclosure to Abner Mikva re: taxes [26 USC 6103] (1 page)	05/11/1995	P3/b(3), P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
015a. memo	Craig Livingstone and George Saunders to Christopher Cerf re: Memo for Security Interview (2 pages)	06/12/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
015b. form	White House Office Supplemental Information Sheet for Personnel Action [partial] (1 page)	06/05/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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White House Office
Personal Information Sheet for Person (To be completed by all persons tentatively selected for employment)

SECURITY INTERVIEW REQUIRED

Date: 6/5/95

Name: Elena Kagan Social Security Number: P6(b)(6) [0156]
Date of Birth: 4/28/60 Place of Birth: New York City
Local Address: 3133 Connecticut Ave Washington DC 20008 Last Permanent Address: 605 W. Arlington Pl Chicago IL 60614

In case of emergency notify: Mother - Gloria Kagan P6(b)(6) Phone Number: 312-702-0350
Marital Status: Single Married Widowed Separated Divorced
Spouse's Name: Spouse's Employer:

Department/Office/Agency: Council's Office
Reporting to: Abner Mikva Office Phone Number: 202-456-2632

Personnel Status: White House Employee Other Government Employee (please specify):
 Reimbursable Detail Non-reimbursable detail Volunteer
 Assignee White House Fellow Presidential Management Intern
 Historically Provided Service Intergovernmental Personnel Agreement Intern
Other:

(For all Other Government Employees, please attach a brief description of the individual's role and responsibilities)
Effective Date: 7/1/95 Ending Date (if applicable):

Current or Most Recent Place of Employment: Univ. of Chicago Law School
Address: 1117 E 60th St Chicago IL 60637
Supervisor: Douglas Baird Phone Number: 312-702-0350
Military Service: Yes No Service Branch: Date of Discharge:

Prior EOP Service: Yes No Agency: Dates of Employment:
Have you ever been fired from any job for any reason, quit after being told you would be fired, or left by mutual agreement because of specific problems? Yes No (If yes, please explain on the back of this form.)
Are you now under any charge, or have you ever been convicted of, or forfeited collateral for any violation of law? Yes No (If yes, please explain on the back of this form.)

To Be Completed by Requesting Official:

Type of Pass or access requested:
 WH Badge WH Vol WH Access Other (OGA, NGS, CON)
 EOP Badge EOP Vol EOP Access

Signature of Requesting Official: James S. Castell

To be completed by all regular employees:
I acknowledge that the information provided here is confidential and that this information may be used in the White House and the Executive Branch.

Signature: [Signature]

To be Completed by Volunteer:
I acknowledge that the personnel information provided here is confidential and that this information may be used in the White House and the Executive Branch.

Signature: [Signature]

Elena will be in DC around June 30.
Kelli

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
016. memo	Abner Mikva to FBI, Liaison re: FBI investigations [partial] (1 page)	06/08/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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COPY

June 8, 1995

TO: FBI, LIAISON
FROM: ABNER J. MIKVA
SUBJECT: FBI INVESTIGATIONS

0163

SUBJECTS NAME KAGAN, ELENA SSN: P6/(b)(6)
DATE OF BIRTH 04/28/60 PLACE OF BIRTH NY, NY
PRESENT ADDRESS 3133 Connecticut Ave., Washington DC, 20008

WE REQUEST: Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation: Level I Level II Level III
 Limited Update
 Other

The person named above is being considered for:

White House Staff Position
 Presidential Appointment

Attachments:

SF 86
 SF 87, Fingerprint Card
 SF 86, Supplement

Remarks/Special Instructions:



U.S. Department of Justice

UH
SEP 14 1995

Federal Bureau of Investigation

RESTRICTED • White House Counsel's Office

Washington, D.C. 20535

SEP 13 1995

BY COURIER

Honorable Abner J. Mikva
Counsel to the President
The White House
Washington, D.C.

Dear Mr. Mikva:

Based on a request received from your office dated July 13, 1995, a Level II background investigation has been conducted concerning Miss Elena Kagan. Enclosed are two copies of a summary memorandum containing the results of this investigation, along with a copy of an interview providing details of information contained in this summary memorandum.

This completes our investigation.

Sincerely yours,

Thomas J. Coyle
Assistant Director
Personnel Division

Enclosures (3)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
017. memo	Memo re: Elena Kagan (4 pages)	09/13/1995	P6/b(6), b(7)(C)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F
rc87

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]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
018. memo	Abner Mikva to FBI, Liaison re: FBI investigations [partial] (1 page)	06/08/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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June 8, 1995

TO: FBI, LIAISON
FROM: ABNER J. MIKVA
SUBJECT: FBI INVESTIGATIONS

SUBJECTS NAME KAGAN, ELENA SSN: P6/(b)(6) 10182
DATE OF BIRTH 04/28/60 PLACE OF BIRTH NY, NY
PRESENT ADDRESS 3133 Connecticut Ave., Washington DC, 20008

WE REQUEST: Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation: Level I Level II Level III
 Limited Update
 Other

The person named above is being considered for:

White House Staff Position
 Presidential Appointment

Attachments:

SF 86
 SF 87, Fingerprint Card
 SF 86, Supplement

Remarks/Special Instructions:

JUN 15 1995

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
019. memo	Director, IRS Office of Disclosure to Abner Mikva re: taxes [26 USC 6103] (1 page)	05/11/1995	P3/b(3), P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
020. statement	Statement re: Elena Kagan background investigation (3 pages)	08/11/1995	P6/b(6), b(7)(C)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
021. form	Personal Data Statement Questionnaire (1 page)	05/02/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Security Office
Easley
OA/Box Number: CF 1326

FOLDER TITLE:

Kagan, Elena October 3, 1995

2009-1006-F

rc87

RESTRICTION CODES

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

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

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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NLWJC – Kagan

Staff & Office – Box 001-Folder 12

June – Counsel’s Office 186384

[Kagan]

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Records Management (OP)

Series/Staff Member:

Subseries:

OA/ID Number: 9745

FolderID:

Folder Title:

June - Counsel's Office 186384 [Kagan]

Stack:

S

Row:

79

Section:

1

Shelf:

1

Position:

2

THE WHITE HOUSE

WASHINGTON

June 14, 1996

Mr. Jim Ruvolo
Ruvolo and Associates
405 Madison Avenue, 12th Floor
Toledo, Ohio 43604-1220

Dear Jim:

As we discussed, I am sending you a copy of the President's veto message on the Product Liability Reform Act.

As the message states, and as the President often has said in the past, the President supports meaningful product liability reform, so long as appropriately limited in scope and balanced in application. He gladly would sign a bill meeting these standards.

We would be happy to have further discussions with you on possible legislation. It was certainly good and useful to meet with you earlier this year.

Sincerely yours,



Elena Kagan

Associate Counsel
to the President

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 2, 1996

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 956, the "Common Sense Product Liability Legal Reform Act of 1996."

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

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

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

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

First, as I previously have stated, I oppose wholly eliminating joint liability for noneconomic damages such as pain and suffering because such a change would prevent many persons from receiving full compensation for injury. When one wrongdoer cannot pay its portion of the judgment, the other wrongdoers, and not the innocent victim, should have to shoulder that part of the award. Traditional law accomplishes this result. In contrast, this bill would leave the victim to bear these damages on his or her own. Given how often companies that manufacture defective products go bankrupt, this provision has potentially large consequences.

more

(OVER)

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

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

In addition, I am concerned that the Conference Report fails to fix an oversight in title II of the bill, which limits actions against suppliers of materials used in devices implanted in the body. In general, title II is a laudable attempt to ensure the supply of materials needed to make life-saving medical devices, such as artificial heart valves. But as I believe even many supporters of the bill agree, a supplier of materials who knew or should have known that the materials, as implanted, would cause injury should not receive any protection from suit. Title II's protections must be clearly limited to nonnegligent suppliers.

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

First, the Conference Report seems to expand the scope of the bill, inappropriately applying the limits on punitive and noneconomic damages to lawsuits, where, for example, a gun dealer has knowingly sold a gun to a convicted felon or a bar owner has knowingly served a drink to an obviously inebriated customer. I believe that such suits should go forward unhindered. Some in the Congress have argued that the change made in Conference is technical in nature, so that the bill still exempts these actions. But I do not read the change in this way -- and in any event, I do not believe that a victim of a drunk driver should have to argue in court about this matter. The Congress should not have made this last-minute change, creating this unfortunate ambiguity, in the scope of the bill.

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

Similarly, the Conference Report reduces the statute of repose to 15 years (and less if States so provide) and applies the statute to a wider range of goods, including handguns. This change, which bars a suit against a maker of an older product even if that product has just caused injury, also will preclude some valid suits.

In recent weeks, I have heard from many victims of defective products whose efforts to recover compensation would have been frustrated by this bill. I have heard from a woman who would not have received full compensatory damages under this bill for the death of a child because one wrongdoer could not pay his portion of the judgment. I have heard from women whose suits against makers of defective contraceptive devices -- and the punitive damages awarded in those suits -- forced the products off the market, in a way that this bill's cap on punitives would make much harder. I have heard from persons injured by products more than 15 years old, who under this bill could not bring suit at all.

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

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 2, 1996.

#

NLWJC – Kagan

Staff & Office – Box 001-Folder 13

**Organization File: 1997 – “Elena
Kagan File”**

FOIA Number: Kagan

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Women's Init. & Outreach

Series/Staff Member:

Subseries:

OA/ID Number: 18602

FolderID:

Folder Title:

Organization File: 1997 - "Elena Kagan File"

Stack:

S

Row:

51

Section:

1

Shelf:

3

Position:

2

Elena Kagan is Deputy Director of the Domestic Policy Council and Deputy Assistant to the President for Domestic Policy. She is currently on leave from the University of Chicago, where she is a Professor of Law, specializing in constitutional law and labor law.

Kagan received her A.B. summa cum laude from Princeton University. She spent two years at Worcester College, Oxford University, as a Daniel M. Sachs Scholar and received an M. Phil in Politics in 1983. In 1986, she graduated magna cum laude from Harvard Law School, where she was Supervising Editor of the Harvard Law Review. She clerked for Judge Abner J. Mikva of the U.S. Court of Appeals for the D.C. Circuit and Justice Thurgood Marshall of the U.S. Supreme Court. From 1989 to 1991, Kagan was in private practice at the Washington, D.C. law firm of Williams & Connolly.

Kagan joined the faculty of the University of Chicago Law School in 1991 and became a full professor in 1995. Kagan served as Special Counsel to the Senate Judiciary Committee in the summer of 1993 for the confirmation hearings of Ruth Bader Ginsburg. In July 1995, Kagan took a leave from the University of Chicago Law School to serve as Associate Counsel to the President. In January 1997, she moved from the Counsel's Office to her current position in the Domestic Policy Council.

Kagan also has served as a member of the Board of Governors of the Chicago Council of Lawyers and a public member of the Administrative Conference of the United States.

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Kagan received her A.B. summa cum laude from Princeton University. She spent two years at Worcester College, Oxford University, as a Daniel M. Sachs Scholar and received an M. Phil in Politics in 1983. In 1986, she graduated magna cum laude from Harvard Law School, where she was Supervising Editor of the Harvard Law Review. She clerked for Judge Abner J. Mikva of the U.S. Court of Appeals for the D.C. Circuit and Justice Thurgood Marshall of the U.S. Supreme Court. From 1989 to 1991, Kagan was in private practice at the Washington, D.C. law firm of Williams & Connolly.

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