



U.S. Department of Justice

Office of Legal Counsel

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Washington, D.C. 20530

November 9, 2011

Joseph E. diGenova  
diGenova & Toensing  
1776 K Street, N.W.  
Suite 737  
Washington, DC 20006

Dear Mr. DiGenova:

This responds to your Freedom of Information Act request dated March 28, 2011, which was referred to us on July 21, 2011. We have searched the files of the Office of Legal Counsel and have found the enclosed email exchange. While on its face the email exchange does not appear to be responsive to your request, it apparently refers to an op-ed in the Wall Street Journal by Michael McConnell, dated March 15, 2010, and in that light, could potentially be considered responsive.

I am required by statute and regulation to inform you that you have the right to file an administrative appeal. Any administrative appeal must be received within 60 days of the date of this letter by the Office of Information Policy, United States Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in cursive script that reads "Paul Colborn" followed by a stylized monogram "PAC".

Paul P. Colborn  
Special Counsel

Enclosure

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**From:** Barron, David  
**Sent:** Tuesday, March 16, 2010 1:40 PM  
**To:** Kagan, Elena  
**Subject:** RE: Health care q

YES -- HE IS GETTING THIS GOING.

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**From:** Kagan, Elena  
**Sent:** Tuesday, March 16, 2010 1:06 PM  
**To:** Barron, David  
**Subject:** Health care q

Did you see michael mcconnell's piece in the wsj?

Tracking:

Recipient  
Kagan, Elena

Read  
Read: 3/16/2010 1:57 PM



U.S. Department of Justice  
Office of the Solicitor General

Executive Officer

Washington, D.C. 20530

NOV 9 2011

**VIA U.S. MAIL and FACSIMILE (202-289-7706)**

Joseph E. diGenova  
diGenova & Toesing, LLP  
1776 K Street, N.W., Suite 737  
Washington, DC 20006

Re: OSG FOIA No. 2011-0130

Dear Mr. diGenova:

We have located two additional documents that may be responsive to the above-referenced FOIA request. Enclosed please find copies of those documents. Please note that we are redacting the names and e-mail addresses of low-level government employees and private parties as being nonresponsive in order to protect their privacy.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie H. Hall", written over a large, stylized flourish.

Valerie H. Hall  
Executive Officer  
Office of the Solicitor General

[REDACTED]

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**From:** Elena Kagan [REDACTED]  
**Sent:** Sunday, March 21, 2010 11:04 PM  
**To:** [REDACTED]; Larry Tribe; Elena Kagan  
**Cc:** [REDACTED]; Henthorne, Betsy L. (SMO)  
**Subject:** Re: fingers and toes crossed today!

I can do April 12

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**From:** [REDACTED]  
**Date:** Sun, 21 Mar 2010 23:00:58 -0400  
**To:** Larry Tribe [REDACTED]; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: fingers and toes crossed today!

[REDACTED] would be available on April 7 or 12. Look forward to hearing from you regarding what works best for the rest of the group.

Best,  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Larry Tribe [mailto:[REDACTED]]  
**Sent:** Sunday, March 21, 2010 5:06 PM  
**To:** ekagan [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: fingers and toes crossed today!

So health care is basically done! Remarkable. And with the Stupak group accepting the magic of what amounts to a signing statement on steroids!

Re dinner, I now remember the place you'd suggested back in December: Founding Farmers. I still like the name and don't recall why I'd thought the place in the Mandarin would be worth trying. So how about our going to Founding Farmers with you and [REDACTED]? I'd suggest April 4, 7, 9, 12 and 23 as possible dates. I don't have [REDACTED] [REDACTED] email but I'm hoping the [REDACTED] email will reach her indirectly and am also copying her assistant [REDACTED] just in case.

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**From:** Elena Kagan [REDACTED]  
**Sent:** Sunday, March 21, 2010 11:39 AM  
**To:** Larry Tribe  
**Subject:** Re: fingers and toes crossed today!

I hear they have the votes, Larry!! Simply amazing. Let's go wherever you want; I think you mentioned a place in the Mandarin, which would be great. Give me any dates you want after March 31. [REDACTED] expressed an interest in joining as well.

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**From:** Larry Tribe [REDACTED]

1/31/2011

Date: Sun, 21 Mar 2010 13:02:09 +0000

To: elena.kagan@usdoj.gov<elena.kagan@usdoj.gov>;  
[REDACTED]

Subject: fingers and toes crossed today!

Also: [REDACTED] and I haven't forgotten that dinner with you that we had to postpone. Where were we going to meet? I recall that it was someplace you'd not yet visited but wanted to try out. Let's find a date to get together there before too long. . . . Larry

1/31/2011

[REDACTED]

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**From:** Katyal, Neal  
**Sent:** Tuesday, October 13, 2009 1:06 PM  
**To:** Kagan, Elena  
**Subject:** RE: At some point soon

we just got snowed on health care

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**From:** Kagan, Elena  
**Sent:** Tuesday, October 13, 2009 12:55 PM  
**To:** Katyal, Neal  
**Subject:** Re: At some point soon

In person. I'll call a meeting when I return.

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**From:** Katyal, Neal  
**To:** Kagan, Elena  
**Sent:** Tue Oct 13 12:43:00 2009  
**Subject:** At some point soon

We should talk also about whether to extend the offer to [REDACTED]. I'm definitely in favor of this, and doing it sooner will be good so that we don't have much of a gap. I also worry that he might be looking elsewhere since he seemed ready to leave his current position during the interviews. If you are in agreement, we could probably do this conversation over email with the other deputies to make sure they are on board (it sure sounded like they were in our August hiring meeting), or we can do it in person at a future meeting of us all.

N