

**NLWJC - KAGAN**

**WHORM - BOX 002 - FOLDER 021**

**FG006-21      274601SS**

# 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 - SUBJECT FILE  
**Series/Staff Member:**  
**Subseries:**

---

**OA/ID Number:** 21748  
**Scan ID:** 274601SS  
**Document Number:**

---

**Folder Title:**  
FG006-21

Stack:	Row:	Section:	Shelf:	Position:
S	84	1	2	3

copied  
Reed  
Kagan  
Bowles

274601 SS  
FG 006-21

98 AUG 15 PM 4:48

THE WHITE HOUSE  
WASHINGTON

August 15, 1998

THE PRESIDENT HAS SEEN  
8-17-98

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- Legal Update:** As you know, a Fourth Circuit panel invalidated the FDA's tobacco rule yesterday, holding (2-1) that the Food, Drug, and Cosmetic Act does not give the FDA authority to regulate tobacco products. The Justice Department immediately decided to seek review of the decision by the en banc Fourth Circuit. Those knowledgeable about the Fourth Circuit think we have about a 50 percent chance of obtaining en banc review. If the Fourth Circuit rejects the petition for an en banc rehearing, the Justice Department will file a petition for certiorari in the Supreme Court.

The industry's settlement talks with the states are scheduled to resume on August 24th, but some believe that the industry may decide not to return to the table. The latest gossip is that a serious split has developed between Philip Morris and R.J. Reynolds, with the former still preferring to reach a resolution, but the latter inclined to take its chances in court. (RJR apparently now believes that PM is using the settlement talks to gain a competitive advantage over the rest of the industry.) The next case scheduled to go to trial (on September 14th) is Washington State's, which everyone considers to be in very bad shape.

In the event that the states do reach a settlement with the tobacco companies, we will have to decide how much money to claim as the federal government's. As you recall, the federal government is entitled on average to 57 percent of the monies collected by the states in Medicaid recoupment actions. The Justice Department has developed a theory under which the federal government could make a claim for even more -- in fact, for every penny that the states collect from the tobacco companies. The Department, unfortunately, has failed to develop a similarly creative theory under which we could relinquish our claim to this money in exchange for the states' commitment to use it for specified purposes (e.g., tobacco control programs or child care). The Department currently believes that we would need Congressional approval to effect such a bargain.

The Justice Department continues to doubt -- but still (at least ostensibly) to consider -- the viability of bringing an action against the industry for the tobacco-related costs incurred by federal health programs. We understand that Justice Department staff will brief the Attorney General on this issue this coming Friday. The Civil Division currently has many reservations about bringing such a suit, but its most essential claim is that the federal

THE PRESIDENT HAS SEEN

8-17-98

government can sue the companies only for the harm suffered by each individual (and named) Medicare beneficiary (an essentially impossible proposition), rather than for the costs incurred by the entire Medicare program. Professor Larry Tribe of Harvard Law School called the Attorney General on Friday to dispute this conclusion (he is sure that the federal government has an independent claim for tobacco-related costs, existing separate and apart from any individual beneficiary's claim for damages), but we do not yet know how their discussion went. (Our own view is that neither the Civil Division nor Tribe should be so certain about this question; the answer is not nearly as clear as each would have it.) The Antitrust Division has just begun to look at potential claims against the industry, based on an alleged conspiracy to refrain from producing a safer cigarette, but fears that the federal government may not have legal standing to bring such an action. Professor Einer Elhauge, also of Harvard Law School, has written Joel Klein a memo urging that the federal government does indeed have standing to bring suit against what he terms "the most socially destructive antitrust conspiracy of the century." We will continue our discussions with the Justice Department on these questions.

Flowchart  
1/10/98  
The Case  
U.S. Court

**2. Tobacco – Counteradvertising Event:** We are planning an event for September where you can announce a new national effort to promote tobacco counteradvertising, thus showing once again that you are taking every action within your power to reduce youth smoking while Congress dallies in passing comprehensive legislation. At the event, you could designate the Center for Disease Control's Media Campaign Resource Center as a National Clearinghouse on Tobacco Counteradvertising, and direct HHS and CDC to: (1) collect and disseminate a package of the "top-10" advertisements for preventing youth smoking, and make these available free of charge to states and organizations for television placement; (2) work with the Department of Education to make effective anti-tobacco curricula available to every school; and (3) conduct research on what media interventions are most successful in preventing youth smoking.

copied  
Reed  
Kagan  
Bawles

**3. Crime – Police Corps/COPS:** We are preparing an event that you can do while on vacation or in September that focuses on educating and hiring law enforcement officers. At this event, you could announce new Police Corps grants totaling over \$30 million, of which about half will fund scholarships for students. Included in the grant recipients are six states that have not previously participated in the Police Corps program. Because Massachusetts is one of these new states and because the Police Corps program is closely associated with the Kennedys (first Bobby and now Kathleen), we are working to involve the Kennedy family. At the same time, you could announce \$10 million in COPS Small Community Grants to help 855 small and rural law enforcement agencies (serving populations under 50,000) defray the costs of retaining current COPS-funded officers, and \$75 million in COPS Universal Hiring Grants to hire over 1,000 community police officers in 237 jurisdictions, including 12 school resource officers for Jonesboro, Arkansas.

✓  
2001

**4. Crime – Early Warning Guide:** We are working with the Departments of Justice and Education to complete the Early Warning Guide to school violence that you recently directed Secretary Riley and the Attorney General to develop; we should be ready to announce

the release of the guide prior to the start of this school year, probably in your August 22nd radio address. The guide will be a user-friendly document with practical suggestions to help principals, teachers, and parents identify and address the early signs of youth violence. The guide also will provide advice on how to respond to violent incidents if they occur. The departments will post the guide on the Web and mail about 250,000 copies to schools and communities on the day of your announcement.

**5. Crime -- Probation/Parole Study:** The Justice Department will release on Sunday a survey of the nation's probation and parole population in 1997. The survey will show that a record 3.9 million adults were on probation or parole in 1997. This number reflects a 2.9 percent increase from 1996, which is roughly consistent with the average annual increase of 3 percent since 1990. Of the 3.26 million probationers, 54 percent were convicted felons, 28 percent were misdemeanants, and 14 percent were drunk or impaired drivers. Of the 685,000 parolees, nearly all (96 percent) were convicted felons. Texas and California had the greatest number of probationers and parolees (538, 500 for Texas and 408,900 for California); four states (Nevada, Maine, New Hampshire, and Arizona) reported more than a 10 percent increase in their probation populations; and nine states reported more than a 10 percent increase in their parole populations.

**6. Crime -- Brady Law Statistic:** We thought we should clarify some statistics on the Brady Law to which you referred in California. Background checks have stopped nearly a quarter of a million (or 242,000) prohibited handgun purchases since the Brady Law took effect in February of 1994. Checks stopped 69,000 prohibited purchases last year alone, of which about 62 percent were based on felony convictions or indictments. Thus, the Brady Law stopped about 42,780 felons -- *or an estimated 18 per day* -- from purchasing handguns in 1997.

**7. Drunk Driving -- New Statistics:** The Transportation Department announced on Friday that the rate and number of alcohol-related traffic fatalities dropped in 1997 to their lowest levels since the Department began keeping these statistics in 1975. The percentage of all fatal crashes that involved alcohol fell from nearly 41 percent in 1996 to 38.6 percent in 1997 -- the first time ever that the rate dropped below 40 percent. At the same time, 1997 saw the lowest total number of alcohol-related traffic fatalities, with these fatalities dropping by a full 5 percent among 16 to 20 year olds. Last year's statistics are part of a long-term trend: the number of alcohol-related fatalities has dropped by more than a third since 1982.

**8. Health -- Patients' Bill of Rights:** Senator Lott sent you a letter last week that chided you for threatening to veto the Republican patients' rights bill and asked you to urge Senate Democrats to enter into an agreement to limit debate and amendments on the legislation. The letter is consistent with Lott's strategy of attempting to blame Senate Democrats for his refusal to bring the bill to the floor of the Senate. We believe that this letter presents a good opportunity to reiterate your concerns about the Republican Leadership bills, while expressing your continued commitment to work toward a good bill on a bipartisan basis.

We accordingly have drafted a letter to Lott that lists the shortcomings of the Republican bills (in much the same way as you did in Kentucky) and restates your insistence on strong legislation. The letter also contrasts your own willingness to work across party lines with the Republicans' decision to develop their bills through a purely partisan process, without consulting Democrats, holding hearings, or considering the proposals in committee. We plan to release the letter sometime this week.

**9. Health -- Physical Fitness Council:** Secretary Shalala recommended to the DPC last week that the Administration transfer responsibility for the President's Council on Physical Fitness and Sports to the United States Olympic Committee (USOC), while retaining the current mechanism for appointing members. The Secretary believes that the Council currently suffers from chronic underfunding, and that the USOC would provide the Council with needed financial support. Senator Stevens of the Appropriations Committee also favors this approach, as long as the Administration and Congress retain authority over appointments. We think that the Council is now falling short in its mission to promote physical fitness and that this proposal -- which probably will require new legislation -- therefore merits serious consideration. We will give you a recommendation when you come back from vacation.

**10. Welfare Reform -- New Caseload Numbers and Study:** HHS will release new welfare caseload numbers on Friday to coincide with the two-year anniversary of the welfare reform law. We do not have the exact numbers yet, but we expect to see a caseload reduction of several hundred thousand in the last three months. HHS also will announce \$1.6 million in technical assistance grants to help states promote job retention and advancement.

At around the same time, the Manpower Demonstration Research Corporation will release an encouraging study of welfare reform in Los Angeles, funded in part by HHS. In 1995, Los Angeles shifted to a job-focused welfare program, based largely on the positive results from nearby Riverside county. The early results from Los Angeles are promising: after six months, welfare recipients in the program were 34 percent more likely to be employed and had 46 percent higher earnings than other welfare recipients. In addition, the program reduced welfare costs by just under 10 percent.

The Los Angeles study adds to the multitude of evidence contained in HHS's first report to Congress on the success of the TANF program in promoting work opportunities. Almost every state now requires personal responsibility contracts, and most states have adopted a work-first model, with 32 states expecting clients to work within six months. For the first time, half of all low-income single mothers with children under six -- the population most affected by welfare policy -- are working, a dramatic increase from 35 percent in 1992. And state evaluations of welfare programs consistently show employment increases of between 8 and 15 percentage points.

**11. Welfare Reform -- San Diego Immigrant Policy:** We are currently considering how to respond to the possibility that San Diego County will take actions in its food stamp and

TANF programs that are ostensibly directed at illegal immigrants, but that may harm U.S. citizen children. The county for many years has asked all people applying for TANF and food stamps whether they are illegally in the country, even if they are requesting assistance only for their citizen children. The county now may begin to send to the INS names of illegal aliens that it obtains through this process -- and to send a letter to all current welfare and food stamp recipients indicating its intention to do so. These actions may well deter undocumented parents from applying for assistance for their citizen children. Although we probably have legal authority to stop the county from taking these actions under the food stamp program, we have no similar legal authority under TANF. In a meeting with HHS and USDA last week, we agreed that USDA would attempt to point out to the county, in a relatively low-key way, the pitfalls of proceeding with its intended policy -- for example, the potential budget costs to the county as more children have to rely on county-funded nutrition programs, and the possibility of triggering regulatory action by the USDA that will force the county to separate its food stamp and TANF application processes. If this approach fails to work, we will determine whether to take the threatened regulatory action.

**12. Food Safety -- Food Safety Council:** We expect the National Academy of Sciences to release next week a report recommending better coordination of the government's food safety structure and more even allocation of resources between FDA and USDA. In response to this report, we have prepared an executive order setting up a Food Safety Council, consisting of all relevant agencies and White House offices, which will set common food safety priorities and produce a coordinated food safety budget. The Council also will take charge of reviewing the specific recommendations in the NAS study and reporting back to you on appropriate further actions. HHS and USDA are somewhat anxious about the proposed Council, fearing that it could constrain their current budgetary authority or create a desire for a single food agency. We and NPR believe, however, that the government's food safety efforts are currently too fragmented and that the Council can serve a very useful coordinating function. Assuming we can clear up remaining issues with the agencies (they are especially fearful of White House participation in the Council), you could announce the creation of the Council in early September.

**13. Education -- Single-Sex Schools:** The Education Department has been working for the past six months with the New York City school system to develop a rationale and evidence to support the continued operation of its Young Women's Leadership Academy. The Education and Justice Departments initially believed that the most promising approach, consistent with prevailing interpretations of Title IX and the Equal Protection Clause, would be to find evidence that the school is an appropriate remedial response to gender discrimination. The Departments, however, now have concluded that there is insufficient evidence to support this approach. In a meeting last week, they acceded to the strong view of the DPC and Counsel's Office that they nonetheless should allow this school to continue, rather than close it down, force it to admit boys, or order the establishment of an all-boys school. The Department's new approach will be to work cooperatively with the New York City school system to (1) develop evidence that students in the all-girls school and students

in coed schools currently are afforded “comparable learning opportunities” and (2) set up some kind of mechanism, preferably fairly informal, to monitor the continued existence of comparable opportunity over time.