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ID # 2217 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010 LSL recd. 8/12 5:15

- ☐ O - OUTGOING
- ☐ H - INTERNAL
- ☐ I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Al Hubbard

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Civil Rights / Abortion polls from American Viewpoint

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
CMOFC	ORIGINATOR	~~91~~ 08 08		C	91/08/12
	Referral Note:				
CMAT:O	I	91/08/09	DJ	C	91/08/09
	Referral Note: DJ				
Curt O7	~~A~~	/ /		C	91/08/12
	Referral Note: DJ	Attn: FYI see comments			
Cuglady	I	910809		C	910809
	Referral Note:				
Curt02	I	910809		C	910809
	Referral Note:				

ACTION CODES.
- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES.
- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE.
- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: Circ out - Info only
LSL/CFP 8/12/91
copy retained

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Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

OFFICE OF THE VICE PRESIDENT
WASHINGTON

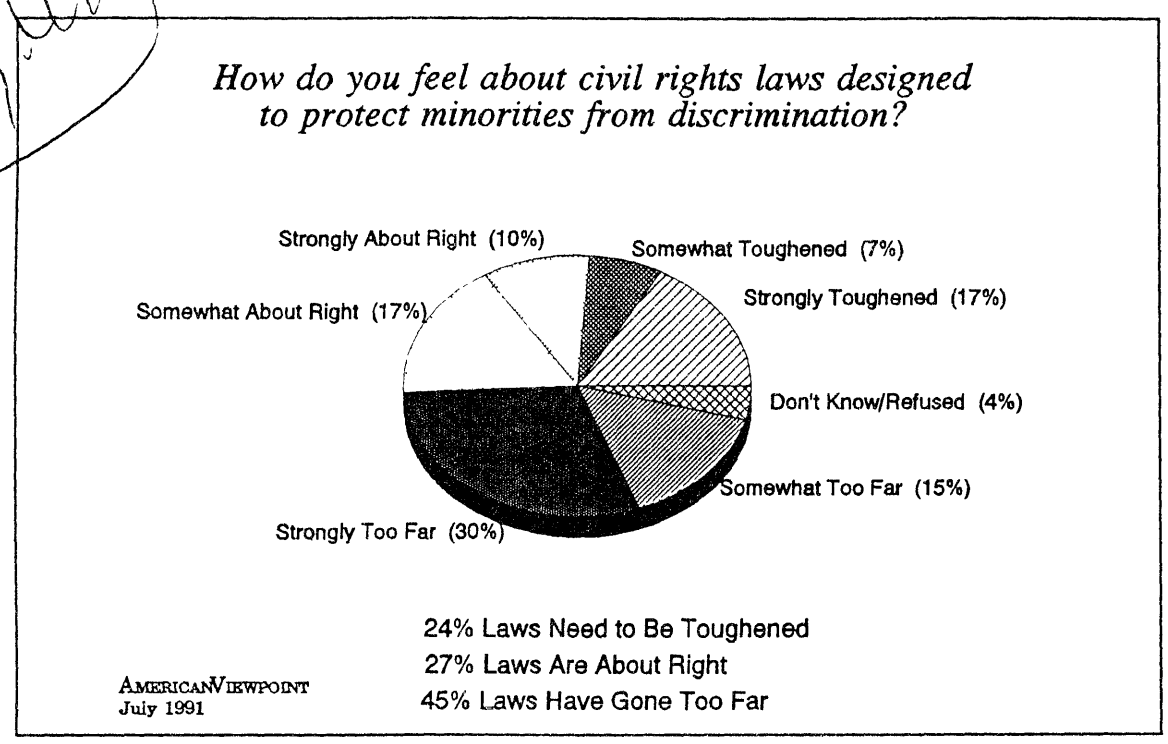
TO: Boyden Gray

FROM: **Allan B. Hubbard**
Executive Director
The Council on Competitiveness

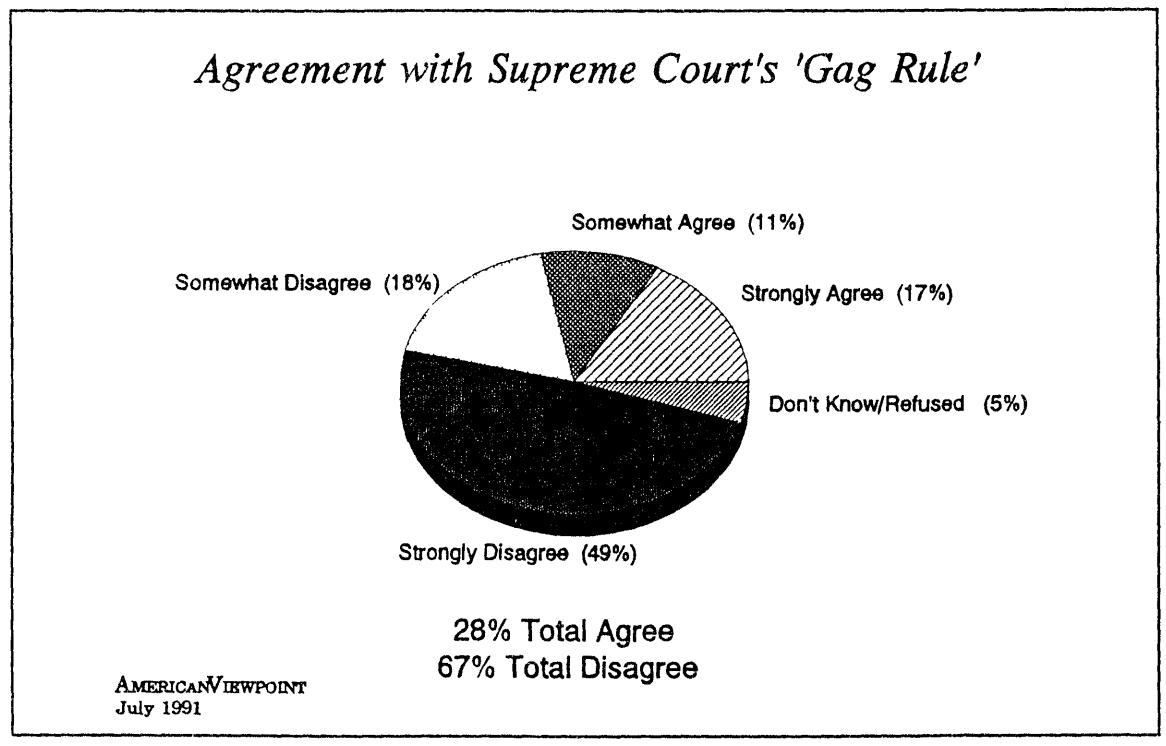
☒ **FYI**

☐ **Comment**

☐ **Action**



Question: Which of the following statements comes closest to your opinion? Current laws need to be toughened because they don't protect minorities well enough; OR Current laws are about right and protect minorities well enough; OR Current laws have gone too far and have resulted in unfair quotas that cause reverse discrimination against people who do not qualify as minorities.



Question: Do you agree or disagree with the recent Supreme court ruling that would prohibit public health care workers from discussing abortion with patients in federally-funded family planning clinics?

INCOMING

ID# 261548

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HU010 R: 8/12/91

DATE RECEIVED: AUGUST 12, 1991

NAME OF CORRESPONDENT: MR. ROBERT O. ADERS

COUNSEL'S OFFICE
RECEIVED
AUG 13 1991

SUBJECT: ENCLOSES A COPY OF AN ADDRESS BY JOHN E. JACOB, PRESIDENT AND CEO OF THE NATIONAL URBAN LEAGUE, FOR ADMINISTRATION REVIEW REGARDING THE CIVIL RIGHTS BILL

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
C. BOYDEN GRAY	ORG	91/08/12		C	91/09/04 CS
REFERRAL NOTE: CUAT10					
	RD	A 91/08/13	NL	A	91/09/04 CS
REFERRAL NOTE: Letter to Aders					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

COMMENTS: WRITER IS MEMBER, BOARD OF TRUSTEES, NATIONAL URBAN LEAGUE

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 4900 4400 ____

MI MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

THE WHITE HOUSE

WASHINGTON

September 4, 1991

Dear Mr. Aders:

On behalf of the President, thank you for your recent letter enclosing a copy of a speech by the President of the National Urban League, Mr. Jacob. I have studied Mr. Jacob's speech and appreciate your taking the trouble to send it to the White House.

With respect to the pending civil rights legislation, Mr. Jacob makes several statements that the Administration does not believe are accurate. The President feels strongly about the subject of civil rights and about the importance of leading the country in the right direction on this sensitive subject. The bill that he vetoed last year (and which is being advanced in almost identical form this year), however, would actually do more to take us in the wrong direction than to solve any of the real problems that quite obviously exist. Attaching the label "civil rights" to such a bill cannot alter its substance.

The President and the Administration have taken many steps in an effort to resolve this matter in a constructive fashion. Perhaps most important, the President has offered his own civil rights bill, which has unfortunately not received the attention it deserves. The President's bill includes all of the worthwhile measures on which Republicans and Democrats have agreed, along with generous compromise provisions dealing with the more controversial issues. A copy of the President's bill and an accompanying section-by-section analysis is enclosed for your information. I am also enclosing a copy of a speech in which the President set forth his vision of civil rights; I think you will see that it is consistent with Mr. Jacob's views in several important respects.

Thank you again for writing.

Yours truly,

Nelson Lund
Associate Counsel to the President

Mr. Robert O. Aders
1750 K Street, N.W.
Washington, DC 20006

Attachments as directed in memo were sent.

261548

ROBERT O. ADERS
1750 K STREET, NORTHWEST
WASHINGTON, D. C. 20006

August 7, 1991

The Honorable George H.W. Bush
Office of The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

Here is a copy of an address by John E. Jacob, President and CEO of the National Urban League, that your staff ought to take a look at in the context of the current discussions of what the Administration will and will not do with respect to civil rights legislation. Pages 9 through 12 are devoted to that subject but I think it is important to read the total speech because it is a very fine presentation of a moderate point of view that would be helpful for you and your people to consider.

John Jacob is the same John Jacob that was the chairman of Howard University when Lee Atwater was asked to go on the board. The National Urban League is an organization that decided to remain neutral on the Clarence Thomas appointment despite very strong urgings from much of his constituency to go along with the NAACP position.

As a member of the board of trustees of the National Urban League I am very pleased to be associated with John Jacob and have a high regard for his talents and great respect for his views. Please pay attention to this speech.

Sincerely,

Bob

Robert O. Aders

Address
By
John E. Jacob
President & Chief Executive Officer
National Urban League, Inc.
At
Keynote Session
National Urban League Annual Conference
Atlanta, GA
July 21, 1991

We come to Atlanta this week to continue our journey on the road to "Making a Difference in the '90s."

For the 1990s are a critical decade for African Americans and indeed for all Americans -- a decade that will decide whether America maintains its leadership role or whether it sinks to second-class status ... whether African Americans progress toward parity, or whether we fall further behind.

We enter this critical decade after years of stalled progress ... battling to preserve our limited gains ... facing urban decline ... racial tensions ... economic recession.

But ours has always been an uphill struggle. Never more so than now.

For today's world is an often confusing place. It is changing at an incredibly fast pace.

We are in a revolutionary new era in which America faces great challenges that will affect the future of African Americans and of all our people.

I'll just touch briefly on four of the revolutions that are sweeping the world today, and some of the challenges they pose.

The first is political -- the global trend toward democracy and inclusion.

It is symbolized by the collapse of communism, the weakening of apartheid, and the cries of self-determination now being heard in places as far apart as Kurdistan and Kashmir.

We are challenged to harness that drive toward democratic ideals ... to channel it to positive changes that respect the dignity and potential of all people.

The second is technological -- as new scientific developments sweep away old ways of doing things.

It's a trend symbolized by "smart bombs" and high definition television ... the application of high technology to weapons of destruction and to consumer goods alike.

We are challenged to direct the development of technological change so that it becomes the vehicle to make life better, and not the vehicle to destroy life.

Technology drives a third revolution -- the economic revolution.

It is symbolized by empty factory buildings in the inner city and shining new office towers in the suburbs ... by highly trained professionals working for big corporations and by despairing, jobless men on street corners ... by shrinking job opportunities in major American industries and "Made in Japan" stickers on the cars and appliances we buy.

We are challenged to take part in that economic revolution ... to help our young people get the education and the skills to hold productive jobs ... and to implement public policies that enable every citizen to be productive.

Finally, there is the demographic revolution.

That is symbolized by the wave of new immigrants pouring into the industrial nations ... by the rising tide of African American majorities in our major cities ... and by a national work force that is growing slower, and is more dependent on women and minorities.

We are challenged to meet the needs of a more diverse society by developing an appreciation for other cultures and by building bridges that cross racial and ethnic lines.

Four revolutions that will shape our lives.

And four sets of challenges that will drive our personal and citizenship responsibilities.

Those of us who grew up in the civil rights struggle must come to terms with this revolutionary new era.

For the issues have changed and the challenges are in many ways much more difficult.

In the 1960s, we could mount a drive for national civil rights laws to protect constitutional rights that had been illegally denied to African Americans.

But in the 1990s white resentment is fanned by demagogic shouts of "quotas" ... and we find ourselves debating the merits of a civil rights bill that turns on legal definitions of "business necessity" and "disparate impact."

In the 1960s, we were fighting for the right to vote. In the 1990s, African American elected officials preside over crumbling cities without the resources to meet the needs of their people.

In the 1960s we had identifiable villains like Bull Connor and the Klan.

In the 1990s, even violent racists don't do as much damage as the crack dealer on the corner or the child with a handgun and no conscience.

In the 1960s we had to deal with employers who refused to hire African Americans except to sweep up.

In the 1990s, we have to deal with employers who say they can't get people with the skills to do demanding jobs, and with glass ceilings that keep minorities and women out of positions of corporate power.

But one thing remains constant -- in the 1990s, as in the 1960s, African Americans are disproportionately poor and are victimized by discrimination and by unequal opportunity.

That has to change. Not simply for reasons of morality and fairness.

But also because America's future in this new, changing world will depend on its ability to develop the human resources of all of its diverse people.

:::

Diversity will be the burning issue of the 1990s -- and beyond.

Demographers say that by mid-century whites will no longer be a majority of the population. It's already happened in the state of California and in cities like New York, where no single group is in the majority.

Today, thirty-two million Americans are black. Twenty-five million are Hispanic. Seven-and-a-half million are Asian.

Those totals mask even more extensive diversity -- African Americans from the Caribbean and from Africa ... Hispanic Americans from every country in the Hemisphere ... Asian Americans who include fifth-generation Americans and new arrivals from places as different as Cambodia and Sri Lanka.

Will America use that wonderful mosaic of difference to create a truly pluralistic society?

Will it remove the barriers to African Americans and other minorities?

America's future depends on positive answers. But the sad fact is that America is really unprepared for diversity.

Too many Americans are intimidated by differences and hung up on stereotypes.

A few months ago, a nationwide survey by the University of Chicago's National Opinion Research Center found what we all know and have been saying for years -- that Americans are victims of racist thinking that negatively stereotypes all minorities.

The survey found that three out of four white Americans stigmatize blacks as lazy, violent, unintelligent people who prefer welfare to work.

To a lesser extent, they held similar negative stereotypes about Hispanics and Asians.

The disease of racism threatens to poison America's destiny as a pluralistic, multicultural democracy.

We must remember that America's history is stained with the evils committed against minorities and newcomers.

This is the land where African Americans won our constitutional rights and other minorities secured freedoms unknown in their homelands.

But it is also the land where blacks were enslaved, oppressed, lynched, and brutalized. The land of wholesale slaughter of Native Americans ... of anti-Irish riots ... of quotas that kept Jews from schools and jobs ...of detention camps for Japanese Americans.

And this is also the land where each wave of newcomers learned that the fastest way to become a real American was to absorb the racism of the majority.

People who faced discrimination themselves quickly learned to keep blacks out of their unions, out of their neighborhoods, and out of their schools.

We need to confront that painful history, because there are signs today that the past may repeat itself.

There's evidence of racial stereotyping among many of today's new minorities -- and some African Americans hold negative stereotypes about other groups.

That's important for everyone to understand -- and to do something about.

So let me repeat -- there's evidence of racial stereotyping among many of today's new minorities -- and some African Americans hold negative stereotypes about other groups.

That's sure to make a lot of white supremacists very happy.

But it's not in anyone else's interest. And it is something that could crack the American mosaic and endanger America's future.

America has to come to terms with diversity. It needs to protect minority rights ... end discrimination ... provide education and training opportunities for a diverse workforce ... and stop stereotyping people.

But African Americans will also have to adjust to the new ethnic realities.

We've become used to seeing race relations in terms of black and white. But race relations in the 1990s and into the 21st century will be more complex.

We need to encourage inter-group cooperation. And we need to guard against divide-and-conquer tactics that encourage inter-group frictions.

That won't be as easy as it sounds.

There is a danger that the diversity issue will be manipulated to concentrate on the concerns of emerging new minorities to the exclusion of blacks.

And we've already seen the way cultural misperceptions have bred conflict.

In many cities there is friction between African Americans and Arab or Korean storekeepers.

In cities like Miami, African Americans confront a power structure that is not white, but Hispanic.

In cities like Washington D.C., Hispanic immigrants confront a power structure that is black.

In many cities, African American mayors, police chiefs, and school superintendents are in a strange situation for us -- being resented by other minorities as the holders of power ... the Establishment.

So it's a mistake to think that we can achieve unity simply because we share the nonwhite or minority label.

But it's also a mistake to think we can go it alone in a diverse society.

If history is any guide, White America will pick and choose among its minorities.

Some will be accepted grudgingly and allowed in the door.

Others -- and especially African Americans -- will be confined to the cellar.

We can't allow that to happen.

We'll need to build inter-racial and inter-ethnic coalitions around concerns we share and issues that can unite.

Issues like: poverty ... injustice ... jobs ... training opportunities ... access to quality education and health care ... affordable housing.

And those coalitions have to be based on the question: is it good for America?

Not just: is it good for African Americans? But: is it good for America?

If the answer is "yes," African Americans will benefit disproportionately since we are disproportionately burdened by poverty and the social problems that poverty breeds.

And if the answer is "yes," we can attract the support to move our country forward and solve many of its problems.

:::

Re-assessing our relations with other minorities is part of the necessary process of adjusting to a society that is being transformed.

We need to address old paradigms and adjust them to this new era. New occasions teach new truths, and there is nothing wrong with questioning positions of an era gone by.

That doesn't mean hopping on the bandwagon of fashionable new trends. Rather, it means carefully re-examining positions in the light of changing circumstances.

Let me briefly mention just three of many issues that may require some new thinking.

One is enterprise zones.

Many of us have questioned their effectiveness, and correctly suggest they are not and cannot be the answer to black unemployment problems.

But the African American economy has been in permanent Depression and anything legal that might improve it should be tried.

In the absence of a federal commitment to national job creation programs, we can support an enterprise zone program that includes expanded job opportunities for people living in poverty neighborhoods.

School choice is another issue that bears re-examination.

There is no way we can support a voucher system that includes private schools, because that would destroy public schools.

But we can take another look at public school choice programs as one of many school reforms.

Not the choice programs now being thrown together with a slogan and a prayer. But choice programs with strict controls that guarantee parent information processes ... eliminate tracking ... and prepare all children for high academic achievement.

A final issue that needs rethinking is political representation.

Right now congressional district lines are being redrawn by state legislatures.

With the help of technical experts from the Republican Party, some districts are being reshaped to rope in as many African American voters as possible.

Some think that's a great idea -- creating all-black districts to ensure election of black representatives.

But we have to ask if this isn't a new form of political apartheid -- assuring some safe congressional seats for blacks at the cost of losing influence with legislators from adjoining districts.

Is it better for African Americans to be 80 percent of the voters in one district or to be 25 percent of the voters in many districts?

Does racial redistricting maximize our participation or does it dilute our potential strength?

The answers may differ in different areas and states.

But strategies that made sense when we just got the vote may not be the best strategies for leveraging our influence on issues that require broad legislative coalitions.

And political strategies based on racial polarization may not be the best strategies at a time when predominately white cities like Seattle and Denver and Los Angeles elect African American mayors.

The new era we are entering is going to mean rethinking those and other issues and positions -- and that can often be a painful process.

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But we are not the only ones who need to address old paradigms.

Our national leaders need to re-examine the disastrous strategies that fail to address America's social and economic problems.

Those strategies are based on three myths:

One, we are a color-blind society.

Two, the free market can solve social problems.

Three, government can only play a limited role.

For over a decade, those myths deepened racial and class divisions, devastated the cities, and weakened America's competitiveness.

It's time to scrap them.

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And the place to begin is with the myth about being a color-blind society.

America is a color-blind society only in its blindness to the needs and the aspirations of African Americans.

People don't like to think about race ... about discrimination ... about injustice. They'd rather pretend it's been taken care of.

But it's our job to make them think about it -- and it's our job to make them do something about it.

Because racism is alive and well in these United States.

The consensus on civil rights has been replaced by racial fears and stereotypes. The consensus against discrimination has been replaced by winking at it and hoping the issue will disappear.

It won't. That's why Congress has to pass a civil rights bill that effectively reverses Supreme Court decisions that encourage job discrimination.

Those decisions -- and others that restrict basic civil liberties and limit constitutional rights -- tell us that the Supreme Court no longer stands by our side. It is now on our back. It is removing gains of the past and building new barriers to our future.

While I am gratified that the President has nominated an African American to the seat held by Justice Marshall, it is clear that Clarence Thomas is no Thurgood Marshall.

I share the alarm caused by the addition of yet another Justice likely to overturn Roe v. Wade and affirmative action rulings.

But I would hope that Judge Thomas' life experiences will lead him to closer identification with those in America who are today victimized by poverty and discrimination.

And I would hope that he sees the irony in opposing affirmative action while at the same time being an affirmative action appointee.

Yes, he has the qualifications for the job of Supreme Court justice. So do literally hundreds of other people.

But there are only nine positions -- and only one was vacant. So additional criteria were applied -- criteria like racial and ethnic diversity ... life experiences ... experience in government ... and political considerations.

Judge Thomas' nomination should tell the Administration and Judge Thomas himself, that affirmative action and merit are not mutually exclusive.

Without affirmative action, merit will always be equated with whiteness. And without strong anti-discrimination laws, African Americans, women, and other minorities will continue to be economically vulnerable.

That is why we so strongly urge the Senate to pass a strong civil rights bill, and why we urge the President to sign it.

He should finally reject the advice of hard-liners like Chief of Staff John Sununu and White House Counsel Boyden Gray, and the political consultants who see the phony quota issue as next year's Willie Horton.

Americans should not be confused by legalistic haggling over technicalities ... by false quota charges ... ~~or by~~ thinking that a bill that benefits white women and all minorities is a "black" bill.

The Civil Rights Act of 1991 is about discrimination.

Quotas aren't the problem. Discrimination is.

Let's be clear about that. I repeat:

The Civil rights Act of 1991 isn't about quotas. It's about discrimination.

It's about not hiring qualified blacks ... refusing to promote qualified Hispanics ... discriminating against qualified women.

African American organizations carried the load for the Civil Rights Act even though we'd rather be fighting on other battlegrounds -- on priorities like more jobs, better schools, and more and better training opportunities.

But this is a fight that was forced upon us by an extremist Supreme Court and by an Administration that made race a partisan political issue.

The struggle over the civil rights bill is a struggle for the soul of America ... about the kind of people we are and the kind of country we want to become ... about replacing the myth of a color-blind society with the reality of a diverse, equal opportunity society.

:::

Let's look at Myth Number Two -- the free market can solve our social problems.

It can help -- a strong free enterprise economy that creates jobs and opportunities is necessary but insufficient.

Without socially directed investments and government programs, cities continue to deteriorate, poverty remains largely intact, and social divisions deepen.

That's the story of the booming eighties, when America became an experimental laboratory for free market theories. While the free market flourished and industries restructured to become more profitable, government trashed poor people's programs to end so-called dependency. Civil rights enforcement was de-emphasized. College grants and training opportunities were cut.

How did that experiment work here in Atlanta, a city that grew and flourished during the boom?

A new book titled "The Closing Door: Conservative Policy and Black Opportunity" tells the story.

New jobs were created. Lots of them. But they were in the white suburbs and went to newcomers from outside the city. Metro area wealth increased. Inner city poverty got worse.

Here's the authors' conclusion, and I quote:

"The Atlanta experience shows that it is essential to confront the issue of racial discrimination directly, as the color line remained an extremely powerful force in distributing opportunity and destroying aspirations." End of quote.

It's the same story for the whole nation -- the gap between white and black, rich and poor, got wider, and the free market alone can't close that gap.

Closing the gap takes partnerships between the private sector, the voluntary sector, and an activist government that opens doors instead of closing them.

:::

That brings us to the the third myth that has dominated our national life for over a decade -- the myth that government has a limited role in solving social and economic problems.

That one is hard to understand.

We're in the midst of a recession that's hurting everybody -- black and white; a recession that's thrown almost two million people out of work over the past year.

Cities are closing fire stations and libraries, laying off teachers, shutting down child care centers and drug clinics.

All this comes on top of a decade of growing black poverty and urban decay.

The President's response is to give speeches beating up on the Great Society and to keep calling for a thousand points of light -- as if government was the electric company.

But whatever its shortcomings, the Great Society worked.

No one -- not even the President of the United States -- should be confused about that.

In only five years, the Great Society brought about history's biggest reduction in poverty.

Medicare ... Medicaid ... Head Start ... the Job Corps ... the civil rights laws. All Great Society programs. All proof that government can and does and should make a difference.

Voluntarism is important. Everyone should be involved in helping people in need. The Urban League, its programs, and its volunteers are America's brightest points of light.

The voluntary sector is doing what it can -- and it's doing a lot.

But it's cynical to say that voluntarism is the answer.

Voluntarism can ameliorate some of the worst effects of our social problems. But those problems are massive -- and only government has the power and the resources to solve them.

And voluntarism cannot even be effective in softening the inequities of our society when nonprofit agencies are denied resources to manage those volunteers and to implement necessary programs.

Nor can voluntarism solve the deep structural problems that condemn millions of Americans to poverty and hardship.

A strategy of voluntarism can be more helpful if community-based organizations are used as intermediaries, delivering programs backed by government and the private sector.

Those points of light need to be hooked up to the powerful generator of a national domestic policy aimed at getting to the root causes of poverty and unequal opportunities.

Today, we have no such domestic policy.

Listen to this quotation from someone who knows:
Quote: "The White House is the epicenter of national policy. There are problems of poverty, despair, and economic decline in many people's neighborhoods which the President has both a moral and a political obligation to combat." End of quote.

A moral and a political obligation!

That wasn't said by John Jacob. It wasn't Ben Hooks. It wasn't Jesse Jackson. And it wasn't Maynard Jackson.

That quote comes from Jack Kemp, the President's Secretary of Housing and Urban Development.

We're not buying into all of Secretary Kemp's program, which is burdened by the free market myth.

But we do buy into the view that government has a moral and a political obligation to combat America's economic and social problems.

Government can't just be a cheerleader for volunteers. It's got to be a quarterback, calling the plays and setting the game plan for deep changes in our society.

The President plays a pretty good game of quarterbacking international policy. But he needs to get back into the game of domestic policy.

And in the Persian Gulf crisis, he has a good model for developing a domestic game plan.

:::

Why did America win the Gulf War in 100 hours?

The answer is clear. We developed clear objectives ... assembled overwhelming resources to achieve those objectives ... and let General Colin Powell coordinate a unified air, sea, and land campaign.

Why is America losing the war in the cities?

Again, the answer is clear. It lacks clear objectives. It cuts off resources. Its programs are uncoordinated and often contradictory.

How can America win in the cities?

Once more, the answer is clear: The way we won in the Gulf. By mounting an Operation Urban Storm the way we mounted Operation Desert Storm.

Develop clear objectives to end poverty and renew urban America.

Commit the necessary resources and target them to develop the enormous human resources of our youth and the people on the margins of our society.

Coordinate that massive effort through coalitions of government, the private sector, and the voluntary sector, with clear, accountable lines of authority.

:::

The Urban League has developed a domestic policy game plan that can win the war in the cities.

We have called for an Urban Marshall Plan ... a Marshall Plan for America ... a ten year, $50 billion annual investment in our people and in our infrastructure.

Since we issued our call, others have jumped on the Marshall Plan bandwagon.

There have been proposals for a Marshall Plan for eastern Europe. A Marshall Plan for the Gulf. Gorbachev wants the West to fund a Marshall Plan for the Soviet Union.

The original Marshall Plan worked. It put western Europe back on its feet after World War Two. That's why everyone wants a Marshall Plan for their country or their region.

But there's only one place where a Marshall Plan makes sense.

And that's right here at home -- rebuilding our cities,
bringing poor people into the economic mainstream,
investing in making America competitive again.

Our Marshall Plan for America isn't only for African-Americans, but for all Americans.

And we developed it because of the hard realities staring us in the face.

We looked at the nation and the world. We saw the political, technological, economic and demographic revolutions transforming a global society.

We saw the irreversible trends gathering force: the cries for participation, the shift to knowledge work, the faster economic growth of other countries, the growing diversity of our society and our workforce.

And we put that all together and concluded that unless America invests in its future and in its people, its people will have no future.

We'll have a once-proud democratic society split between haves and have-nots; between those with decent jobs and those with no jobs, between a smaller white population and a larger minority population. All fighting over the crumbs from a smaller economic pie.

That's the handwriting on the wall of the future and it's why we proposed a Marshall Plan for America -- to rewrite that future by rebuilding the physical infrastructure essential to economic growth and by rebuilding the human infrastructure essential to economic competitiveness.

In the year-and-a-half since we offered our Marshall Plan for America, some Congressional representatives have expressed interest, but the Administration has been silent.

It did come up with a transportation and highway improvement program that will cost over $120 billion over five years.

But that program doesn't include the core of the Urban Marshall Plan infrastructure proposal -- targeted recruitment and training of the disadvantaged.

Without that, it's just another pork barrel program instead of a unified plan to bring the economy to a higher level of productivity.

So tonight, we renew our call for a Marshall Plan for America.

We tell our nation once more -- and it cannot be repeated often enough -- that unless America invests in the future of all of its people, it will lose its world leadership role and all Americans will lose their standard of living.

I don't expect the Administration to see the light and become an overnight convert to the Marshall Plan idea.

But I do expect growing numbers of Americans -- of all races and classes -- to come to understand that our plan is in the national interest.

It's not a black plan or a special interest plan, but an American plan -- a plan for a strong, economically competitive, powerful and democratic 21st century America.

The Urban Marshall Plan should be the catalyst for the long overdue national debate about our future.

For the United States is moving into a new century without a strategic plan ... without a clear idea of where we want to be in ten or twenty or thirty years.

We've been busy celebrating our military power, waving the flag, and shouting that we're Number One. So busy, we haven't noticed our declining economic power and the social tensions that could bring us down.

A Marshall Plan for America would change all that.

It would mobilize the country behind a positive program to ensure America's greatness ... behind a vision of a future America that is truly an open, pluralistic, integrated society.

:::

Our America needs to recapture the vision of itself that has inspired people around the world for over two centuries.

It is a vision of a diverse people living together in harmony and respect with liberty and justice for all.

That's the vision that separates the United States from all other nations in the world.

And that American vision of freedom and democracy and opportunity still inspires the world's people.

It is a vision that drives the hopes of little black children in Atlanta ... a vision dear to people in faraway lands struggling to be free ... a vision that flourishes in the minds and hearts of people of all races and all cultures.

It is a strong vision. It has to be, to have survived the contradictions of its birth in a slave society.

It is a vision that has been tarnished by injustice and violated by unfairness.

It is a vision that has been abused by racism ... tattered by exploitation ... trampled by discrimination.

But as much as we are disappointed and saddened by the way that noble vision has been violated more often than it's been followed, we are not disappointed in the vision itself.

Much as we are frustrated at the way that vision has been applied to others more than to ourselves, we are not frustrated at the vision itself.

And much as we deplore the failure of Americans to revive and cherish that unique vision, we do not deplore the vision itself.

Rather, we are inspired by it ... by the vision of a land of diverse peoples living and working together in equality, in harmony, in mutual respect.

That vision may be old in years but it is young in its meaning for a nation struggling to achieve equality for all ... a people grappling with the terrors of racism ... a land of diverse peoples entering an unknown future.

And it is a vision to which we of the Urban League movement hold fast.

For ours is a struggle to help our society fulfill its vision, even as it often drifts away from the best of its heritage.

We of the Urban League live daily with the shattered violations of the American vision -- with the children victimized by drug gangs and bad schools, with the adults who don't have work, don't have food, don't have hope.

But we carry on, with faith in the vision articulated by the Founding Fathers, who gathered together to birth a nation based on the revolutionary principle that:

"We, the People of the United States" create a government to "establish justice ... promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

We carry on with faith in that vision as articulated by Dr. Martin Luther King, Jr., who dreamed: "that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood."

And we labor in pursuit of that same vision, as defined by the late, great, Whitney M. Young, Jr., when he said:

"We seek not to weaken America but to strengthen it; not to divide America but to unify it; not to decry America, but to purify it; not to separate America but to become part of it.

"This is our land. Here we have risen from slavery to freedom and here will we rise from poverty to prosperity.

"This is our land.

"This is our land.

"Here we shall overcome."

This then, is our vision of an America that is just and fair ... an America in which we shall prosper ... an America that is and always will be, our land.

Here, we shall overcome.

That is what we of the Urban League are about.

That is why we have come to Atlanta this week.

That is what this Conference is all about.

Let this Conference begin!

# # #

ID# 262322

HU010

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: AUGUST 13, 1991

NAME OF CORRESPONDENT: MARION A. BOWDEN

SUBJECT: URGES THE PRESIDENT TO SIGN THE CIVIL RIGHTS ACT OF 91

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C/D	DISPOSITION COMPLETED YY/MM/DD
JEFF VOGT	ORG	91/08/13	~~A~~	C	91/10/29 TC
REFERRAL NOTE: Co Kell	A	91/10/2		C	91/10/04 TC
REFERRAL NOTE: 99 DOJ	R	91/10/09 TC		D	91/10/21
REFERRAL NOTE:		/ /			/ /
REFERRAL NOTE:		/ /			/ /
REFERRAL NOTE:		/ /			/ /

COMMENTS: Pls. cc: PLBUTTS w/ltr & response. Thank you

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 1180 4400 ____

PL MAIL USER CODES: (A)_____ (B)_____ (C)_____

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*ACTION CODES:          *DISPOSITION            *OUTGOING             *
*                       *                       *CORRESPONDENCE:      *
*A-APPROPRIATE ACTION   *A-ANSWERED             *TYPE RESP=INITIALS   *
*C-COMMENT/RECOM        *B-NON-SPEC-REFERRAL    *          OF SIGNER  *
*D-DRAFT RESPONSE       *C-COMPLETED            *     CODE = A        *
*F-FURNISH FACT SHEET   *S-SUSPENDED            *COMPLETED = DATE OF  *
*I-INFO COPY/NO ACT NEC*                        *             OUTGOING*
*R-DIRECT REPLY W/COPY  *                       *                     *
*S-FOR-SIGNATURE        *                       *                     *
*X-INTERIM REPLY        *                       *                     *
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KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 21, 1991

Marion A. Bowden, President
Blacks In Government
1820 11th Street, N.W.
Washington, DC 20001-5015

Dear Mr. Bowden:

Thank you for your recent letter urging the President to support the Civil Rights Act of 1991. Your letter has been referred to me for response.

As you know, the President has repeatedly expressed his desire to sign a civil rights bill. Indeed, the President has sent legislation to Congress, S. 611, which would effectively and fairly protect the civil rights of working men and women.

The President cannot endorse H.R. 1, the bill passed by the House of Representatives, or S. 1745, the bill recently introduced by Senator Danforth. Both measures are seriously flawed. Each would encourage employers to resort to unlawful quotas to avoid costly litigation and would lock in place existing quotas by prohibiting victims of quotas from challenging them.

The President also strongly favors strengthening the remedies for sexual harassment. S. 611 allows equitable awards of up to $150,000 and immediate injunctive relief in cases of on-the-job harassment. By contrast, S. 1745 simply goes too far by authorizing jury trials and damage awards in all cases of intentional discrimination.

Moreover, only the President's bill would make the law against job discrimination, including sexual harassment, fully applicable to Congress. The time when Congress should be permitted to exempt itself from these laws is long passed.

The President is committed to ensuring equal opportunity for all Americans. He will continue to work with Congress to enact

legislation that will provide effective remedies for discrimination without forcing employers to resort to quotas.

Thank you for sharing your views on this important matter.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

T H E W H I T E H O U S E O F F I C E

REFERRAL

OCTOBER 9, 1991

TO: DEPARTMENT OF JUSTICE

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: 262322

MEDIA: LETTER, DATED AUGUST 8, 1991

TO: PRESIDENT BUSH

FROM: MARION A. BOWDEN
PRESIDENT
BLACKS IN GOVERNMENT
1820 11TH STREET, NW.
WASHINGTON DC 20001

SUBJECT: URGES THE PRESIDENT TO SIGN THE CIVIL RIGHTS ACT OF 91

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE, 20500

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

8

26235 2

BLACKS IN GOVERNMENT

1820 11th Street, N.W.
Washington, DC 20001-5015
(202) 667-3280 FAX (202) 667-3705

August 8, 1991

9 Vet

The President
The White House
Washington, DC 20500

Dear Mr. President:

We take this occasion of the 13th Annual National Training Conference of Blacks In Government to urge you once more to sign the Civil Rights Act of 1991 when it comes before you in the near future. Moreover, we further urge you to immediately state your intent to sign the legislation, and eliminate the concern, confusion, and uncertainty that is being caused by the public perception that you are considering another veto.

We make this plea on behalf of all Americans, but particularly those Americans who have historically been denied access to the economic mainstream. These are the people who see the possibility of the veto as a threat to their economic future.

Blacks In Government is dedicated to the elimination of racism and discrimination in public service and we view the Civil Rights Act of 1991 as an essential tool to further this objective. The legislation would make it easier to prove discrimination, provide for punitive damages in discrimination cases, and make it clear that it is always illegal for employers to make job decisions on the basis of prejudice.

This bill is not about quotas, and we do not believe that the history of civil rights law enforcement in this country supports the notion that quotas would become a problem. It does provide remedies for discrimination and assures stumbling blocks will not be placed in the path of those who are its victims.

We urge you to recognize that, for many, your Administration will be remembered for the way in which it presides over the changing face of America and how it deals with the new Americans. Your action on this bill will be the litmus test of the credibility of your Administration as a government of all the people. It will determine whether your "kinder and gentler America" is a promise or a fantasy.

Sincerely,

Marion A. Bowden

Marion A. Bowden
President

R: 8/19

ID # 262988 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HU010

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Evan Kemp, Jr.

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: letter to Pres. Bush re his insight on education and the civil rights bill

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuofa	ORIGINATOR	91/08/14	C	C	91/09/09 CS
Cuatio	Referral Note: IA	91/08/15		C	91/09/09 CS
Cuat07	Referral Note: I	9/08/15		C	91/08/15 See Comments
Cuyoay	Referral Note: I	9/08/15		C	91 08 15
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	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
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FOR OUTGOING CORRESPONDENCE.
Type of Response = Initials of Signer
Code = "A"
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M. Lund 9-9-91 - Close out - CS

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

OFFICE OF
THE CHAIRMAN

AUG 12 1991

COUNSEL'S OFFICE
RECEIVED
AUG 14 1991

August 12, 1991

Mr. Albert Shanker
President
American Federation of Teachers
200 East 24th St., Apt. 502
New York, New York 10010

Dear Al:

You have written several columns in the New York Times[1] that I have read and reread time and again because of the clarity of your insight on contemporary issues of mutual concern. More recently I have been reading disturbing editorials in both the Washington Post and the New York Times which I have enclosed in the unlikely event you haven't already seen them. The opinions expressed in these editorials fail to recognize, as you do, the interdependence of education and equal opportunity. I want to express my total agreement with your position that

> "(I)nstead of downplaying achievement, we should be letting students know that what they do in school will make a difference and that this will be true for all students. And we should be sure that the new civil rights act will permit employers to reward students who have done well. Anything else will teach students the wrong lesson."

To read these enclosed editorials and to listen to the talk shows and news reports, one would get the impression that the President had suddenly decided to defend some outrageous "diplomas-for-janitors" requirement as a pretext for blocking compromise on a civil rights bill. This "one-liner" trivializes the President's position into a "sound bite" and ignores how dependent the promise of equal employment opportunity is on our educational system.

---

[1]"It Doesn't Matter: Doing Well in School" (7/16/89), and "Making School Count: The New Civil Rights Bill" (3/24/91).

Contrary to media coverage, the President is not advocating a law that would permit employers to screen out blacks by demanding a high school diploma from 50-year old applicants for a job emptying trash cans. As made clear in his July 28 letter to Senator Danforth which I have enclosed for your information, the President's civil rights bill would not permit such a practice, and he has provided Senator Danforth with additional language to put that "red herring" to rest. In the real world, this type of menial, dead-end job is largely beside the point in any event.

According to the Department of Labor, over the next twenty years, jobs dependent on strong backs and little if any thinking will employ about 4% of the work force and more than half of the new jobs created will require some education beyond high school. Unskilled jobs will virtually disappear from our economy in the future - provided that our educational system can provide the trained workers we will need to challenge our international competitors.

No, the issue involving most of the jobs of today, and virtually all of the jobs of tomorrow, is whether employers can use measures of educational effort and achievement in filling them without the risk of ruinous litigation. The common-sense answer should be self-evident since there have been hundreds of studies showing that competence in the basic skills of reading, math, science and problem-solving are strongly related to productivity gains in virtually all civilian jobs. I know you have heard this before from Cornell economist John Bishop because you have frequently quoted his research.

The problem is that under the Democrat bill pending in the Senate (and Senator Danforth's bill as well), employers cannot rely on this wealth of cumulative knowledge and must instead reprove the obvious with respect to every job. The employer's burden will be to conduct an expensive, scientific "validation" study for every job - an expense that only the biggest corporations can afford.

What is important to acknowledge here is that the difficulties of using measures of educational effort and achievement would continue to exist to some extent under the President's bill, because his bill codifies the pre-Wards Cove case law under which these legal burdens were defined. But as the Attorney General recently made clear in his letter to Senator Danforth, and as Yale law professor Paul Gewirtz confirmed in a recent issue of the New Republic (both enclosed), the Supreme Court Griggs decision and subsequent Supreme Court cases clearly leave open to employers the possibility of using educational criteria for selection purposes when upward mobility promotions to more demanding jobs are taken into consideration.

Unfortunately, the Democrat bill - as well as the Danforth bill - would eliminate this well-established option by forbidding the use of educational measures unless the relationship to job performance is proven time and again for each and every job. This is a significant change in the law that has nothing to do with either "codifying" Griggs or "overruling" Wards Cove.

Perhaps the most tragic of unintended consequences of the Democrat and Danforth bills will be on those who seek entry-level jobs such as janitors and who will never be able to move beyond that job without the tools that only a good education will give them. Should any job be characterized as precluding upward mobility to more demanding jobs for those individuals willing to invest their efforts in learning - whether that education is provided by the employer or by the community? I don't think so. Yet this would be the unintended consequence of a law which, by requiring the relationship with job performance to be reproved again and again each and every time an employer posts a job opening, discourages employers from rewarding learning.

The unintended consequences of the Democrat and Danforth bills, if enacted into law, could be dramatic. Almost all serious educational reformers agree with you that reform efforts are pointless unless employers begin to reward educational effort and achievement. It is true that the President's civil rights bill leaves intact a number of existing legal obstacles to such educational reforms. But the Democrat and Danforth bills will go much further, seriously jeopardizing our ability to reform our schools and ultimately our ability to compete with other nations that use educational criteria as an integral part of their hiring decisions.

It would be tragic to pass legislation that by making it difficult to reward learning, sends the unmistakable signal to this nation's students that education is irrelevant to success in the workplace. Such a signal would certainly undermine the President's America 2000: An Education Strategy. One of the strategic national goals established by President Bush is that by the year 2000:

> "(E)very school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy."

This issue of the legality of considering measures of educational effort and achievement in making employment decisions has been at the core of the dispute between the Administration and the lobbyists for the Democrat bill. To his credit, Senator Danforth

(an original co-sponsor of Senator Kennedy's bill last year) has recognized the philosophical differences in this dispute which he has correctly characterized as "narrow but quite deep." Indeed, it was Senator Danforth who took the initiative in publicly framing the debate in these terms with his example of a diploma requirement for a janitor's job. But the issue is not new, and it is absurd to blame the President as the Post and Times do for responding to Senator Danforth's arguments in terms of the issue as the Senator framed it.

As you have so clearly written, this is not a marginal issue, as suggested by recent media coverage. It is rather a major philosophical difference as Senator Danforth recognizes. The American Dream of upward mobility depends on education as the means of opening the doors of meaningful opportunity. This promise should be just as true for that adult who invests his or her effort in continuing education as it is for the candidate just entering the job market. I doubt that Senator Danforth intends to stigmatize the janitors of this nation as stuck in their jobs for life or to deny opportunities to anyone based on individual initiative. Yet if the reward for investing one's effort in learning is absent - no matter when that individual effort is made - we will have missed an historic opportunity to recognize the interdependence of education and equal opportunity.

The question is whether the law is going to tell employers, for the first time in our history, in effect to ignore an applicant's education and to hire by the numbers. This issue ought to get debated on its merits, and the public is entitled to participate in the discussion. It is exactly such a discussion that some seek to avoid by attacking the President, impugning his motives, and distorting his position.

The President's goal is the same one stated by the Democrats: A civil rights bill that will eliminate employment discrimination. A definition of discrimination which starts with bad numbers and presumes liability on the basis of using measures of educational effort and achievement will do nothing to eliminate employment discrimination and do less than nothing to improve equal employment opportunity.

I have relied on your views in the past to clarify my own thinking on these critical issues and I look forward to your continued leadership. Please feel free to schedule some time in the near future so that we may further discuss these vitally critical issues of mutual concern.

Best regards,

Evan J. Kemp, Jr.
Chairman

Enclosures

cc: The Honorable C. Boyden Gray
Counsel to the President

The Honorable Richard L. Thornburgh
Attorney General of the United States

The Honorable Constance B. Newman
Director
Office of Personnel Management

The Honorable Lynn Martin
Secretary of Labor

The Honorable Lamar Alexander
Secretary of Education

THE WHITE HOUSE

WASHINGTON

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WHERE WE STAND

By Albert Shanker, President
American Federation of Teachers

The New Civil Rights Bill

Making School Count

We frequently hear comparisons between our education system and the systems of other industrialized countries, along with suggestions that we do things the way they do. But these countries don't have our history of slavery or our sense of responsibility for righting past inequities, so decisions and policies that are straightforward for them can be much more complicated for us.

Take the practice of testing prospective employees for general competence. On the face of it, this makes a lot of sense. But the fairness of these tests has been challenged all the way to the U.S. Supreme Court. And the Court has ruled that if a test results in a disproportionate number of minorities being excluded, the test will be considered discriminatory unless it is directly related to the job. For example, if requiring prospective ditchdiggers to pass a reading test resulted in screening out a disproportionate number of minority ditchdiggers, the test would be viewed as discriminatory.

A couple of years ago, economists John Bishop and James Rosenbaum both presented studies about the relationship between high school achievement and entry-level employment before a U.S. Labor Department commission of which I was a member. They argued that one of the reasons our country was lagging in productivity was that most U.S. students who are not headed for college don't take school work as seriously as their peers in other industrialized countries.

It's not that our kids are dumber; it's that success in an American high school doesn't count in the kind of job you get when you graduate. Top corporations generally do not employ people right out of high school. And the companies that do hire new graduates typically don't look at high school records. So students who were often absent—and tuned-out on the days they did go to school—get the same low-level jobs as students who worked hard and did well in school.

The logical response to this is to make achievement in high school count for employment. Reward kids who do well in high school with better jobs and better pay, and kids will soon get more serious about high school. This will improve the kids' future prospects, the climate of schools and, eventually, the quality of our work force.

When I argued this position at the commission meeting, I found myself in the middle of a debate. Several members of the commission thought that linking achievement with jobs and pay would be unfair to minority youngsters. They feared that a lot of the jobs available to minority youngsters who had dropped out or had not done well in school would go to non-minority youngsters with good records. Anyway, why do you need a bunch of B's in math and English to flip hamburgers?

There are several problems with this position. The biggest is that in trying to be fair, it is unfair. It reinforces low expectations by assuming that minority youngsters will not be able to improve their achievement even if there is a real incentive to do so. The position also makes it unlikely that employers will reward school achievement with jobs. Why should they if they fear that doing so might lead to accusations of discriminatory hiring practices or make them vulnerable to law suits?

John Bishop suggested in recent testimony before Congress that the proposed civil rights bill would increase the danger of law suits for employers who use basic skills tests or other educational criteria. Under the bill, the burden of proof for establishing that the criteria are directly related to the job would be on employers (instead of on the employees, as is now the case).

Bishop's perspective on the proposed civil rights bill is important and hasn't gotten much attention. How should we be thinking about it?

On the one hand, minorities in other countries have found that tests and other qualifications based on achievement work to their advantage. People can study for tests and pass them. And they are judged on *what* they know and can do instead of on *who* they know or what race or ethnic group they belong to.

Nevertheless, many African-Americans are suspicious of hiring based on tests and credentials. And it's true that, until now, doing well in school did not pay off for them. In the days before the civil rights movement, education standards for blacks were different from those for whites—segregated schools and discriminatory laws made sure of that. As a result, employers tended to discount credentials held by blacks in hiring and promotion. Then, in the baby boom period, when more African-Americans were being educated, the same was true for every other group in the population, so everyone's education was worth less.

However, we are entering a period in which there will be a tremendous labor shortage. It will be so severe that employers will not be able to turn down applicants because they don't like their skin color or ethnic background. Qualified applicants will get jobs and get promoted. Poorly qualified ones will be stuck in dead-end jobs, as they are now.

So instead of downplaying achievement, we should be letting students know that what they do in school will make a difference and that this will be true for *all* students. And we should be sure that the new civil rights act will permit employers to reward students who have done well. Anything else will teach students the wrong lesson.

"All the News That's Fit to Print"

The New York Times

VOL.CXL.... No. 48,680 NEW YORK, FRIDAY, AUGUST 2, 1991

PRESIDENT REJECTS SENATE AGREEMENT ON RIGHTS MEASURE

CITES EDUCATION GOALS

Bush Would Allow Employers to Impose Higher Standards Than a Job Requires

By ADAM CLYMER
Special to The New York Times

WASHINGTON, Aug. 1 — President Bush has rejected Senator John C. Danforth's efforts to win agreement on civil rights legislation. Mr. Bush said it was essential to the Administration's education program to let employers impose educational job requirements higher than a particular job requires. Mr. Danforth today released a letter dated July 28 in which the President stated his objections, which the Senator called "a very bad argument." The Missouri Republican said it was "a serious mistake for the President, for his Administration and for the Republican Party to try to turn the clock back on civil rights."

Mr. Danforth predicted that the legislation he was sponsoring would be passed by Congress and that a veto by Mr. Bush, if it came, would be overridden.

Mr. Danforth, speaking at a news conference, sounded sorry, not angry, as he insisted that Mr. Bush was "honorable" but mistaken And he said his disappointment with Mr. Bush on this issue would have no impact on his continued enthusiastic support for Clarence Thomas, Mr Bush's nominee for the Supreme Court. Mr. Danforth is shepherding Mr Thomas through meetings with dozens of senators.

Arguments Are Ridiculed

In his letter, Mr. Bush said Mr. Danforth's legislation, which would prohibit the use of employment qualifications unnecessary for performance of the job, would "seriously, if not fatally, undermine the reform and renewal of our educational system by discouraging employers from relying on educational effort and achievement."

The President included a letter from Education Secretary Lamar Alexander contending that Mr. Danforth's bill "would threaten employers with civil liability if they asked prospective employees for a high shcool transcript or a diploma." He said the bill would damage the Administration's objective of sending a message that education was very important.

Mr. Danforth ridiculed those arguments at a news conference today, saying they could be accepted only "if you believe that an employer on his own is going to further educational policy by shutting out 50-year-old people who never got a high school diploma."

For more than a year arguments over civil rights legislation have focused on how to interpret a 1971 Supreme Court decision, Griggs v. Duke Power Company, which was overruled

Bush Rejects Republican Compromise on Rights

Continued From Page A1

by the Court in 1989 in Wards Cove v. Atonio.

Angry lawyers contended that their interpretation was the only honest way to look at the Griggs case, which barred the power company from requiring a high school diploma for janitors, a standard that the court found discriminated against blacks.

Mr. Bush's letter to Mr. Danforth this week — which followed a face-to-face discussion last Thursday — said he was still committed to the Griggs decision. Mr. Danforth said, "The president says he agrees with Griggs, but he doesn't."

And he said his efforts to settle on language the Administartion would accept amounted to an 18-mointh "rainbow-chasing operation."

Mr. Danforth has played a central role since early June, when the House passed its version of the civil rights bill, which generally would make it easier to sue and collect damages in job discrimination cases by overturning a series of 1989 Supreme Court decisions.

He offered proposals that compromised between the House and the White House positions and then adjusted them largely to meet many White House objections.

Talks Break Down

But in late June his talks with Administration aides broke down over the question of qualifications, and Mr. Danforth said it was a political decision that Mr. Bush had to make.

When it went against him, Mr. Danforth predicted that enough Republicans would join him in voting for the bill so it could win the 67 votes needed to override a veto. There are 57 Democrats, and Mr. Danforth has had 6 or 8 announced Republican allies at various stages. He said today that others would join and vote for the bill even though they would not co-sponsor it.

The Senate will probably not take up the bill until late September or October, after it has finished with the Thomas nomination. It then would probably go to a conference committee for its final form.

Senator George J. Mitchell of Maine, the majority leader, said earlier this week that the Senate would deal with the bill this year whether or not Mr. Danforth and Mr. Bush agreed. "We must act and we will," he said.

Criticism From Teachers

Tonight Senator Edward M. Kennedy, the Massachusetts Democrat who heads the Committee on Labor and Public Welfare and is the chief Democratic advocate of the bill, said Mr. Bush's position "seriously undermines the right of millions of working women and minorities to be free from discrimination on the job."

He said he looked forward to working with Mr. Danforth to enact the bill "even if it means overriding an unfair Presidential veto that shields unacceptable kinds of job bigotry."

The National Education Association also attacked Mr. Bush's position, calling it "dangerous and untenable." It said discrimiantory hiring practices would not promote educational achievement.

While Mr. Danforth's tone today was sorrowful, his words were caustic. He said Mr. Bush was making a mistake because "the most important thing a politician can do is to try to keep the country glued together" and his approach to the legislation was divisive.

He said Mr. Bush was not among those Republicans who "believe this is a terrific political issue." But he said the argument that the bill would cause employers to use quotas, which Mr. Bush used against the House bill and which some have applied to Mr. Danforth's version, has "always been a total red herring."

He said the President was supporting a "wrong-headed educational objective." and that even had he agreed with it, the principle of equal opportunity was more important.

More national news appears on page B6.

The Washington Post

AN INDEPENDENT NEWSPAPER

More Civil Rights Slogans

THE MAIN White House charge against the pending civil rights bill is still that this is a quota bill. It isn't, but if it were, so would the president's alternative be. Their salient passages can scarcely be told apart. A Congress expert at splitting or blurring differences and tossing them to the courts could reach a compromise in a day if the White House would assent. Time and again it has refused, preferring a slogan to a deal, and now comes a second charge that the bill is also anti-education. The requirement is that hiring standards be related to the job to be performed. The president chooses to take that to mean "that employers cannot use educational standards in hiring decisions except in limited circumstances."

"I cannot," he says in a letter to Republican Sen. John Danforth of Missouri, who had tried again to enlist the administration to compromise, "ignore the advice of the secretary of education, the attorney general and the chairman of the EEOC that the other pending proposals will seriously, if not fatally, undermine the reform and renewal of our education system by discouraging employers from relying on educational effort and achievement." You know what that is pious shorthand for. The new message is the oldest of them all: that the price of advance in civil rights is a lowering of national standards. Mr. Danforth understands what is happening. "It's a serious mistake for the president, his administration and the Republican Party to turn back the clock on civil rights," he said.

The ideologues, political label-pasters and, above all, litigators grasping for marginal (and largely imagined) advantage on both sides are the ones who have kept this issue alive. The bill began as an effort to reverse a group of largely technical 1989 decisions by the Supreme Court, the combined effect of which was to weaken equal employment law as previously understood. Even the administration agrees that these decisions should be reversed.

The main sticking point is what an employer must prove if his hiring and promotion standards, even if not intended to discriminate, have a "disparate impact" on blacks and other groups protected by the law, meaning low percentages of such groups get jobs. The administration says civil rights groups and their allies in Congress (where a House-passed bill is stuck in the Senate) would leave so little room for defending such standards that employers would be forced to resort in self-defense to quotas. The advocates say they're only restoring a rule of law that worked just fine in the 18 years before the court disturbed it and that leaves plenty of room for defending legitimate employment standards—those related to performance of the given job. The two sides could work that out if there were a will to do so.

But something else needs to be noted here: In drafting the bill, civil rights groups, though generally professing merely to be restoring the status quo, in fact went beyond the stated purpose of restoration. They would increase the access of complainants in discrimination cases to jury trials and punitive damages. We think this was wrong policy as well as wrong tactics. At least most proposed compromises would now put caps on damages, which is a step in the right direction.

Mr. Danforth, having been rebuffed by the president, says he and other moderate Republicans are now ready to work out a compromise that will be veto-proof, and Sen. Edward M. Kennedy, the leader of the interested Democrats, says the same. They can do it, and they should, but it's a shame they have to. On this one, the president is poorly advised and on the wrong side.

The New York Times

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The President's New Pretext

Why there's just one reason after another to explain President Bush's truculent opposition to the modest, reasonable civil rights bill now pending in Congress.

For a long while, he denounced it as a hateful promotion of "quotas" in employment. That's a reach indeed; Republican Senator John Danforth says "it has always been a red herring." And now Mr. Bush has come up with another explanation, and this one is a whopper: To protect workers from discrimination, he says, would undermine reform of American education.

That is so implausible that members of Congress may find it insulting. They, and ordinary citizens, are left to wonder. If the President is so determined to find pretext after pretext to oppose this bill, what's the real reason for his hostility?

•

According to Mr. Bush's logic, allowing discriminatory hiring practices would increase educational achievement. How? It's in the national interest that everyone graduate from high school — and the bill wouldn't let employers insist on a high school diploma as a qualification for any job, even shoveling coal or emptying trash cans.

Senator Danforth, who is trying to lead Mr. Bush's party out of its civil rights quagmire, has nothing but contempt for the argument. Disgusted, he will push ahead and predicts a veto-proof majority for the bill he is redrafting. Senator Danforth has been plenty patient with Mr. Bush and his staff. Now he's right to proceed.

The bill reflects a common view that the Supreme Court was wrong in 1989 to overturn its 1971 interpretation of the law on hiring discrimination. What the Court said in 1971, and a 5-to-4 majority disowned two years ago, was that even when minorities can't prove an employer intended to discriminate, they can win if they show the employer's rules screened them out disproportionately.

For example, a company that insists that a janitor have a high school diploma can fairly be required to show that the requirement has some bearing on job performance. The Bush Administration argues that having overqualified employees bears on "legitimate employment goals" and should be permitted, whatever the harm.

In simple terms, the White House doesn't want to restore the rule of Griggs v. Duke Power Company, the 1971 case, while majorities in Congress find it an eminently fair reading of the landmark 1964 Civil Rights Act.

In that case former Chief Justice Warren Burger used homely, apt analogies. Congress, he said, insisted on practical job criteria, not merely illusory equal opportunity "in the sense of the fabled offer of milk to the stork and the fox" in a vessel from which one of them could not drink.

The law, he held, "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited."

Now, however, the President disputes that reasoning with a new fable, about how racially biased hiring policies enhance education. Congress has a date with reality when it returns in the fall.

TEXT OF LETTER FROM PRESIDENT BUSH TO SEN. DANFORTH

THE WHITE HOUSE
WASHINGTON

July 28, 1991

Dear Jack:

The meeting on Thursday was helpful to me, and I appreciate all the energy you've put into the civil rights issue.

As I understand it, you are worried that I would allow what Griggs ruled out: the use of unjustified educational requirements for menial jobs that are not tied to promotion policies. The Attorney General assures me that this is not allowed under my bill, but, to nail it down, I've asked for some additional language, which I am enclosing.

Ensuring that Griggs is preserved is far better than broadly legislating new rules that say employers cannot use educational standards in hiring decisions except in limited circumstances. I cannot ignore the advice of the Secretary of Education, the Attorney General and the Chairman of the EEOC that the other pending proposals will seriously, if not fatally, undermine the reform and renewal of our educational system by discouraging employers from relying on educational effort and achievement.

I understand that you have contacted Dick about some of the other outstanding issues, and I hope you can resolve them quickly so that I can sign a good bill this year.

Sincerely,
/s/ George Bush

The Honorable John C. Danforth
United States Senate
Washington, D.C. 20510

Legislative History to Accompany
Section 3 of the President's Civil Rights Bill (S. 611)

The definition of the term "justified by business necessity" is meant to codify the meaning of business necessity as used in *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971), and subsequent cases, including *New York City Transit Authority v. Beazer*, 440 U.S. 568, 587 & n. 31 (1979). Such a definition was reaffirmed even by the dissent in *Wards Cove*. "*Griggs* made it clear that a neutral practice that operates to exclude minorities is nevertheless lawful if its serves a *valid business purpose*." See 109 S. Ct. at 2129 (1989) (Stevens, J., dissenting) (emphasis added).

The Supreme Court has consistently made clear that the business necessity defense must permit employers to defend employment practices that they have adopted in the furtherance of legitimate employment goals. At the same time, however, the Court has never permitted the business necessity defense to excuse arbitrary or whimsical employment criteria unrelated to the demands of the employment or the employer's valid business purposes. In *Griggs* itself, for example, the operator of a power plant required applicants for jobs as coal handlers to have a high school diploma and to register satisfactory scores on two aptitude tests. The defendant had never tried to determine whether such credentials were relevant in any way to work as a coal handler or to any other position in the company.

In particular, the employer made no showing that, in order to fulfill a genuine business need, its criteria took into account capability for the next succeeding position or related future promotions. See 401 U.S. at 431-432. Where an employer adopts educational credential requirements for a menial job without giving any consideration to the relationship between such requirements and the requirements of the job or any other valid business objective (such as capability for promotions), the business necessity defense is unavailable under *Griggs* and under this bill as well.

End of Section

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Office of the Attorney General
Washington, D. C. 20530

June 21, 1991

The Honorable John C. Danforth
United States Senate
Washington, D.C. 20510

Dear Senator Danforth:

Governor Sununu has asked me to respond to your letters of June 19 and 20. In your first letter, you set out several phrases used in the course of discussions of "business necessity" in the opinion in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and stated that one of these phrases -- "manifest relationship to the employment in question" -- has been declared unacceptable by the principal proponents of H.R. 1. You suggested in both letters that we should instead accept as the holding of Griggs the phrase "shown to be related to job performance." Finally, you suggest in your second letter that this phrase be codified as the definition of "business necessity." As I will explain in some detail, the one phrase declared "off limits" is the only phrase that has been rationally defended as the definition of business necessity under Griggs.

I appreciate your efforts to identify language in Griggs which the proponents of H.R. 1 will accept. I can imagine your frustration that the proponents, notwithstanding their insistence that they are "merely restoring Griggs", are in fact prepared to accept anything but the legal standard established by Griggs.

One difficulty, however, with your suggestion is that it rejects two decades of Supreme Court precedent. Indeed, the very language now deemed unacceptable is the only language that the Court has always treated as the operative standard: "manifest relationship to the employment in question." Contrary to your suggested reading of the case, an unbroken line of Supreme Court opinions overwhelmingly confirms this proposition. Nor is this an issue on which there has ever been disagreement among the Justices.

- Scarcely a year after Griggs was decided, Justice Thurgood Marshall remarked in passing that Griggs "even placed the burden on the employer 'of showing that any given requirement must have a manifest relationship to the employment in question.'" Jafferson v. Hackney,

406 U.S. 535, 577 (1972) (Marshall, J., dissenting) (quoting Griggs).

- In 1973, in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 805-806, the Court quoted the "related to job performance" language, but only because it had been specifically quoted and relied on by the court below (463 F.2d 337, 352 (1972)). The Supreme Court itself rejected its application to the case before the Court. See 411 U.S. at 806-807.

- In 1975, Justice Stewart, speaking for the Court and joined by Justices Douglas, Brennan, White, Marshall, and Rehnquist, said that the Court in Griggs had "unanimously held" that an employer must "meet[] 'the burden of showing that any given requirement [has] . . . a manifest relationship to the employment in question.'" Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (quoting Griggs).

- In 1976, the Court again quoted this same language when stating the Griggs standard. The opinion was written by Justice Rehnquist, and joined by Chief Justice Burger (the author of Griggs) and by Justices Stewart, White, and Powell. General Electric Co. v. Gilbert, 429 U.S. 125, 137 n. 14.

- In 1977, Justice Stewart again quoted this same language from Griggs. He was speaking for the Court, and his opinion was joined by Justices Powell, Stevens, Brennan, and Marshall. Dothard v. Rawlinson, 433 U.S. 321, 329.

- In 1979, Justice Stevens wrote an opinion for the Court quoting the same language: "manifest relationship to the employment in question." He was joined by Chief Justice Burger (the author of Griggs) and by Justices Stewart, Blackmun, and Rehnquist. New York Transit Authority v. Beazer, 440 U.S. 568, 587 n. 31 (quoting Griggs and citing Albemarle).

- In 1982, Justice Brennan's opinion for the Court, which was joined by Justices White, Marshall, Blackmun, and Stevens, quoted both formulations. The context makes it clear, however, that the phrase "manifest relationship to the employment in question" is the formulation adopted by "Griggs and its progeny" in establishing the analytical framework for disparate impact cases. Connecticut v. Teal, 457 U.S. 440, 446.

This reading of Teal was later confirmed in an opinion by Justice Blackmun, in which Justices Brennan and

Marshall joined. Justice Blackmun quoted the phrase "manifest relationship to the employment in question," attributing it both to Teal and to Griggs. See Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 1004 (1988) (Blackmun, J., joined by Brennan and Marshall, JJ., concurring in part and concurring in the judgment). Elsewhere in the same opinion, these Justices quoted the same language yet again. See id. at 1001.

Justice Powell's dissent in Teal also quoted the phrase "manifest relationship to the employment in question." See 457 U.S. at 461 (quoting Dothard's quotation of Griggs).

- Also in 1982, Justice Rehnquist mentioned in an opinion for the Court that Griggs had held that the employer must show "a manifest relationship to the employment in question." His opinion was joined by Chief Justice Burger (the author of Griggs) and by Justices White, Blackmun, Powell, and O'Connor. General Building Contractors Ass'n v. Pennsylvania, 458 U.S. 375, 383 n. 8.

- In 1988, Justice O'Connor quoted the same language in an opinion joined by Chief Justice Rehnquist and by Justices White and Scalia. Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 997. As noted above, Justice Blackmun's concurring opinion, in which Justices Brennan and Marshall joined, used the same quotation no less than three times. Id. at 1001, 1004, 1005; see also id. at 1006.

- Finally, in the discussion of business necessity in Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 659 (1989), the Court cited the page on which the phrase "manifest relationship to the employment in question" appears in Watson, Beazer, and Griggs. Even the dissenting opinion (Stevens, J., joined by Brennan, Marshall, and Blackmun, JJ.) quotes this same language at least three times. Id. at 666, 668 n. 14.

In sum, the phrase "manifest relationship to the employment in question" correctly states the legal standard to which the Supreme Court has unwaveringly held since Griggs was first decided. Apart from the citations in Teal and McDonnell Douglas, which for the reasons discussed above do not undermine my conclusion, the phrase you propose to treat as the holding in Griggs has never even been cited by the Court.

In response to the argument in your June 20 letter, I must say that it is not surprising that the opinion in Griggs would contain numerous phrases using the words "job performance" or the

like. The facts of that particular case, and the arguments generated by those facts, naturally led the Court to focus on the question of whether the employment practices at issue predicted job performance.

It is equally unsurprising, however, that the Court has never thought or said that every disparate impact case should be shoehorned into a narrow analytical framework dictated by the particular facts at issue in Griggs. That is why the Court has always relied on the more general language of Griggs -- "manifest relationship to the employment in question" -- when stating the legal standard established by Griggs.

To take but one example, this language reflects the fact that the Griggs Court expressly left open the question "whether testing requirements that take into account capability for the next succeeding position or related future promotion might be utilized upon a showing that such long-range requirements fulfill a genuine business need." Griggs, 401 U.S. at 432 (emphasis added). The Court later held unambiguously, in a manner that would have been difficult or impossible under the definition of business necessity that you propose, that the business necessity standard is satisfied if an employer's "legitimate employment goals...are significantly served by -- even if they do not require -- [a challenged practice]." Beazer, 440 U.S. at 587, n.31 (Stevens, J., joined by Burger, C.J., and by Stewart, Blackmun, and Rehnquist, JJ.) (emphasis added). This understanding of business necessity has been completely noncontroversial on the Court. Indeed, even the dissenting opinion in Wards Cove firmly stated: "The opinion in Griggs made it clear that a neutral practice that operates to exclude minorities is nevertheless lawful if it serves a valid business purpose." Wards Cove, 490 U.S. at 665 (Stevens, J., joined by Brennan, Marshall, and Blackmun, JJ., dissenting) (emphasis added).

Neither does it seem sensible to create a legal rule under which any employment practice not related to job performance could give rise to a finding of liability under Title VII. We know that there are legitimate employment criteria that would not meet this standard. "No smoking" rules provide one kind of example. A rule against hiring those with criminal convictions to work on a police force offers another example. An employer's decision to reject all applicants who lie on their employment applications is yet another example.

For over a year, Americans have been told again and again that the goal of this legislative initiative is to "restore Griggs." But we have never been told why the language from Griggs that the Supreme Court has been using for 20 years to define "business necessity" fails to codify Griggs. Nor have we been told why this language, or the language from Justice

Stevens' 1979 Beazer opinion, is "unacceptable" as an appropriate legal standard.

In your op-ed in the New York Times yesterday you said "[i]f ever the devil was in the details he has been present..." in this issue. I could not agree more. This is not a political issue, or one in which new language can be lightly substituted for well understood precedent. As the President's chief legal advisor, I have insisted on a reasoned and substantive review of every proposal offered to deal with these matters. Before this Administration and the Congress accept the departure from precedent and from the stated objective of this legislation which your proposal incorporates, I think it is only prudent that we have a clear understanding as to why the definition of "business necessity" consistently used by the Supreme Court for many years, and without any objection from any member of the Court, is suddenly unacceptable as a matter of policy.

Additionally, I must note that any agreement on an acceptable definition of "business necessity" would be inseparable from agreement on the related issues raised by efforts to codify disparate impact analysis and on the other matters addressed in these bills. As you know from the conversations that your staff had with Administration attorneys, S. 1208 -- like H.R. 1 -- suffers in our view from serious shortcomings in several respects.

I trust that we can continue to discuss these issues with a view to achieving a constructive outcome.

Sincerely,

Dick Thornburgh
Attorney General

UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C. DANFORTH
Missouri

June 20, 1991

Honorable John Sununu
Chief of Staff to the President
The White House
Washington, D. C. 20500

Dear John:

Yesterday, you said that everyone agrees that the objective of civil rights legislation should be to return to the Supreme Court's decision in Griggs v. Duke Power Co., and that the definition of "business necessity" should be lifted verbatim from that decision. I think that your suggestion is very important, and that it offers the possibility of a real breakthrough in resolving this problem.

The issue dealt with in Griggs is explained by Chief Justice Burger in the first sentence of the Court's opinion:

> We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (401 U.S. at 425-426, emphasis supplied)

The Court then proceeds to analyze the employment standards before it. With respect to two tests administered to employees, the Court finds that:

> Neither was directed or intended to measure the ability to learn to perform a particular job or category of jobs. (401 U.S. at 428)

The Court then analyzes Title VII as follows:

> The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.
>
> On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.
>
> The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used. (401 U.S. at 431-432, emphasis supplied)

Further interpreting Title VII, the Court quotes the following EEOC guidelines as "expressing the will of Congress:"

> The Commission accordingly interprets "professionally developed ability test" to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job or class of jobs. (401 U.S. 433 n. 9, emphasis supplied)

Finally, at the end of the opinion, the Court summarizes its holding.

> What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the

better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract. (401 U.S. at 436, emphasis supplied)

John, as you can see, a fair reading of Griggs is not a matter of lifting one isolated sentence out of context. From the beginning of the opinion to the end, Griggs is about job performance. Therefore, it is clear to me that the Court best defines business necessity at 401 U.S. 431. Using Griggs language verbatim, the legislation could provide that:

The term "required by business necessity" means--shown to be related to job performance.

Let me know what you think.

Sincerely,

cc: Senator Robert Dole

UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C. DANFORTH
Missouri

June 19, 1991

Honorable John Sununu
Chief of Staff to the President
The White House
Washington, D. C. 20500

Dear John:

This afternoon you asked me to provide you with verbatim quotes from the Griggs decision, which define "business necessity."

The seven instances in which the Griggs decision defines business necessity are listed below:

The practices must:

A) "be significantly related to successful job performance", 401 U.S. 424, 426.

B) "be shown to be related to job performance", 401 U.S. 424, 431.

C) "bear a demonstrable relationship to successful performance of the jobs for which it was used." 401 U.S. 424, 431.

D) "[not be] unrelated to measuring job capability." 401 U.S. 424, 432.

E) "have a manifest relationship to the employment in question." 401 U.S. 424, 432.

F) "measure the applicant's ability to perform a particular job or class of jobs." 401 U.S. 424, 433 n.9.

G) "[be] demonstrably a reasonable measure of job performance." 401 U.S. 424, 436.

Our problem has been that definitions A, B, C, D, F, and G are acceptable to the civil rights

community, and only definition E is acceptable to the White House legal counsel. This is why we have tried to satisfy both points of view with a bifurcated definition.

If the White House could accept definitions A, B, C, D, F or G, I am sure that we could pass a bill in short order. I do not believe that it would be possible to convince supporters of the legislation to accept only definition E as being the heart of the Griggs decision.

We believe that the holding in Griggs with respect to business necessity is best expressed in the following passage:

"The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." 401 U.S. 424, 431.

Please let me know what you think.

Sincerely,

DISCRIMINATION ENDGAME

By Paul Gewirtz

With the apparent collapse of Senator John Danforth's effort to forge a consensus on a new civil rights act, and President Bush's nomination of Clarence Thomas to the Supreme Court, a showdown national debate on civil rights is at hand. The time may have come when the deep policy disagreements underlying the debate over the bill will finally be discussed more openly and candidly. Of course, there's already been an enormous wrangle over the civil rights act—perhaps the most sustained consideration of racial issues by national political officials in at least twenty years. Yet the discussion has been thin. The fault isn't with the issues (which the media have repeatedly mischaracterized as "technical"). Deeply important matters have been at stake. But they've been obscured by polemics and platitudes, evaded by political fear, at times pushed aside by legal details.

What's at stake are different ideas of what discrimination means and what equality requires, different views about affirmative action preferences (not simply "quotas"), and different stances toward meritocratic criteria. A great deal turns on the path our society takes. Yet it's been impossible for most people to understand the debate precisely because the fundamental policy disagreements have been obscured. Here, then, is an effort to make these divisions clear.

The centerpiece of the proposed legislation is its codification of what lawyers call a "disparate impact" conception of discrimination. This is profoundly different from what the word "discrimination" means to many people. Discrimination commonly means someone's prejudiced *intent* to treat members of certain groups worse than others. A "disparate impact" standard deems an action discriminatory because it has a more adverse *effect* on certain groups than others, whether or not discriminatory intent produced it.

The view that disparate impact is presumptively discrimination doesn't pervade the law. But in a series of cases beginning with *Griggs v. Duke Power Company* in 1971, the Supreme Court held that an employment practice having a disparate impact on racial minorities or women is unlawful under Title VII of the 1964 Civil

PAUL GEWIRTZ is professor of law at Yale Law School.

Rights Act unless the employer can demonstrate that the practice is significantly related to effective job performance or to some other business need. *Griggs* has had tremendous practical consequences. Through litigation, fear of litigation, or acceptance of its basic principle, it deserves more credit for integrating America's workplaces than any other law case.

But in 1989, in a case called *Wards Cove* v. *Antonio*, the Supreme Court gutted *Griggs*—mainly by changing the law to require the employee to show that employment practices resulting in disparate impact do not have an adequate business justification, rather than requiring the employer to show they do. *Wards Cove*, along with several other restrictive Court decisions, sparked the recent congressional activity.

It is important to understand that, until now, Congress has never explicitly embraced or spelled out the disparate impact notion of discrimination. The *Griggs* impact standard that developed in the pre-*Wards Cove* era was a creation of the Supreme Court and federal agencies, which gave very broad interpretations to utterly vague wording of the 1964 Civil Rights Act. This sort of dynamic interpretation of statutes by courts and agencies, though not unusual or illegitimate, has thus far allowed Congress to avoid responsibility for a highly controversial civil rights policy that other government officials developed in Congress's name.

Those of us who support the disparate impact approach give this basic justification: where an employment practice has a disparate impact on minorities or women, the practical effect is just as harmful whether or not it is caused by intentional discrimination. Moreover, practices having disparate effects build on historic wrongs, exacerbating these groups' existing disadvantages and, in fact, often measuring attributes that they lack precisely *because of* past discrimination. Thus, before allowing an employment practice to create exclusionary patterns, the employer should at least have a substantial reason for engaging in the practice. Employment tests, for example, should be good tests, which predict real job performance, not free-standing quizzes that say nothing about how well people will actually do the job.

Critics of the disparate impact approach are disturbed by the idea that numerical disparities are presumptively discriminatory. After all, there can be legitimate explanations for numerical hiring disparities by race or sex. Cultural factors may lead people from different groups to choose different lines of work to different degrees. Or disparate effects may be caused by reasonable business decisions (say, closing a plant) and by hiring standards that are meritocratic or otherwise sensible. Given generations of harmful discrimination, it should not surprise us if members of historically victimized groups, on the average, possess somewhat fewer skills and achievements that society properly values and businesses understandably prefer. If the disparate impact is caused by the "pool," critics say, it is misguided to attack the hiring standards. They are concerned that the fear of legal liability will lead employers to avoid creating disparities by abandoning reasonable employment practices, or using preferences or quotas for minorities and women.

Critics also have a broader cultural worry if disparate impact ideas are legitimated. The very focus on the group effects of employment practices can foster thinking about equality in terms of group rather than individual rights (Thomas's basic concern). And disparate impact theory's focus on disproportionate effects can contribute to a belief that proportional representation of minorities is the real measure of equality.

In truth, there often *is* a trade-off between preventing disparate harms to historically disadvantaged groups and allowing employers the leeway to pursue legitimate business objectives. The basic policy choice is how that trade-off should be made. *Griggs*, in my judgment, charts a wise middle course. It doesn't condemn all disparate impacts or require proportional hiring of the races; it doesn't mandate "equality of results." Not all disparities even make out a prima facie case of discrimination, only disparities between properly defined comparison pools. But if there is a disparate impact, *Griggs* requires the employer to show that the employment practice is "significantly related to successful job performance" or (in some cases) other "business needs." Weak justifications for disparate impacts won't do, even if employers are pursuing legitimate business goals.

What underlie the divisions in the current debate are their fundamentally different approaches to the basic policy trade-off—differences that have been obscured by the "technical" terrain on which the battle is being waged. Civil rights advocates, focused on aiding members of disadvantaged groups, strongly embrace disparate impact ideas. The original version of the bill, introduced with a couple of hundred congressional co-sponsors, would have required employers to show that a challenged employment practice is "essential" to effective job performance. This would have gone beyond *Griggs* and other pre-*Wards Cove* cases, and made employment practices having a disparate impact enormously difficult for employers to justify. While now supporting a more moderate standard, civil rights activists continue to push for a relatively broad version of the disparate impact test—either by simplifying the plaintiff's burden of showing statistical disparities or by toughening the employer's burden of justification (for example, barring any business justification unrelated to job performance).

The Bush administration has sided with the longtime critics of the impact test. Its initial testimony before Congress on the proposed legislation argued that *Wards Cove* shouldn't be overturned; and though it has publicly moved off that position, its approach to the so-called "technical" issues in the bill reflects an underlying dislike of the impact approach. Most important, although the administration now seems to agree that employers should have the burden of justifying employ-

ment disparities, it has pressed for statutory language making it quite easy for employers to show an adequate justification. Thus it has pushed to allow employers to use hiring practices that don't actually measure ability to perform the job at all (but instead serve vague "legitimate business objectives"), or that have only the loosest connection to job performance.

How the bill ultimately resolves these sorts of "technical" matters will make the difference between having a vibrant impact test or a weak one that adds very little to the traditional prohibition on intentional discrimination. And though the administration and Congress have at times seemed to be converging on a compromise position, the deeply felt underlying policy differences may make certain final concessions seem too much a compromise of principle, even if the actual differences become relatively small.

The "quota" question, which has become central to the current debate, is related to the disparate impact test, but is really broader than that. The basic issue is this: Is it acceptable for employers to use racial preferences to hire and promote minorities ahead of whites who are equally or more qualified under non-racial criteria? The issue isn't simply the acceptability of "quotas" (if that means fixed racial percentages), but the acceptability of racial preferences more broadly; not simply whether there's a relationship between the disparate impact tests and racial preferences, but the place of preferences under Title VII more generally; not simply the appropriateness of race-conscious recruiting to enlarge the minority applicant pool (which few oppose), but preferential treatment in actual hiring and promotion decisions.

The issue has been badly distorted in the debate so far—on all sides. To begin with, too few of the bill's supporters have been candid. Honest observers, as well as common sense, will tell you that to some extent a disparate impact test does encourage racial preferences. Yet the bill's supporters generally say it will not do so.

To be sure, special preferences aren't "compelled" by a disparate impact test (some administration spokesmen have suggested they are). But the point of the impact test is to encourage employers to focus on results, and to re-examine hiring practices that cause disparate results—either justifying them or avoiding them with changed hiring practices. In theory employers always meet their burden of justifying disparities, and therefore avoid legal liability, if they use truly meritocratic standards; but litigation is always risky, and losing a discrimination lawsuit can be costly. Thus, the impact test inevitably gives some practical incentive to avoid legal risks by avoiding disparate results, and preferences are an easy way to do that. (The higher the statute puts employer's burden of justification, the greater the practical incentive.) "Quotas" in the sense of rigidly fixed racial percentages are unnecessary; an employer avoids legal risks by being very roughly in the range of proportional hiring and using flexible preferences to achieve that.

In fact, civil rights advocates have long encouraged this form of affirmative action. And in several controversial cases (most famously, *Weber* v. *Steelworkers* and *Johnson* v. *Transportation Authority*), the Supreme Court has upheld their use. Indeed, several justices argued that the preferences are permissible precisely *because* their use would cut the employer's risk of potentially violating Title VII's disparate impact test.

If the bill's supporters were honest—and politically brave—they'd face up to this and defend at least some affirmative action racial preferences. A defense exists, even where the racial preference means that some less qualified minorities are hired ahead of more qualified whites. For me, properly structured affirmative action programs are a justifiable means of overcoming the continuing effects of our country's long history of discrimination. Others defend them as promoting diversity, overcoming inadequacies in existing standards, developing customer or community relations, enhancing long-term recruiting, or counteracting ongoing discrimination. Furthermore, the impact of minority preferences on whites overall is modest, since in virtually no valued area of American life, even with preferences, goals, and "quotas," do blacks end up with a share of jobs (or admissions) that is greater than their proportion in the population; and in most areas they end up with far less.

Those who make the case for racial preferences, of course, must engage the serious arguments against them: that they are unfair to those individuals passed over, stigmatize and stereotype the groups purportedly benefited, compromise decent meritocratic values, stimulate racial resentments that would otherwise not exist, entrench racial ways of thinking about oneself and others, and will lead to a permanently quotified society. Politically, defenders of preferences also have to address the fact that many whites today do not believe they are responsible for our racial predicament or that it is their responsibility to address it. On balance, though, a case for various types of racial preferences can be made. But liberals and moderates in Congress have been afraid to take the issue on and defend what they support.

Their evasion is certainly no more blameworthy than the president's distortion of the quota issue. Contrary to what many of his critics have said, the president's central wrong is not that he has drawn any link between the disparate impact approach and racial preferences; as I've indicated, there is some practical link. Moreover, the president is fully entitled to argue that racial preferences are morally wrong and bad for the country. A lot of decent people believe that.

The president's failing is the simplistic, divisive way he has moved onto America's most sensitive ground. Yes, civil rights advocates have sometimes been simplistic and divisive too; but the president is the country's leader. He has failed to emphasize common ground in an area, above others, where the country needs to be

reminded of it; and he has not helped the country see that the divisions over the racial preference issue concern a hard moral and policy question that can produce honest disagreements among people of goodwill. He has wrongly suggested that the congressional bill requires quotas. He has ignored that there's some incentive to quotas in his own proposed bill, and that his administration accepts racial preferences in some contexts. And by exaggerating the quota issue, he encourages racial resentments that are always close to the surface in American life.

Politically stung by the president's charge that the bill is a quota bill, House Democrats (with a few Republicans) recently tried to strike back, with a tricky amendment to the bill that would prohibit quotas—or what they defined as quotas. What the House Democrats did was move from a defensive position of denying that the disparate impact test would encourage quotas to an offensive position of banning them. This allowed the Democrats to answer the president's slogan ("it's a quota bill") with their own slogan ("we've abolished quotas"). Both slogans obscure the fact that the real issue isn't just quotas, but the broad question of affirmative action racial preferences. The House Democrats don't want to abolish all such preferences. Thus, their political strategy required them to define what's barred and not barred, opening up for resolution all the contentious issues about racial preferences more generally—issues they've long avoided like the plague.

Two things stand out in the House's quota provision. First, as the Republicans have correctly said, very little is prohibited. Quota is defined very narrowly as a *fixed* number or percentage. But very few hiring programs that give racial preferences use utterly inflexible numbers. The second and more significant feature—and something that virtually no one seems to have noticed—is that for the first time in the history of federal civil rights legislation, Congress *endorses* the use of racial preferences for minorities in employment. The bill explicitly "approve[s] the lawfulness of voluntary or court ordered affirmative action that is . . . consistent with the decisions of the Supreme Court of the United States in employment discrimination cases . . . as in effect on the date of the enactment of this Act."

These approved decisions include the controversial case of *Weber* v. *Steelworkers*. *Weber* upheld "voluntary" racial preferences for minorities as consistent with Title VII. (Other approved decisions involved "court-ordered" hiring and promotion goals as a remedy for proven discrimination.) The racial preference in *Weber* was not a quota as the House has now defined that word, since the numbers weren't absolutely fixed. But of course most people who object to "quotas" think that *Weber* (or the follow-on *Johnson* case involving women) is precisely the problem, for it supports racial preferences that override other qualifications or seniority provisions, and endorses using racial numbers as a benchmark in hiring. Indeed, the *Weber* decision has long been the target of conservatives. But the House bill approves *Weber* and related decisions, and presumably immunizes *Weber* from modification by the new conservative majority on the Supreme Court (which has already greatly tightened standards for racial preferences elsewhere).

Although President Bush hasn't focused on it, this provision, more than any other in the many versions of the civil rights bill, best supports his "quota bill" charge, since it actually endorses affirmative action racial preferences. The provision reminds us, though, that established Supreme Court decisions on affirmative action do authorize racial preferences in a broad range of circumstances. It also should remind us that racial preferences are now a relatively entrenched (if controversial) part of American life from universities to the corporate workplace, supported by powerful bureaucracies and constituencies in many of these institutions. To the extent that George Bush thinks most racial preferences should be illegal, he wants to roll back Supreme Court case law on affirmative action and a lot of established practices. Thus far at least, he hasn't been prepared to say that's his objective.

It is, however, the open objective of Senator Jesse Helms, and may yet become the president's. Largely unnoticed outside Washington, Helms provoked great agitation in the Senate four weeks ago by introducing an amendment to the crime bill that would ban all race- and sex-based "preferential treatment" in employment. The amendment was tabled on June 27, but it will surely resurface when the Senate takes up the civil rights bill. Helms has adapted, with a vengeance, the provision in the House bill prohibiting "quotas." His avowed objective is to force those senators who say they oppose "quotas" to take a stand on prohibiting the broader practice of racial preferences. Helms will be shrewd enough to eliminate a politically easy reason to oppose his amendment by accepting a modification already offered by Senator Robert Dole that would permit special *recruitment* of minorities and women for an employer's applicant pool—a broadly acceptable form of affirmative action. This will force a Senate showdown on preferences in actual hiring and promotion: the hot spot.

One of the most extraordinary things about the last twenty years of civil rights law is that Congress has had virtually nothing to do with large parts of it. The *Griggs* disparate impact test and virtually the entire law of affirmative action were forged by federal judges and administrative agencies, not Congress. And though Congress came close to assuming responsibility for these policies when it amended Title VII in 1972, it backed off then and has been silently acquiescent ever since.

Something seems to have gone wrong in a democracy when Congress does not assume responsibility for policies that so fundamentally changed the country. Yes, some of the recent debate suggests reasons for legislative abdication through statutory ambiguity or silence. A head-on political debate about racial matters in our society might lead to rejection of wise policies or to even

deeper racial divisions than currently plague us There is an argument that the country was well served by what has occurred these past twenty years—with relatively independent judges and officials evolving a disparate impact theory of discrimination and a relatively permissive law of affirmative action, without the direct involvement of congressional politics. A premise of modern judicial activism, after all, is that we cannot expect majoritarian political institutions to resolve fairly issues involving the treatment of "discrete and insular minorities," such as racial minorities, because on such matters prejudice and political distortion are all too likely in majoritarian, white-controlled institutions.

But as a practical matter, civil rights advocates can no longer avoid the political arena. The Supreme Court is no longer an institution that minorities look to as a distinctively safe harbor from majoritarian politics. The entire current crisis over civil rights was caused by a series of unfriendly civil rightss decisions by the Court. In fact, one of the obstacles to achieving a compromise civil rights bill in Congress is that civil rights advocates now so distrust the Supreme Court that they are hostile to using consensus-building fudgewords in the statute, fearful that the Supreme Court will resolve any ambiguities against them.

But there is a deeper reason for thinking that the political arena, not the courts or agencies, is where the powerfully contested civil rights policies now belong These policies continue to reshape our society, and continue to divide it. Subject to constitutional constraints, the ultimate responsibility for making major policy in our democracy is properly with Congress Furthermore, no large social policy can or should long survive if the broader public does not come to accept it Indeed, one reason the American public may continue to reject the appropriateness of racial preferences—even though courts and agencies have approved and required them—is that Congress has never openly affirmed these policies and accepted responsibility for generating public understanding of them.

To be candid and wise about such matters—to deliberate about them publicly in a way that does not further divide our society—will be enormously difficult But it is time for us to try. ●

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WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HUC10

R 8/20
3:30p

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Richard K. Day

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: iSCrimination Complaint Issue

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
WofC	ORIGINATOR	DJ 91/08/16		C	92/01/09 CS
Cwat 10	Referral Note: A	91/08/17		DJ C	92/01/09
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CS

ACTION CODES.
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE.
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoi CS

Comments: Overtaken by events per N. Lewis 1-7-92

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
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5/81

August 11, 1991

Richard E. Day
P.O. Box 1212
Morehead City, N.C. 28557

Mr. C. Boyden Gray
Counsel to The President
Executive Office Of The President
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500

Dear Mr. Gray:

Congress is struggling again with a "Civil Rights Bill" which will lead to quotas in private sector labor practices. For three years I have been struggling against an established quota system within the federal government. This system has denied not only my civil rights, but also denied me due process and equal application of the law. The two examples below show the extent that a policy of deliberate reverse discrimination and affirmative action quotas already exists within civil service.

Example 1

In June 1988, I applied for a promotion. A female working in my office also applied for the same Project Engineer position. As part of the selection process, the selecting official received a memo from the Commanding Officer (a military colonel) stating that the selecting official was to ensure that equal employment opportunity policies and objectives were followed. Attached to the memo was a note from the activity Equal Employment Opportunity (EEO) Office stating, "There is one white female on cert [selecting certificate]. This grade grouping level, GS-09-12, is under representative for white females by 17 according to the facility Ultimate Goals Report [quotas]". The female was promoted.

Question: Was the female equally or better qualified? I can provide extensive evidence proving she was not. But let me provide only this for now. The female's supervisor (who was also one of the selecting officials) stated before the selection that the female, "was not experienced enough for the management position", and that he was, "dissatisfied with her work". He stated my work, "is outstanding and [I] have no competition for the position." He also stated the female (having once been an EEO representative herself) threatened him about her "EEO rights" to the position.

Example 2

In November 1990, I applied for another promotion in my office. Among the candidates for this Program Manager position was a Black male. As part of the selection process, the chairman of the selection panel received a memo from the Commanding Officer stating that the chairman was, "to ensure that my [Commanding Officer] equal employment opportunity policies and objectives are followed". The Commanding Officer in his memo also directed the panel chairman to read to the other selection panel members all parts of the memo and specific additional information supplied with the memo.

This information supplied regarding the facility EEO Numerical Objectives [quotas] stated, "the category to be filled is under represented for Black males". It stated, "there are no minorities above the GS-11 level". In addition to the information on affirmative action quotas, the memo also directed that the chairman read to the selection panel members the following: "He [selection panel chairman] was directed to report for necessary [disciplinary] action any violations of the Commanding Officer's EEO policy and objectives". The first and most important element of the performance appraisal of all supervisors (selecting officials) and on which their job security rests is "compliance with EEO objectives". The Black male was promoted.

Question: Was the Black male equally or better qualified? I can provide extensive evidence proving he was not. But again, I'll provide only this for now. The selection panel didn't think the Black was the best qualified person, because in spite of the Commanding Officer's pressure and quota requirements, they recommended that I be promoted to the position. Still, the selection official "after consulting with the EEO office" disregarded the selection panel recommendation and promoted the Black to the position instead.

These two reverse discrimination examples affected one person in a short period of time. In federal service, similar instances are more often the rule rather than the exception. This practice is driving quality people to quit civil service or withdraw commitment to their jobs. No government agency today can afford either. Our taxpayers deserve much more.

A recent article in New Dimensions Magazine quoted a Gallup Poll which found that Americans reject affirmative action 8-1. The May 27 issue of Time Magazine quoted a statistic in which 77 percent of the whites polled felt affirmative action programs discriminate against whites. You and The President have taken a stand against the injustice of reverse discrimination; an injustice that hurts us all, black and white, male and female.

I am surely preaching to the choir, but the same New Dimension magazine article stated, "Experience has shown that all reverse discrimination accomplishes is to further heat the fires of racism and hatred". The Times magazine article referenced earlier stated that racial tensions are rising. It further stated, "Black conservatives say their people have become addicted to racial preferences instead of hard work" and, "Blacks now stand to lose more from affirmative action than they gain." Many years ago you had already fully understood the "destructive force of quotas".

Something has to be done; some changes are needed. Affirmative action quotas and reverse discrimination within civil service are just as rehenisible as they are in the private sector. There is a great deal at stake. In my profession, where we are responsible for investigating the causes and prevention of military aircraft crashes, there is no room for anything other than the best qualified engineers. This is <u>not</u> the case. People's lives and mult-million dollar aircraft are at risk.

So why am I writing you? I need a little help. Maybe in return, my reverse discrimination situation can be used as examples to help you in your fight for equal opportunity and a better life for all Americans. By helping me, you will be helping us all.

How can you help me? The enclosure explains in detail, but essentially I need to identify those attorneys and organizations who are knowledgeable and willing to help me fight my legal battle against reverse discrimination. This legal battle could add substance to our stand against quotas. I don't want any special treatment or consideration. All I want is an equal chance which I have been denied. All I want is my day in court to let the judicial system work fairly. The investigation and handling of my case by government officials was an obstruction of justice which impeded my rights to a fair and impartial consideration.

Mr. Gray, please review enclosure (1). Give me an opportunity to talk with you or some of your staff on this matter. Time is <u>very critical</u> as it relates to my situation. Please contact me at: work (919) 466-8055 or home (919) 726-7220.

Very respectfully,

Richard E Day

Richard E. Day

Background

I filed a "reverse" discrimination complaint against the Dept. of the Navy because affirmative action quotas were used as the basis for promotion. Attachment (a) provides some facts showing how strong my case is.

Investigation by internal government officials found no discrimination. The investigation was an obstruction of justice with the intent of hiding reverse discrimination. Numerous violations of policy/regulations impeded my rights to prompt, fair, and impartial consideration. Acts of reprisal were taken against me by management officials for filling my complaint. The government decision involved erroneous interpretation of and misapplication of law and regulations. The investigation was not thorough and the resultant report stated erroneous facts and analysis. Attachment (b) provides details.

I appealed the decision, but my request for appeal was <u>illegally</u> not accepted for consideration.

I requested the case be reopened. I received notification of denial of that request on November 26, 1990. This denial stipulated I had 30 days to file a civil action. It also stated that if I could not find or afford an attorney, the court would appoint one.

Since I could not afford an attorney, I relied on district court officials who provided me a standard form on which to file my complaint. They also told me my case would be properly and timely filed if I mailed the form by certified mail within the 30 day time limit. On Dec. 24, 1990, within the 30 day time limit, I mailed my complaint <u>along</u> with a request to proceed in forma pauperis.

District court denied my request to file forma pauperis.

The federal defendants filed for a dismissal of the case because the complaint was not filed in district court until Dec. 27 '90, three days after I had mailed it and one day after what they considered to be the deadline. There was a federal holiday in between the time I mailed the action and when it was filed by the court.

I borrowed money and obtained a local attorney who filed a counter motion in federal district court on my behalf to accept the case. Attachment (c) is that motion.

Attachment (d) is the courts final decision which rejected and dismissed my civil action.

I have asked my attorney to appeal to the 4th District Appeals Court.

I have written more than a hundred letters seeking legal and financial assistance. Attachment (d) identifies organizations contacted. There are apparently no organizations willing to aid individuals in the unprotected classes involved in reverse discrimination cases. There are few North Carolina attorneys with indepth knowledge or willingliness to represent plantiffs and fight reverse discrimination complaints.

Some firms declined stating they represent only employers. Many declined because it was not in their best interest and feared hostility from certain groups for litigating reverse discrimination suits. A few were honest enough to admit that the prevailing mindset of most attorneys runs counter to reverse discrimination and view equal opportunity as the special preserve of certain groups rather than rights shared equally by all.

How can you help in my fight against quotas and reverse discrimination?

Identify knowledgeable pro bona attorneys to represent me and fight my case.

Identify organizations or individuals who would provide financial assistance to help fight my case. It is discouraging that none of the the tax exempt organizations contacted represent all people.

Case law examples to overturn the district court ruling to dismiss my case. These can be provided to aid my attorney: Mr. David Voerman of New Bern, N.C. Telephone (919) 638-5611.

Time is very critical as my appeal will be heard shortly in Appeals Court in Richmond. Any help you can provide would be greatly appreciated and would help us all.

THE WHITE HOUSE

WASHINGTON

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____ Hardcopy pages are in poor condition (too light or too dark).

__√__ Remainder of case not scanned.

____ Oversize attachment not scanned.

____ Report not scanned.

____ Enclosure(s) not scanned.

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____ Incoming letters(s) not scanned.

____ Proposal not scanned.

____ Statement not scanned.

____ Duplicate letters attached - not scanned.

____ Only table of contents scanned.

____ No incoming letter attached.

____ Only tracking sheet scanned.

____ Photo(s) not scanned.

____ Bill not scanned.

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Comments:

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DISCRIMINATION COMPLAINT ISSUES

FACTS USED TO SUBSTANTIATE CLAIM OF DISCRIMINATION

1. POSITION ANNOUNCEMENT STATES THAT CANDIDATES WILL BE EVALUATED BASED ON EXPERIENCE, EDUCATION, TRAINING, AWARDS, PERFORMANCE RATINGS, AND WOULD BE QUALIFIED BY THREE KSA'S (KNOWLEDGE, SKILLS, AND ABILITIES). COMPARED TO MYSELF, THE SELECTEE HAD MUCH LESS TECHNICAL EXPERIENCE, DID NOT PERFORM AS WELL ACADEMICALLY IN COLLEGE, HAD LESS MANAGEMENT TRAINING AND EXPERIENCE, HAD NO AWARDS, HAD LOWER PERFORMANCE APPRAISALS, AND HAD NO FIRST HAND KNOWLEDGE OF ONE OF THE KSA'S.

a. I HAD EIGHTEEN YEARS OF AIRCRAFT MAINTENANCE AND ENGINEERING EXPERIENCE (TEN YEARS WITHIN THE PSD, NINE YEARS OF THAT WITH THE AV-8). SELECTEE HAD LESS THAN ONE FOURTH THIS EXPERIENCE.

b. I HAD THIRTY MONTHS EXPERIENCE AS THE ACTING AV-8B GS-855-12 LEAD ENGINEER (THE POSITION FOR WHICH I WAS NOT SELECTED). SELECTEE HAD SIX MONTHS EXPERIENCE.

c. MY PROFESSIONAL PERFORMANCE REFLECTS ANNUAL OUTSTANDING PERFORMANCE APPRAISALS (TWO WHILE WORKING THE AV-8, ONE AS THE AV-8 LEAD ENGINEER), COMMANDING OFFICER LETTER OF APPRECIATION, TWO PERSONNEL CERTIFICATES OF COMMENDATION, SUSTAINED SUPERIOR PERFORMANCE AWARD, COST REDUCTION AWARD. SELECTEE HAD NO OUTSTANDING PERFORMANCE APPRAISALS AND NO AWARDS.

d. SELECTEE HAD FEWER ENGINEERING COURSES IN THE ELECTRICAL ENGINEERING DISCIPLINE. SELECTEE'S GRADE POINT AVERAGE IN HER DISCIPLINE WAS BARELY ADEQUATE TO GRADUATE FROM COLLEGE.

2. MUCH OF THE WORKED PERFORMED BY SELECTEE REFLECTS (BY ACTUAL OFFICE PERSONNEL MANAGEMENT GUIDELINES AND NADEP POSITION DESCRIPTIONS) WORK THAT IS ONLY ACCEPTABLE AT THE GS-9 GRADE LEVEL; IT DOES NOT REFLECT WORK ACCEPTABLE FOR THE GS-12 GRADE LEVEL.

3. ONE OF THE SELECTING OFFICIALS STATED IN FEB 88, THAT THE SELECTEE WAS NOT EXPERIENCED ENOUGH TO BE A LEAD ENGINEER AND THAT HE WAS DISSATISFIED WITH HER WORK. HE DISCUSSED WAYS I COULD STILL RUN THE PROGRAM EVEN WITH THE SELECTEE ACTING AS THE LEAD ENGINEER. THIS WAS JUST A FEW MONTHS BEFORE THE SELECTION WAS MADE. HE STATED TO THE EEO COUNSELOR THAT I WOULD HAVE BEEN SELECTED IN DECEMBER 87.

4. THERE ARE VERY FEW FEMALES IN THE PSD IN MANAGEMENT POSITIONS. A CLASS ACTION TYPE SUIT WAS BEING BROUGHT AGAINST THE FACILITY FOR UNDER REPRESENTATION OF FEMALES.

5. POSITION DESCRIPTIONS OF SELECTING OFFICIALS IDENTIFY RESPONSIBILITY FOR CARRYING OUT AFFIRMATIVE ACTION PLANS. THEIR WITHIN-GRADE SALARY INCREASES AND CAREER GROWTH ARE DEPENDENT UPON COMPLIANCE WITH THIS REQUIREMENT. IMMEDIATELY BEFORE THE SELECTION WAS MADE, THE EEO OFFICE PROVIDED THE SELECTING OFFICIAL WITH A MEMO ADVISING THAT THE FACILITY WAS SHORT BY 17 WHITE FEMALES ITS EEO NUMERICAL GOALS AND REMINDED HIM OF HIS AFFIRIMATIVE ACTION RESPONSIBILITIES AS A SUPERVISOR.

6. SELECTEE (ONCE AN EEO COUNSELOR OR REPRESENTATIVE HERSELF) ON AT LEAST TWO OCCASIONS APPROACHED ONE OF SELECTING OFFICIALS ABOUT HER "RIGHTS" TO THE POSITION. THERE WAS AN IMPLIED THREAT OF AN EEO SUIT IF SHE DID NOT GET THE POSITION.

7. PRIME SELECTING OFFICIAL WAS GOING TO ANOTHER BRANCH. AS THIS NEW BRANCH HAD NO MINORITIES OR FEMALES, HE WOULD LOSE AN OPPORTUNITY TO DEMONSTRATE COMPLIANCE WITH AFFIRMATIVE ACTION REQUIREMENTS (SEE #5 ABOVE). ALSO, HE WOULD NOT HAVE TO RESOLVE ANY TECHNICAL PROBLEMS RESULTING FROM A POSITION HE FILLED NOW BY AN UNQUALIFIED PERSON.

8. PRIME SELECTING OFFICIAL STATED HE HAD TO WAIT UNTIL SELECTEE BECAME ELIGIBLE FOR THE POSITION BEFORE HE COULD ANNOUNCE AND FILL THE POSITION (SHE WAS NOT QUALIFIED FOR THE POSITION BECAUSE SHE DID NOT MEET THE MINIMUM OPM REQUIREMENTS FOR TIME IN GRADE).

9. REGULATIONS REQUIRE THAT CANDIDATES FOR MERIT PROMOTIONS BE EVALUATED AGAINST PRETERMINED CRITERIA IDENTIFIED IN THE MERIT PROMOTION ANNOUNCEMENT. SELECTING OFFICIALS HAD TO DISREGARD THIS CRITERIA BECAUSE THE SELECTEE WOULD NOT HAVE QUALIFIED. SELECTING OFFICIALS STATED CRITERIA IDENTIFIED IN THE ANNOUNCEMENTE WERE NOT USED BECAUSE THEY WERE OUTDATED. THE SELECTING OFFICIAL HAD HOWEVER CERTIFIED BY SIGNATURE ONLY WEEKS EARLIER THAT THE CRITERIA IN THE ANNOUNCEMENT WERE CURRENT AND VALID. CIVILIAN PERSONNEL OFFICE STAFFING SPECIALISTS CERTIFIED THAT THE SELECTING CRITERIA WAS IN FACT CURRENT AND NOT OUTDATED.

10. AT THE TIME THE SELECTION WAS ANNOUNCED, PRIME SELECTING OFFICIAL COULD NOT TELL ME WHAT SELECTION CRITERIA HE HAD USED TO MAKE THE SELECTION. THIS WAS BECAUSE THE SELECTION WAS BASED ON PREJUDICE AND NO CRITERIA HAD BEEN USED. HIS PERSONAL SELECTING CRITERIA WERE GENERATED ONLY AFTER IT WAS KNOWN THAT THERE WOULD BE A DISCRIMINATION COMPLAINT. THE SELECTION CRITERIA FINALLY PRODUCED WERE NON-STANDARD, SELECTIVELY CHOSEN TO ATTEMPT TO SUPPORT THE PRE-SELECTION, AND WERE NOT OBJECTIVE AS EVIDENCED BY OBVIOUSLY BIASED AND SKEWED NUMERICAL VALUES GIVEN.

DISCRIMINATION COMPLAINT INVESTIGATION IRREGULARITIES

1. The exceptional and irregular circumstances involving the investigation of the complaint impeded my rights to prompt, fair, and impartial consideration. These irregularities were violations of regulations and law.

1.1 At the onset of the investigation, I was given misleading and incorrect information by NADEP Cherry Point EEO officials. An EEO official assigned to my case told me that if I obtained an attorney, ALL attorney fees would be my total obligation. It was not stated that I could REQUEST relief to help defer the cost of an attorney IF I won the suit. The EEO official stated if I accepted any other GS-12 position, the investigation would be automatically terminated. In hind sight, I believe the intended purpose of the NADEP internal investigation was more to discourage me from continuing with the suit than to determine the true facts and try for settlement at the lowest level.

1.2 The investigation conducted by the Discrimination Complaint Investigation Component (DCIC) of the Civilian Personnel Center in Norfolk, Va. was a blatant attempt at hiding reverse discrimination. The DCIC investigator was a minority, investigating a reverse discrimination complaint. I had initiated action to provide the DCIC investigator with much pertinent source data, in advance of his scheduled interviews. The purpose of this was to allow him to prepare and conduct a quality investigation. During the interview, it was apparent that the DCIC investigator had given no prior consideration to the provided evidence. During the interview, the DCIC investigator showed little interest in the case and asked few pertinent questions.

1.3 I questioned the DCIC investigator on who else he was going to interview besides the selecting officials. I had previously provided the names of approximately 30 people who had information which could substantiate my complaint. The NADEP EEO counselors report identified several people who had pertinent information but who wished confidentiality until the formal interviews. The investigator's response to my question was that he was interviewing NO ONE else. When I complained, the DCIC investigator told ME to obtain written and signed statements from these individuals and include their statements with my rebuttal. From the onset, it was apparent that the DCIC investigator had no intention in conducting a quality "reverse" discrimination complaint. The DCIC investigator made no attempt to investigate or substantiate my evidence while he was on site at the NADEP facility.

1.4 The Administrative Judge from the Charlotte EEOC office who was to conduct the scheduled hearing disapproved (would not allow) three fourths of my proposed witnesses. The testimony of these witnesses would have clearly proven that the agency's stated reasons for my non-selection

DISCRIMINATION COMPLAINT ISSUES

FACTS USED TO SUBSTANTIATE CLAIM OF DISCRIMINATION

1. POSITION ANNOUNCEMENT STATES THAT CANDIDATES WILL BE EVALUATED BASED ON EXPERIENCE, EDUCATION, TRAINING, AWARDS, PERFORMANCE RATINGS, AND WOULD BE QUALIFIED BY THREE KSA'S (KNOWLEDGE, SKILLS, AND ABILITIES). COMPARED TO MYSELF, THE SELECTEE HAD MUCH LESS TECHNICAL EXPERIENCE, DID NOT PERFORM AS WELL ACADEMICALLY IN COLLEGE, HAD LESS MANAGEMENT TRAINING AND EXPERIENCE, HAD NO AWARDS, HAD LOWER PERFORMANCE APPRAISALS, AND HAD NO FIRST HAND KNOWLEDGE OF ONE OF THE KSA'S.

a. I HAD EIGHTEEN YEARS OF AIRCRAFT MAINTENANCE AND ENGINEERING EXPERIENCE (TEN YEARS WITHIN THE PSD, NINE YEARS OF THAT WITH THE AV-8). SELECTEE HAD LESS THAN ONE FOURTH THIS EXPERIENCE.

b. I HAD THIRTY MONTHS EXPERIENCE AS THE ACTING AV-8B GS-855-12 LEAD ENGINEER (THE POSITION FOR WHICH I WAS NOT SELECTED). SELECTEE HAD SIX MONTHS EXPERIENCE.

c. MY PROFESSIONAL PERFORMANCE REFLECTS ANNUAL OUTSTANDING PERFORMANCE APPRAISALS (TWO WHILE WORKING THE AV-8, ONE AS THE AV-8 LEAD ENGINEER), COMMANDING OFFICER LETTER OF APPRECIATION, TWO PERSONNEL CERTIFICATES OF COMMENDATION, SUSTAINED SUPERIOR PERFORMANCE AWARD, COST REDUCTION AWARD. SELECTEE HAD NO OUTSTANDING PERFORMANCE APPRAISALS AND NO AWARDS.

d. SELECTEE HAD FEWER ENGINEERING COURSES IN THE ELECTRICAL ENGINEERING DISCIPLINE. SELECTEE'S GRADE POINT AVERAGE IN HER DISCIPLINE WAS BARELY ADEQUATE TO GRADUATE FROM COLLEGE.

2. MUCH OF THE WORKED PERFORMED BY SELECTEE REFLECTS (BY ACTUAL OFFICE PERSONNEL MANAGEMENT GUIDELINES AND NADEP POSITION DESCRIPTIONS) WORK THAT IS ONLY ACCEPTABLE AT THE GS-9 GRADE LEVEL; IT DOES NOT REFLECT WORK ACCEPTABLE FOR THE GS-12 GRADE LEVEL.

3. ONE OF THE SELECTING OFFICIALS STATED IN FEB 88, THAT THE SELECTEE WAS NOT EXPERIENCED ENOUGH TO BE A LEAD ENGINEER AND THAT HE WAS DISSATISFIED WITH HER WORK. HE DISCUSSED WAYS I COULD STILL RUN THE PROGRAM EVEN WITH THE SELECTEE ACTING AS THE LEAD ENGINEER. THIS WAS JUST A FEW MONTHS BEFORE THE SELECTION WAS MADE. HE STATED TO THE EEO COUNSELOR THAT I WOULD HAVE BEEN SELECTED IN DECEMBER 87.

4. THERE ARE VERY FEW FEMALES IN THE PSD IN MANAGEMENT POSITIONS. A CLASS ACTION TYPE SUIT WAS BEING BROUGHT AGAINST THE FACILITY FOR UNDER REPRESENTATION OF FEMALES.

5. POSITION DESCRIPTIONS OF SELECTING OFFICIALS IDENTIFY RESPONSIBILITY FOR CARRYING OUT AFFIRMATIVE ACTION PLANS. THEIR WITHIN-GRADE SALARY INCREASES AND CAREER GROWTH ARE DEPENDENT UPON COMPLIANCE WITH THIS REQUIREMENT. IMMEDIATELY BEFORE THE SELECTION WAS MADE, THE EEO OFFICE PROVIDED THE SELECTING OFFICIAL WITH A MEMO ADVISING THAT THE FACILITY WAS SHORT BY 17 WHITE FEMALES ITS EEO NUMERICAL GOALS AND REMINDED HIM OF HIS AFFIRIMATIVE ACTION RESPONSIBILITIES AS A SUPERVISOR.

6. SELECTEE (ONCE AN EEO COUNSELOR OR REPRESENTATIVE HERSELF) ON AT LEAST TWO OCCASIONS APPROACHED ONE OF SELECTING OFFICIALS ABOUT HER "RIGHTS" TO THE POSITION. THERE WAS AN IMPLIED THREAT OF AN EEO SUIT IF SHE DID NOT GET THE POSITION.

7. PRIME SELECTING OFFICIAL WAS GOING TO ANOTHER BRANCH. AS THIS NEW BRANCH HAD NO MINORITIES OR FEMALES, HE WOULD LOSE AN OPPORTUNITY TO DEMONSTRATE COMPLIANCE WITH AFFIRMATIVE ACTION REQUIREMENTS (SEE #5 ABOVE). ALSO, HE WOULD NOT HAVE TO RESOLVE ANY TECHNICAL PROBLEMS RESULTING FROM A POSITION HE FILLED NOW BY AN UNQUALIFIED PERSON.

8. PRIME SELECTING OFFICIAL STATED HE HAD TO WAIT UNTIL SELECTEE BECAME ELIGIBLE FOR THE POSITION BEFORE HE COULD ANNOUNCE AND FILL THE POSITION (SHE WAS NOT QUALIFIED FOR THE POSITION BECAUSE SHE DID NOT MEET THE MINIMUM OPM REQUIREMENTS FOR TIME IN GRADE).

9. REGULATIONS REQUIRE THAT CANDIDATES FOR MERIT PROMOTIONS BE EVALUATED AGAINST PRETERMINED CRITERIA IDENTIFIED IN THE MERIT PROMOTION ANNOUNCEMENT. SELECTING OFFICIALS HAD TO DISREGARD THIS CRITERIA BECAUSE THE SELECTEE WOULD NOT HAVE QUALIFIED. SELECTING OFFICIALS STATED CRITERIA IDENTIFIED IN THE ANNOUNCEMENTE WERE NOT USED BECAUSE THEY WERE OUTDATED. THE SELECTING OFFICIAL HAD HOWEVER CERTIFIED BY SIGNATURE ONLY WEEKS EARLIER THAT THE CRITERIA IN THE ANNOUNCEMENT WERE CURRENT AND VALID. CIVILIAN PERSONNEL OFFICE STAFFING SPECIALISTS CERTIFIED THAT THE SELECTING CRITERIA WAS IN FACT CURRENT AND NOT OUTDATED.

10. AT THE TIME THE SELECTION WAS ANNOUNCED, PRIME SELECTING OFFICIAL COULD NOT TELL ME WHAT SELECTION CRITERIA HE HAD USED TO MAKE THE SELECTION. THIS WAS BECAUSE THE SELECTION WAS BASED ON PREJUDICE AND NO CRITERIA HAD BEEN USED. HIS PERSONAL SELECTING CRITERIA WERE GENERATED ONLY AFTER IT WAS KNOWN THAT THERE WOULD BE A DISCRIMINATION COMPLAINT. THE SELECTION CRITERIA FINALLY PRODUCED WERE NON-STANDARD, SELECTIVELY CHOSEN TO ATTEMPT TO SUPPORT THE PRE-SELECTION, AND WERE NOT OBJECTIVE AS EVIDENCED BY OBVIOUSLY BIASED AND SKEWED NUMERICAL VALUES GIVEN.

DISCRIMINATION COMPLAINT INVESTIGATION IRREGULARITIES

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1.4 The Administrative Judge from the Charlotte EEOC office who was to conduct the scheduled hearing disapproved (would not allow) three fourths of my proposed witnesses. The testimony of these witnesses would have clearly proven that the agency's stated reasons for my non-selection

were in fact a pretext to hide discrimination. The EEOC Administrative Judge was of a "protected class" sent to investigate a discrimination complaint filed by someone not in a "protected class". The attorney for the agency was also in a "protected class" (a black female). Because the witnesses which the EEOC Judge DID APPROVE were management officials or "hostile witnesses for the defence", and because of reprisal actions which were being taken against me by management; I thought it would be in my best interest to request the EEOC Judge to cancel the hearing and have her make a decision without a formal hearing.

1.5 Because of the actions which were being taken against me as a result of filing my discrimination complaint, I had to file a grievance concerning reprisal actions. Management officials provided FALSIFIED documents to refute my allegations. During my PARS review, my supervisor told me I would probably not be promoted for other positions because of filing my discrimination complaint.

1.6 Historical, past actions by management officials had resulted in general fear of reprisal for persons testifying in formal complaints. Because numerous proposed witnesses expressed fear of reprisal for testifying on my behalf, I expressed my concerns in a memo to the NADEP Commanding Officer stating that I would not be able to receive a fair and impartial hearing. It was my intent to have him endorse that memo or provide his own which I could have shown proposed witnesses to reassure them there would be no reprisal for their involvement in a reverse discrimination case.

1.7 Unfortunately, the Commanding Officer's response, which was provided only to me, addressed primarily not eliminating fear; but rather complaint action a witness could take AFTER reprisal action had been taken against them. This did not resolve my problem of convincing proposed witnesses there would be no reprisal. I believe that because my complaint was "reverse" discrimination, the Commanding Officer felt that existing policy was adequate and that additional action on his part was unnecessary, even though I had specifically identified a problem. His decision I believe impeded me from fair and impartial treatment. A simple endorsement of my memo would have been sufficient to ensure witnesses of no reprisal.

1.8 While I was preparing for the scheduled interview, management officials directed in writing that I not provide any discrimination complaint documents to any one in the facility. The stated purpose of their direction was that it was disruptive to the efficient operation of the workplace. My immediate supervisor stated it was not disruptive. The ONLY person that really felt it disruptive and complained was one of the selecting officials. The actual purpose of management's direction was I believe to impede proper investigation of my discrimination complaint, and to prevent proposed witnesses access to relevant information necessary for the investigation.

1.9 Federal regulations state that "Employees have the right and responsibility to seek information regarding staffing policies and procedures." Regulations further stimulate that "to assure maximum credibility for the merit system, priority assistance will be provided to answer employee questions concerning staffing-related matters." As I had no attorney and was preparing my own case, I requested by memo that our Civilian Personnel Department (CPD) set up a meeting so that I could obtain this information. I indicated subsequently by phone I was bringing a list of questions. However, at the meeting, CPD officials then suddenly refused to answer ANY questions relative to general merit promotion policy and procedures. At the meeting CPD officials stated that in order to obtain these answers, I would have to first submit the questions AGAIN by formal memo. Even after I submitted another official memo with the questions, CPD STILL did not provide any answers to my questions.

1.10 Department of the Navy regulations require that a complete record of each competitive placement action effected under the Merit Promotion Program be retained so that all actions associated with the selection can be reconstructed. DON regulations also allow informal access to certain official merit promotion records, especially when the information is required for processing complaints. I requested by official memo that CPD set up a meeting and have available the complete merit promotion case file for my review. I explained that this was necessary in order to proceed with my discrimination complaint. I specifically requested that prior to the meeting, they sanitize personal information in accordance with the Privacy Act. At the meeting, I was refused access to most of the records. I was told that I would have to request this information again under the Freedom Of Information Act.

1.11 Following CPD's refusal to have available for my review the placement record, I requested by formal letter to the NADEP Commanding Officer, that under the provisions of the Freedom Of Information Act, that all documents/records associated with the selection be provided so that I could reconstruct all actions associated with that selection. Although regulations require that a response to a FOIA request be provided within TEN DAYS, the information provided in response to my request took EIGHT weeks to obtain and was provided only after I pursued the request. In addition, the information finally provided consisted of only two documents which were already part of the complaint case file. As requested, the provided information did not include the documentation showing how the job analysis was conducted, certification that the KSAs were current, crediting plan evaluation, task examples and general level definitions. All this type data is required to be kept as part of the placement record under DON regulations. This data which was never provided would have proved that the selection was discriminatory.

1.12. In preparation for the hearing before the EEOC Administrative Judge, I requested the NADEP Commanding Officer provide me other pertinent data under the FOIA. In that request of Jan 2, 1990, I specifically requested that certain personal data be sanitized first.

While some of the data was provided in a short period of time, it took more than FIVE MONTHS to receive a response from the Naval Air Systems Command that other data could not be provided. Even though my initial request had stated the data was required for an official investigation and asked that the data be sanitized, it was ruled the data was an unwarranted invasion of privacy and would not be provided.

1.13. I provided my sworn affidavit to the Discrimination Complaint Investigation Component (DCIC) Investigator during an hour and a half interview scheduled on December 7, 1988. I was told by the investigator that he would interview principles next and meet with me again that same afternoon so we could talk and I could provide a rebuttal to their affidavits. A phone call that afternoon from the investigator cancelled our second interview. The investigator explained that he was giving the principles ten days to provide their affidavits, and at that time I could provide my rebuttal. The principles were actually allowed TWO MONTHS to complete and provide their affidavits. Even though they were allowed more than TWO MONTHS to complete their affidavits, I was informed by the NADEP EEO office that I had to review their affidavits and provide my rebuttal within FIVE DAYS. These actions clearly show unfair and partial treatment.

1.14. Even though the affidavits of all management officials and many other documents produced by management related to my case were produced on government computers, I was directed by management to not use a government computer to generate documents relative to my case. The regulations are vague in certain instances as to what constitutes unauthorized use of computers. Since government time is allowed, it is reasonable to assume that use of government computers to generate official documents DIRECTLY TO to my immediate management relative to my case, is also allowed. The interpretation of the regulations as it applies to this case, and specific prohibitive directive given, may have been more to impede my efforts than to ensure proper use of government computers. Government computers were frequently used to play home computer games.

2. The Department Of Navy decision involved erroneous interpretation of law and regulations and misapplication of established policy. It involved erroneous statement of facts, and did not provide a thorough and valid analysis of the evidence. One of the management officials at the NADEP (who provided a sworn affidavit) was so sure of the government's position on "reverse" discrimination, that he told me much of my own affidavit would not even be read. The DON decision certainly bears this out. This obvious attempt at hiding reverse discrimination is an obstruction of justice.

2.1. Law requires that the findings of fact must be analyzed to determine whether the activity articulated a legitimate, nondiscriminatory reason for its actions. It requires that the activity

present evidence to support those reasons. The law requires that the findings of fact be analyzed to determine whether the reasons offered by the activity were true reasons or just a pretext for discrimination.

2.2. The DCIC investigator was provided with approximately 300 pages of documentation and evidence as proof of discrimination. The DCIC official report summarized my position in less than one third of a page. Much of that summarization was also in error in that it did not present my arguments as I had provided them. It did not address the extensive arguments which proved that the employer's articulated reasons were unworthy of credence. The investigation report did not address ANY of the extensive material evidence which was provided as proof of discrimination. The report did not provide ANY material evidence that showed that the activities nondiscriminatory reasons were in fact legitimate. The report was erroneous in its data (even to the point of contradicting data provided by the NADEP EEO report), was basically sloppy, and was missing parts of critical selection documents which were part of the official case file.

2.3. The EEOC Recommended Decision contains numerous errors in fact. The report incorrectly states that I was an Electronics Technician GS-856-11 for eleven months when in fact the period was approximately 6 and 1/2 years. It incorrectly states that I was an Electronics Technician GS-11 between Jun 87 and Oct 87 when in fact I was a Electronics Engineer GS-11. The EEOC Recommended Decision states incorrectly that the selectee was rated highly qualified when in fact the rating was only qualified. This information was incorrectly stated even though it is correctly and clearly provided in the case file. The factual analysis of the employer's articulated reasons, (which is clearly idiosyncratic), to determine pretext is also in error.

3. New and material evidence is available that was not readily available when the previous decision was issued.

3.1. The selecting official has now contradicted the very reasons for my non-selection which he and others provided in sworn affidavits and made part of the official case file. Those reasons (even though they were a pretext for hiding discrimination) were the basis for the government decision.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION
NO: 91-4-CIV-4-H

RICHARD E. DAY,
Plaintiff

v.

DEPARTMENT OF NAVY, et al
Defendant

PLAINTIFF'S MEMORANDUM IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

STATEMENT OF THE CASE

The Plaintiff, Richard E. Day, is employed by the federal government at the Naval Aviation Depot, Cherry Point, North Carolina. In early 1989, he applied for promotion to the position of Electronics Engineer, GS-0855-12. Mr. Day was denied the promotion in lieu of a female, Ms. Owensby.

In February, 1989, Mr. Day filed with the Naval Aviation Depot a formal complaint in which he alleged sex discrimination. On April 28, 1989, Gerald B. Gartman, the Equal Employment Opportunity Officer for the Marine Corps Air Station at Cherry Point, determined that although Mr. Day had met his burden of establishing a prima facie case of sex discrimination, the management had articulated legitimate nondiscriminatory reasons for the promotion of Ms. Owensby over Mr. Day (Attachment 1).

In February, 1990, Mr. Day sought review with the Equal Employment Opportunity Commission by an administrative judge without a hearing. In that proceeding, Judge Muirhead concluded

that Mr. Day had failed to prove that the defendant's reasons for Mr. Day's nonpromotion were merely a pretext for sex discrimination (Attachment 2). The Secretary of the Navy concurred in that decision (Attachment 3).

Notice of the adverse decision was sent to Mr. Day's address by certified mail. On April 19, 1990, Mr. Day's wife signed for the certified letter. However, the Days were experiencing marital difficulty at that time, and Mrs. Day hid the letter from him. Mr. Day, consequently, did not receive actual notice until May 2, 1990 (Attachment 4--affidavit). Twelve days later, within the specified twenty (20) day period from actual receipt, Mr. Day appealed the Secretary's decision to the Equal Opportunity Commission (Attachment 5). However, the Commission concluded that the twenty-day period had begun when Mrs. Day received the notice; therefore, they concluded that Mr. Day's appeal was untimely and dismissed on that ground (Attachment 6).

Mr. Day then requested that the Commission reopen his case (Attachment 7). He received notice that his request to reopen was denied on November 26, 1990 (Attachment 8). On December 24, 1990, within the 30 day time limitation, Mr. Day mailed an application to proceed in federal district court in forma pauperis. (Attachments 9 and 10).

ARGUMENT

I. MR. DAY, FILING IN FORMA PAUPERIS, MADE A GOOD FAITH EFFORT TO SPECIFICALLY ALLEGE EMPLOYMENT-RELATED SEX DISCRIMINATION. NOW WITH THE ASSISTANCE OF COUNSEL, HE IS PREPARED TO AMEND HIS COMPLAINT TO TECHNICALLY MEET THE REQUIREMENTS THAT FEDERAL EMPLOYEES COMPLAINING OF EMPLOYMENT-RELATED SEX DISCRIMINATION FILE UNDER 42 U.S.C. 2000e-16(c).

When Mr. Day received notice that his request to reopen had been denied, he applied to the United States District Court to proceed in forma pauperis. He subsequently also completed a form-type complaint which specifically alleged employment discrimination pursuant to Title VII and the Civil Rights Act of 1964. The pre-printed portion of paragraph 3 of the complaint also provided that "[j]urisdiction is specifically conferred on the Court by 42 U.S.C. 2000e-5."

Equity requires that Mr. Day's form complaint should not be barred simply because its boiler plate language cites to the wrong jurisdictional statute, especially when paragraph 9 of the complaint, written by Mr. Day himself, specifically alleges inter alia that Mr. Day was not promoted "because of [his] sex."

In the alternative, Mr. Day, with the assistance of counsel, requests that he be allowed to amend his complaint to comply with the technically-correct jurisdictional requirement. (See attached Motion to Amend).

II. THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ERRED IN DISMISSING MR. DAY'S APPEAL FOR LACK OF TIMELINESS. HE HAS, THEREFORE, EXHAUSTED ALL REQUIRED ADMINISTRATIVE REMEDIES.

The commission mailed its final decision to Mr. Day by certified mail. Mr. Day's wife signed for the letter on April 19, 1990. However, due to the strained domestic relationship which existed between the Days at that time, Mr. Day did not actually receive the notification until May 2, 1990. Pursuant to 29 C.F.R. 1613.231-233, Mr. Day had twenty days within which to appeal the adverse administrative decision.

At issue is whether the 20-day period began to run on April 19 when Mrs. Day received the notification or on May 2 when Mr. Day had actual receipt. The 20-day time limit is triggered by the employee's actual notice of the adverse agency disposition, and the employee is not bound by the date on which his representative received notice. Cooper v. Lewis, 644 F.2d 1077 (5th Cir. 1981). The Cooper court based its holding on the concept that Title VII claims should be construed liberally in favor of the complainant in order to effectuate the Act's remedial purpose. "Requiring personal receipt of notice by the affected employee, who will often be without an attorney, comports with the everyday realities of Title VII litigation as well as effectuates the fundamental objectives of the Act." Id.

In December 1990, the Supreme Court applied the same reasoning to the 30-day appeal period provided for in 42 U.S.C. section 2000e-16(c). Specifically, the statute provides that an employment

discrimination complaint against the federal government under Title VII must be filed "within thirty days of receipt of notice of final action taken" by the EEOC. The Court affirmed the fifth circuit's holding that a notice of final action is "received" when the EEOC delivers its notice either to the employee or the employee's attorney, whichever is first. Irwin v. Veterans Adm., 111 S. Ct. 453 (1990).

Mrs. Day's signing of the return receipt on the letter in no way constitutes "receipt" by the claimant or claimant's attorney. Indeed, only one jurisdiction has held that a wife's receipt of notice constituted notice to the husband. Mouriz v. Avondale Shipyards, Inc., 428 F. Supp. 1025 (E.D. La. 1977). That case is clearly distinguishable in that the couple was harmoniously living together; the husband simply neglected to look through the mail for a few days. Id.

In the case at hand, the 20-day time limitation began to run on May 2, 1990, the date of Mr. Day's actual receipt. Mr. Day's appeal was postmarked May 14, 1990, one week before the statute of limitations had run. Consequently, the Equal Employment Opportunity Commission was in error when it dismissed Mr. Day's appeal for lack of timeliness. The agency's contention that Mr. Day has failed to exhaust his administrative remedies due to his disregard of the government's "rigorous exhaustion requirements and time limits" is without merit.

III. THE 30-DAY TIME LIMITATION FOR FILING AN APPEAL WAS TOLLED WHEN MR. DAY MAILED HIS APPLICATION TO PROCEED IN FORMA PAUPERIS.

The United States District Court for the Western District of North Carolina held that the thirty-day time period provided by 42 U.S.C. 2000e-16(c) is subject to equitable tolling. Grier v. Carlin, 620 F. Supp. 1364 (1985). In the Grier case, the plaintiff sued defendant in his official capacity as post master general. The court held that the plaintiff's filing of the application to proceed in forma pauperis tolled the statute until the court's disposition of the application. The court reasoned:

> The purpose of Title VII as a whole is remedial in nature and it is the type of legislation which laymen are more likely to be involved in. By treating the time period of [section] 2000e-16(c) like a statute of limitations subject to equitable tolling...the remedial purpose is furthered. This is so especially in cases...where the Plaintiff filed her application to proceed in forma pauperis within the time period.

Id. at 1365.

As cited earlier in the Irwin case, the Supreme Court has held that even if a complainant does not strictly comply with a filing deadline, his error may be excused under equitable tolling principles. Irwin, 111 S. Ct. 453. Those principles are especially applicable when the claimant has exercised due diligence in preserving his legal rights.

Mr. Day received notice that his appeal was denied on the afternoon of November 26, 1990. Mr. Day then contacted the clerk of court's office and inquired as to how to proceed. He

subsequently requested and received an application to proceed in forma pauperis. He was also informed by that office, and therefore believed, that because he was using the mail, under Rule 6 of the Federal Rules of Civil Procedure, he would have an additional three days in which to file. Mr. Day completed the application and mailed it to Margaret Baxter, Clerk of Court, on December 24, 1990. Mr. Day fully believed that by depositing the necessary forms in the mail to be delivered to the clerk, he had complied with the applicable statutes and rules of procedure (Attachment 4).

Lastly, there has been no prejudice to the defendant. Even if the court should find that Mr. Day's action commenced one day after the statute ran, there is certainly no evidence that a single day in any way affected the viability of the agency's defense. In the interest of justice and equity, the court should deem the statute tolled at the time the application was postmarked for delivery to the clerk of court even though the application was not marked "filed" until one day after expiration of the 30-day statute.

CONCLUSION

At all times during the course of this action, Mr. Day has exercised due diligence in the protection of his legal rights. Unfortunately for Mr. Day, the officers of the court who have provided assistance to him before he obtained a lawyer have not been as diligent. First of all, Mr. Day's appeal of the Equal

been as diligent. First of all, Mr. Day's appeal of the Equal Employment Opportunity Commission was erroneously dismissed as untimely. Notification of an adverse decision made to the complainant's wife does not constitute "receipt" for the purpose of the running of the time limitation for filing an appeal. Mr. Day did, in fact, appeal within the statutory period.

Secondly, Mr. Day, acting in forma pauperis, has necessarily had to rely on information and forms provided by officers of the court. His reliance on a pre-printed jurisdictional statute should not be fatal to his claim, especially since he has now hired a lawyer and seeks to amend his complaint to contain the correct jurisdictional statute.

Mr. Day also relied on information provided by an officer of the court in believing that he had an additional three days for filing his application, if he did so by mail. Tolling of the statute is, therefore, required on equitable principles alone. Pursuant to case law, tolling is also mandated by the filing of the application to proceed in forma pauperis.

For the above stated reasons, the court should deny both the defendants' motion to dismiss and motion for summary judgment.

Respectfully submitted, this is the 16th day of May, 1991.

DAVID P. VOERMAN, P.A.
Attorney for Plaintiff

David P. Voerman

P.O. Box 1534
New Bern, NC 28560
(919) 636-5611

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Plaintiff's Memorandum in Response to Defendants' Motion to Dismiss and Motion for Summary Judgment was served upon the following by depositing the same in a properly addressed and postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service, New Bern, North Carolina and addressed to:

Linda Teal
Assistant United States Attorney
Civil Section
P.O. Box 26897
Raleigh, NC 27611

and

David E. Kirkpatrick
Counsel, Code 005
Naval Aviation Depot
Naval Air Station
Norfolk, VA 23511-5899

This is the 16th day of May, 1991.

DAVID P. VOERMAN, P.A.
Attorney for Plaintiff

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1315 S. Glenburnie Road
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(919) 636-5611

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION
NO: 91-4-CIV-4-H

RICHARD E. DAY, Plaintiff	)	
v.	)	MOTION FOR LEAVE TO AMEND COMPLAINT
DEPARTMENT OF NAVY, et al Defendant	)	

Richard E. Day, Plaintiff, moves the court pursuant to Rule 15 of the Rules of Civil Procedure for leave to file an amendment to his complaint in the above entitled cause, as shown in the attached "Amendment to Complaint".

This is the 16th day of May, 1991.

DAVID P. VOERMAN
Attorney for Plaintiff

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P.O. Box 1534
New Bern, NC 28560
(919) 636-5611

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION
NO: 91-4-CIV-4-H

RICHARD E. DAY, Plaintiff	)	
v.	)	AMENDMENT TO COMPLAINT
DEPARTMENT OF NAVY, et al Defendant	)	

Now comes Richard E. Day, Plaintiff, with leave of the court, and amends his complaint:

By striking paragraph 3 in its entirety and inserting in lieu thereof the following:

3) This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is specifically conferred on the Court by 42 U.S.C. 2000e-16(c).

This is the 16th day of May, 1991.

DAVID P. VOERMAN
Attorney for Plaintiff

1315 S. Glenburnie Road
Suite 19, Thomas Square
P.O. Box 1534
New Bern, NC 28560
(919) 636-5611

VERIFICATION

Richard E. Day, first being duly sworn, deposes and says:

That he is the plaintiff in the foregoing action;

That the contents of the foregoing amendment to the complaint are true to his own knowldge, except as to matters stated on information and belief, and as to those matters, he believes them to be true.

Richard E. Day
RICHARD E. DAY.

Sworn to and subscribed before me
this the 16th day of
May, 1991.

Terri L. Woodard
NOTARY PUBLIC

My commission expires:
11-18-94

TERRI L. WOODARD NOTARY PUBLIC CRAVEN COUNTY, N.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Plaintiff's Motion to Amend Complaint was served upon the following by depositing the same in a properly addressed and postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service, New Bern, North Carolina and addressed to:

Linda Teal
Assistant United States Attorney
Civil Section
P.O. Box 26897
Raleigh, NC 27611

and

David E. Kirkpatrick
Counsel, Code 005
Naval Aviation Depot
Naval Air Station
Norfolk, VA 23511-5899

This is the 16th day of May, 1991.

DAVID P. VOERMAN, P.A.
Attorney for Plaintiff

David P. Voerman
1315 S. Glenburnie Road
Suite 19, Thomas Square
P.O. Box 1534
New Bern, NC 28560
(919) 636-5611

AO 450 (Rev. 5/85) Judgment in a Civil Case

FILED

JUL 5 1991

J. RICH LEONARD, CLERK
U. S. DISTRICT COURT

United States District Court

EASTERN DISTRICT OF NORTH CAROLINA

RICHARD E. DAY, Plaintiff

V.

H. LAWRENCE GARRETT, III, Secretary of the Department of the Navy; RICHARD THORNBURG, Attorney General; MARGARET CURRIN, U. S. Attorney; JERALD B. GARTMAN; WILLIAM T. TAYLOR; LONNIE SCOTT; LESLIE O. WETHERINGTON, Defendants

JUDGMENT IN A CIVIL CASE

CASE NUMBER. 91-4-CI-4-H

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that action is DISMISSED pursuant to Rule 12 (b)(6), Fed. R. Civ. P., and for failure to exhaust required administrative remedies.

SO ORDERED - s/ Malcolm J. Howard, United States District Judge

THE ABOVE JUDGMENT WAS ENTERED TODAY, JULY 5, 1991, AND COPIES MAILED TO:

Mr. DSavid P. Voerman
P. O. Box 1534
New Bern, NC 28560

Mrs. Margaret Currin
United States Attorney
P. O. Box 26897
Raleigh, NC 27611

I cert[illegible] or [illegible] a true and c[illegible] cop[illegible] ginal.
J. Rich Leonard, Clerk
U[illegible] District Court
Eastern District of North Carolina
By _____ Deputy Clerk

July 5, 1991
Date

J. RICH LEONARD
Clerk

(By) Deputy Clerk

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

NO. 91-4-CIV-4-H

RICHARD E. DAY, Plaintiff, v. DEPARTMENT OF NAVY, et al., Defendant.	)	ORDER

This matter is before the court on Defendants', H. Lawrence Garrett III; Richard Thornburg; Margaret Currin; Jerald B. Gartman; William T. Taylor; Lonnie Scott; and Leslie O. Wetherington, motions to dismiss pursuant to 42 U.S.C. § 2000-16(c) and Rules 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Alternatively, Defendants move for summary judgement pursuant to Rule 56, Federal Rules of Civil Procedure. Furthermore, Defendants move this court to dismiss Defendants Richard Thornburg, Margaret Currin, Jerald B. Gartman, William T. Taylor, Lonnie Scott, and Leslie O. Wetherington because they are not proper parties in an action under the Civil Rights Act of 1964, as amended. Lastly, Plaintiff moves this court pursuant to Rule 15 of the Federal Rules of Civil Procedure for leave to

file an amendment to his complaint.

STATEMENT OF THE CASE

The Plaintiff, Richard E. Day, is employed by the federal government at the Naval Aviation Depot, Cherry Point, North Carolina. In early 1989, he applied for promotion to the position of Electronics Engineer, GS-0855-12. Plaintiff complains that sex discrimination resulted in the selection of a female candidate rather than himself.

Plaintiff filed a formal complaint of sex discrimination with the Naval Aviation Depot. After investigation of his complaint, the Naval Aviation Depot Commanding Officer determined that there was no evidence to support his charge of sex discrimination. Plaintiff was informed of his rights concerning appeal and sought a recommended decision by an Administrative Judge with the Equal Employment Opportunity Commission (hereinafter EEOC). The Administrative Judge concluded that Plaintiff had not met his burden of proving sex discrimination in the selection process for the Electronics Engineer position at the Depot. The Secretary of the Navy concurred in that recommendation, provided his decision, and informed Plaintiff of rights of further appeal and associated time limits for appeal.

Plaintiff appealed the Secretary of the Navy's decision to the Equal Employment Opportunity Commission. He was not timely in this appeal and the EEOC dismissed it on that ground. After further Appeal to the Commission by Plaintiff the EEOC denied Plaintiff's

request to reopen his case. When Plaintiff received the Denial of Request to Reopen, Plaintiff was notified that he had the right to file a civil action in the appropriate United States District Court within thirty (30) days. Plaintiff filed an application to proceed in forma pauperis on December 27, 1990, which was denied on January 9, 1991, by the Honorable J. Rich Leonard, United States Magistrate Judge. Subsequently, on January 15, 1991, Plaintiff filed the present action seeking judicial review of the EEOC's decision.

DISCUSSION

Section 717 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16, provides for federal employment discrimination and proscribes an administrative and judicial system to address claims of discrimination by federal employees. Section 717(c) permits an aggrieved employee to file a civil action in a federal district court for review of claims of employment discrimination. Attached to this right of civil action is the requirement of exhaustion of administrative remedies. The administrative and judicial remedies have time limits that must be followed in order to provide an orderly system for resolution of complaints. In the present case, the Plaintiff has failed to adhere to two of these time limits.

I. NOTICE OF APPEAL TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Code of Federal Regulations, Chapter 29, section 1613.233(a), provides, " ... a complainant may file a notice of appeal at any time up to 20 calendar days after receipt of the

agency's notice of final decision on his or her complaint." Plaintiff claims that he did not receive actual notice of the final decision until May 2, 1990. He alleges that the twenty (20) days time limit did not start to accrue until actual notice was recieved. In Harvey v. City of New Bern Police Department, 813 F.2d 652 (4th Cir. 1987), the Fourth Circuit Court rejected the actual receipt rule for the more flexible rule of the Fifth and Eleventh circuits. Under the flexible rule, there is a case-by-case examination to determine whether an equitable tolling of the filing period is appropriate. If reasonable grounds exist for an equitable tolling, the suit will be permitted to proceed. In the present case, the Plaintiff claims that his wife withheld the April 19, 1990, notice because of strained marital relations. The EEOC received notice of his appeal on May 14, 1990. In order for the notice of appeal to be timely, it must have been filed on or before May 9, 1990. Plaintiff received notice of these time limitations on multiple occasions and still had seven (7) days from the date of the alleged actual notice to file a timely appeal to the EEOC. The seven days were adequate time to prepare and file notice of appeal; however, he failed to do so.

Failure to comply with administrative time limits is not a jurisdictional bar; it is simply a failure to exhaust administrative remedies. In limited situations, the time limits may be subject to estoppel. See Zografov v. V.A. Medical Center, 779 F.2d 967, 968-970 (4th Cir. 1985). The administrative remedy of section 717 serves an important function in the resolution of

claims by government employees. The Supreme Court stated in Brown v. General Services Admin., 425 U.S. 820, 833 (1976), the statute "provides for a careful blend of administrative and judicial enforcement powers," and "rigorous administrative exhaustion requirements." The failure to exhaust administrative procedures may be fatal to a complainant's judicial action. See Plowman v. Cheney, 714 F.Supp. 196 (E.D.Va. 1989); Woodward v. Lehman, 717 F.2d 909 (4th Cir. 1983).

Having examined the record in this case, this court does not consider the Plaintiff to be entitled to estoppel. His failure to comply with the administrative procedure is not excusable in light of repeated notification of the administrative time constraints. Plaintiff admits that he had an entire week to file an appeal after the alleged actual notice was recieved.

II. FILING OF CIVIL ACTION

Plaintiff petitioned the EEOC to reopen his appeal and allow administrative review. This request was denied on November 26, 1990. Section 717(c), 42 U.S.C. § 2000e-16(c), of the Civil Rights Act of 1964, explicitly states that the complainant must file his civil action "[w]ithin thirty days of receipt of notice of final action ... ." Plaintiff again failed to follow the proper time limits. The civil action was filed January 15, 1991, fifty one (51) days after notice of final action. Plaintiff would have this court apply the concept of equitable tolling to allow the application to proceed in forma pauperis to be filed and answered

by the court. However, even if this court tolls the time period, the fact sill remains that the Plaintiff filed his action one day after the time period had run.

In Irwin v. Veterans Admin., 111 S. Ct.453, 456-458 (1990), the Court stated that section 717(c) of the Civil Rights Act of 1964,"§ 2000e-16(c)[,] is a condition to [the government's] ... waiver of sovereign immunity and thus must be strictly construed." The Court further held that the concept of equitable tolling is applicable in claims filed pursuant to section 717(c). However, "the principals of equitable tolling ... do not extend to what is at best a garden variety claim of excusable neglect." In the present case, Plaintiff claims that he was informed by the clerk's office that Rule 6(e) of the Fed. R. Civ. P. applied to claims filed pursuant to § 717(c) and would allow three (3) extra days to file his complaint. In Dimetry v. Department of the United States Army, 637 F.Supp 269, 270 (4th Cir.1985), the court held that a claimant, who was one day late in filing a complaint under § 717(c), was not entitled to three extra days under Rule 6(e) in which to file his civil action after receiving notice of decision by EEOC. Plaintiff's reliance on Rule 6(e) amounts to a "garden variety claim of excusable neglect" and should be dismissed as being untimely.

CONCLUSION

The failure of the Plaintiff to file his EEOC appeal and civil action within the proper time limits as set forth by Congress has proven detrimental to his case.

For the aforestated reasons, it is hereby ORDERED that this action is DISMISSED pursuant to Rule 12(b)(6), Fed. R. Civ. P., and for failure to exhaust required administrative remedies.

This the 2nd day of July, 1991.

MALCOLM J. HOWARD
United States District Judge

I certify the foregoing to be a true and correct copy of the original.
J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
By _____ Deputy Clerk

At Greenville, N.C.
#20

LEGAL and CIVIL RIGHTS ORGANIZATIONS CONTACTED

American Civil Liberties Union	Washington, DC
American Constitutional & Civil Rights Union	Aloha, OR
American Ethical Union	Bethesda, MD
Capitol Information Association	Ann Arbor, MI
Center For Democratic Renewal	Atlanta, Ga.
Center For Constitutional Rights	New York, N.Y.
Center for Individual Rights	Washington, DC
Center for Law and Education	Washington, DC
Center for Law and Social Policy	Washington, DC
Christic Institute	Washington, DC
Civil Legal Assistance Clinic	Chapel Hill, NC
Citizens' Commission on Civil Rights	Washington, DC
Citizens For A Better America	Halifax Va.
Commission For Racial Justice	New York, N.Y.
Commission On Civil Rights	Washington, DC
Duke University Legal Clinic	Durham, NC
International Committee Against Racism	Brooklyn, NY
Institute For Public Representation	Washington, DC
Landmark Legal Foundation Center for Civil Rights	Washington, DC
Law Students Civil Rights Research Council	New York, NY
Lawyers' Committee for Civil Rights Under Law	Washington, DC
Leadership Conference on Civil Rights	Washington, DC
Legal Affairs Counsil	Chantilly, Va
Legal Services Corporation	Washington, DC
Legal Services Of North Carolina	Raleigh, NC
Legal Services Of Southern Piedmont, Inc.	Charlotte, NC
NAACP Legal Defense and Educational Fund	Washington, DC
National Alliance Against Racist & Political Repression	New York, NY
National Emergency Civil Liberties Committee	New York, NY
National Institute Against Prejudices & Violence	Baltimore, MD
National Legal Aid and Defenders Assn.	Washington, DC
National Right To Work Legal Defense & Educational Foundation	Springful, Va.
North Carolina Labor Law Center	Raleigh, NC
North Carolina Legal Services Resource Center	Raleigh, NC
North Carolina State Bar Association	Raleigh, NC
Pamlico Sound Legal Services	New Bern, NC
People For The American Way	Washington, DC
Public Citizen Litigation Group	Washington, DC
Section Of Individual Rights & Responsibilities	Washington, DC
School Of Law Clinical Programs	Winston-Salem, NC
Southern Regional Council	Atlanta, Ga.
Support Centers of America	Washington, DC
Southern Poverty Law Center	Montogomery, Ala.
Workers Defense Leaque	New York, NY
Unemployment & Poverty Action Commitee	Washington, D.C.

ID # 120719 CU

HU010 R: 8/20/91 3:30p

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☑ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: D. Louis Pecker

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Support for the President's civil rights bill

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuba	ORIGINATOR	91/08/16		C	91/09/09
Chat 10	A	91/08/17		C	91/09/09
		/ /			/ /
		/ /			/ /
		/ /			/ /
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Referral Note: DJ
Referral Note: DJ See comments
Referral Note:
Referral Note:
Referral Note:

ACTION CODES.
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: No further action Required per G. Lund

Close out 9-9-91

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

402 Devon Court
Ballwin, MO 63011
26 July 1991

Dr John Sununu
Chief of Staff
The White House
Washington, DC

Dear Dr Sununu,

Please continue your opposition to quota legislation masquerading as a "Civil Rights Bill". Any compromise "Civil Rights Bill" will also almost immediately be subverted by liberals and used to require quotas. In fact, many large corporations and many agencies of the Federal Government (in particular) already use a quota system in the hiring and promotion of personnel, in direct violation of the Civil Rights Act of 1964. Congress should be investigating and eliminating the abuses of the 1964 Act instead of legislating the further destruction of America and individual rights. Please continue your coalition building within the Administration against this "Civil Rights Bill" and urge President Bush to stand firm against it. The American people do not require and do not want this Bill. If such a Bill becomes law, it will harm the Bush Presidency, the Republican Party, and without question, place America firmly on the road to destruction. You must prevail in this matter.

Senator Danforth (enclosed article) is misguided. By sponsoring such legislation, he has ensured for himself a place in the Hall of Political Panderers. He does not represent the correct view and does not have the support of his constituency or the country on this legislation. Due to the importance of this issue and his refusal to pursue the right course, we plan to retire Senator Danforth during the next primary election. The needs of America are so great and so urgent, that there is no longer any place in Congress for liberals or Republican compromisers and appeasers (CAPS).

Good luck in your battles with the liberals and CAPS. You have our support and best wishes.

Sincerely,

B. Louis Decker

B. LOUIS DECKER

ST. LOUIS POST-DISPATCH

NEWS ANALYSIS

THURSDAY, JULY 25, 1991

Danforth Plans Appeal To Bush On Civil Rights

Senator Wants To Bypass Sununu On Compromise

By Robert L. Koenig
Post-Dispatch Washington Bureau
WASHINGTON

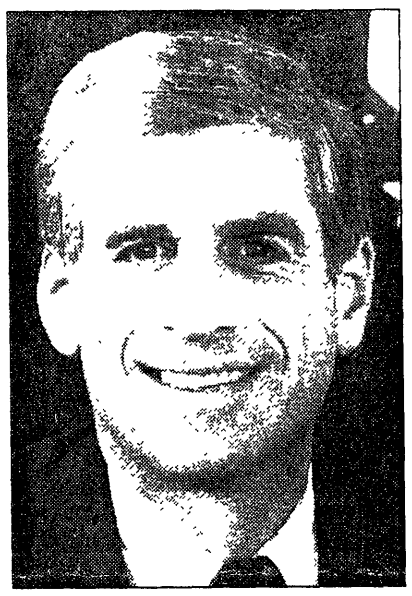
SEN. John C. Danforth, R-Mo., said Wednesday that he had asked for a meeting to appeal directly to President George Bush to remove the remaining barriers to a compromise on civil rights legislation.

Danforth is renewing his efforts to sway the administration almost four weeks after he broke off talks with White House Chief of Staff John H. Sununu and other officials, saying they were being inflexible on a key provision of a civil rights bill.

Now Danforth says he wants to bypass Sununu and appeal to Bush himself to make the decision. "At this point, I view it as a presidential decision, not a Sununu decision," Danforth said.

"If the president were to decide this policy question, I believe we could get a bill enacted into law in very short order," Danforth said. He said leading Senate Democrats appeared ready to support the civil rights bill he proposed, but which Sununu rejected.

At a breakfast meeting with reporters, Danforth said the Senate might be able to put together a "veto-proof" majority on a civil rights bill if Bush decides not to accept compromise language. Last year, Congress was unable to override Bush's veto of a similar bill.



Sen. John C. Danforth
Makes direct appeal to Bush

Danforth said he had tried to separate the civil rights issue — in which he has been at odds with the White House — from his supportive role in the administration's effort to gain Senate confirmation for Supreme Court nominee Clarence Thomas, a black federal judge.

Even so, Danforth said he would "like to see this [civil rights] issue resolved" before the Senate votes on Thomas' confirmation. That vote is likely to occur in late September.

Also on Wednesday, Bush told Republican congressional leaders at a White House meeting that he expected the Senate to confirm Thomas, despite "a flurry of outrage and predictable smearing of the man" by some interest groups. "I have a feeling this country is strongly behind him," Bush said of Thomas.

In the session with reporters, Danforth said he strongly disagreed with a liberal advocacy group that says Thomas should have removed himself from an appeals court case in 1990 that overturned an award against Ralston Purina Corp., which was founded by Danforth's grandfather.

The group, called Supreme Court Watch, said Thomas "showed flagrant disregard for common sense" by not removing himself from the case, or at least disclosing his relationship to Danforth. Danforth gave Thomas his first job and has helped him get other posts in Washington. Senate disclosure forms show that Danforth has at least $8 million in Ralston stock in a blind trust.

"I don't think it's a matter of substance at all," said Danforth, who said his family trusts hold "significantly less than 1 percent" of Ralston's stock. He said lawyers for Alpo, the rival company in the suit against Ralston, were aware of Thomas' relationship to Danforth and did not consider it significant.

RD

265189

HU010

THE WHITE HOUSE

WASHINGTON

June 28, 1991

Dear Mr. Monday:

Thank you for your letter and for your comments about sexual harassment. Certainly, I have the highest respect for the women who serve in our Armed Forces. I recognize that I'm a little old-fashioned, and if my actions in congratulating the women cadets offended anyone, I regret it. I do want to set a good example in this very special office that I'm privileged to hold.

I appreciate your bringing your concerns to my attention. Best wishes,

Sincerely,

GBush

Mr. Mark Monday
Post Office Box 120008
Chula Vista, California 92012

910628

Dear Mr. Monday:

Thank you for your letter and for your comments about sexual harassment. Certainly, I have the highest respect for the women who serve in our Armed Forces. I recognize that I'm a little old-fashioned, and if my actions in congratulating the women cadets offended anyone, I regret it. I do want to set a good example in this very special office that I'm privileged to hold.

I appreciate your bringing your concerns to my attention. Best wishes,

Sincerely,

GEORGE BUSH

Mr. Mark Monday
Post Office Box 120008
Chula Vista, California 92012

GB/LH/SMG/bws (6PRESB)

cc: Lisa Huiet

SAMPLE

DRAFT OF PRESIDENTIAL LETTER

DRAFT DATE: June 24, 1991	**COMPUTER DRAFT DOCUMENT TITLE:** Monday
INITIALS: GB/ lh	**CC:** Lisa Huiet
CLEAR WITH:	**WHCC:**
ENCLOSURES, SPECIAL INSTRUCTIONS: POTUS shook hands, hugged, kissed, and gave "high-fives" to many of 900+ graduates. SAMPLE Spoke with Jan Burmeister, Beth Thompson, Craig Ray (Advance) and Bill Farish to determine if POTUS knows D.Allen's family -- no one knew.	

Dear Mr. Monday:

Thank you for your letter and for your comments about sexual harrassment. Certainly, I have the highest respect for the women who serve in our Armed Forces. I recognize that I'm a little old-fashioned, and I regret if my actions in congratulating the women cadetes offended anyone. I do want to set a good example in this very special office that I'm privileged to hold.

Best wishes, Sincerely, GB

I appreciate your bringing your concern to my attention.

Briefing: Terrorism and Low Intensity Conflict

LH

P.O. Box 120008
Chula Vista, CA ~~91912~~ 92012
June 4, 1991

President George Bush
The White House
Washington, D.C.

Dear President Bush:

How does one start off chiding or advising the President of the United States? It's a very real problem if you have respect for the man and the office.

I cannot imagine you being a Male Chauvinist Pig, nor do I see you as a boss prone to the sexual harassment of your employees. Yet, Mr. President, you blew it last week. With, I am certain, all of the best intentions in the world you put your stamp of approval on sexual harassment. I need not remind you that, when the seal of President of the United States goes on a practice, it justifies and gives social acceptance to the behavior.

I know you have no idea of what I'm talking about--because you would no more have sexually harassed an employee than you would have bestowed a medal on Saddam Hussein. The greatest danger and problem lies in the very fact that you and I, as males, find it so hard to see our actions as sexually harassing.

The enclosed picture from the newspaper, "A kiss for the graduate," really ratifies the acceptability of sexual harassment. It is a classic example of the components of sexual harassment. A boss, the Commander in Chief in this case, physically embraces and busses an employee, a military cadet, who is no position to protest. From the look on her face it seems clear you didn't ask Dana Allen her permission to kiss her. You didn't do the same thing to a male officer, and frankly you probably wouldn't under any circumstances. That is the classic harassment situation: Superior-subordinate relationship; no consensual agreement to the act; inappropriate when done with or to a member of the same sex.

Believe me, Mr. President, I know you didn't intend to have your acts seen in this light. With all of the other things in the world to write your office about I realize this seems petty, and pretty stupid. But it is because you lead us--in fact and by example--that I write. It is my hope that your staff members, who will read this letter, will do their utmost to persuade you to make it clear to the public that sexual harassment is not to be tolerated during your administration. I hope they will ask you, on behalf of both men and women throughout the country, that you establish the eradication of sexual harassment as one goal of your administration.

Sincerely,

Mark Monday

P.O. Box 120008, 750 Third Ave., Chula Vista, CA 92012 (619) 476-0390 ISSN 1041-0244

THE WHITE HOUSE

WASHINGTON

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ID# 265189

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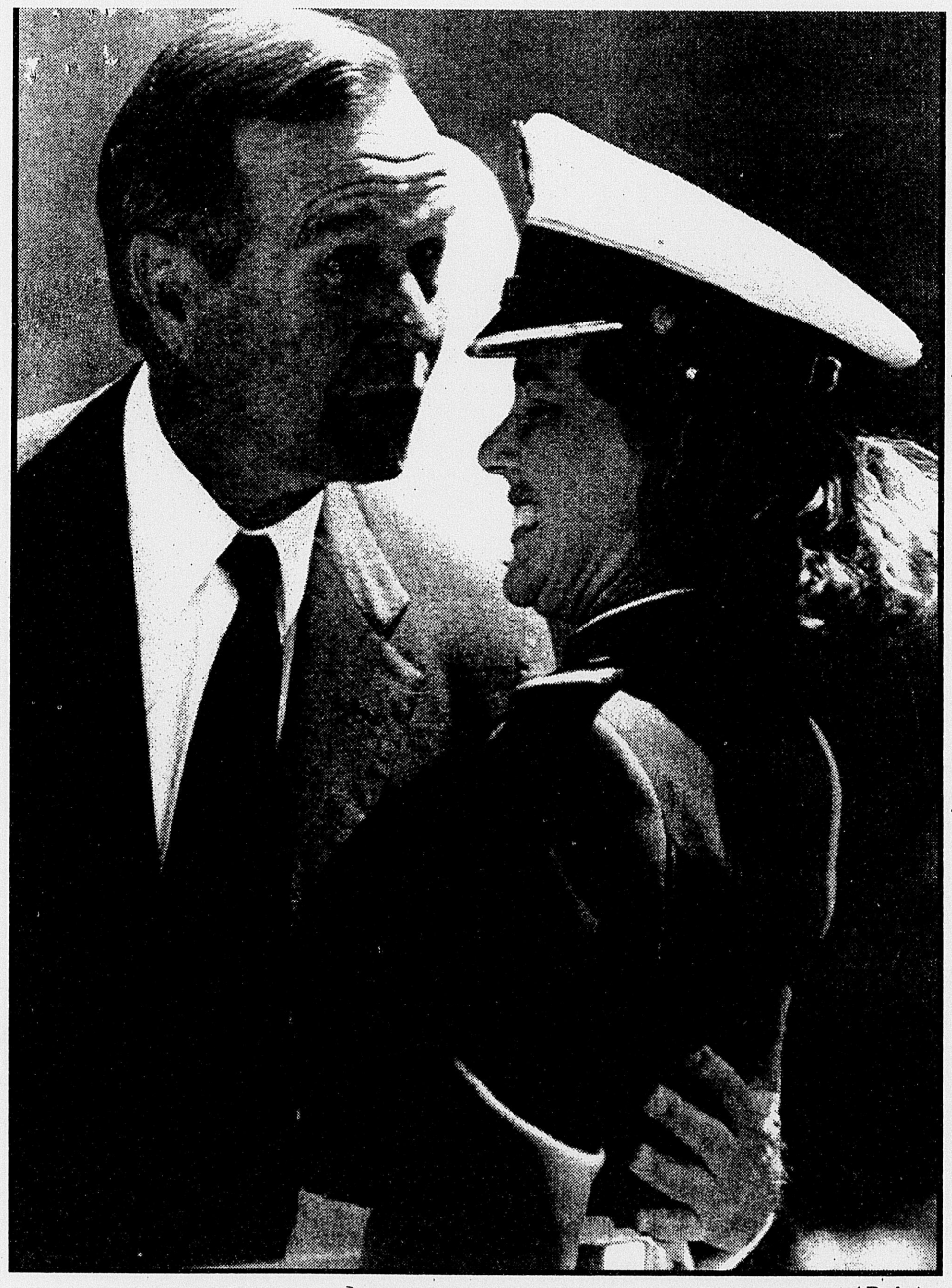

AP photo

A kiss for the graduate

President Bush and Air Force Cadet Dana Allen look a little wowed after he gave her a congratulatory kiss yesterday during graduation ceremonies at the Air Force Academy at Colorado Springs, Colo. Bush spoke on the need for Mideast arms restraint.

265937
H0010

Republican
National
Committee

Clayton Yeutter
Chairman

May 3, 1991

THE CHIEF of STAFF
has seen

MEMORANDUM

TO: **JOHN SUNUNU**
CHIEF OF STAFF
THE WHITE HOUSE

FROM: **CLAYTON YEUTTER**

John, Congresswoman Susan Molinari of New York called earlier this week to say that Congressional Republicans believe that if they can sway a few conservative Democrats, they can pass the Michel civil rights bill. Therefore, they hope the Administration will consider weighing in on the Michel legislation.

I made no commitment to her, of course. Why she was doing the calling, rather than Michel, and why she was calling me, rather than you or someone else at the White House, I do not understand.

I also find it difficult to believe that the Democratic leadership would permit the Michel bill to pass. I suspect our Republican colleagues are being inordinately optimistic, but you might want to have someone in your shop take a reading on this.

No need to respond.

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8700
FAX: (202) 863-8820

THE WHITE HOUSE
WASHINGTON

Date: May 7, 1991

FOR: GARY ANDRES

FROM: **GOVERNOR JOHN H. SUNUNU**

- ☐ Action
- ☐ Your Comment
- ☐ Let's Talk
- XXXX ☐ FYI

TJ

266624
HU5:C

THE WHITE HOUSE
WASHINGTON

Filed Records

CITIZENS COMMISSION ON CIVIL RIGHTS

Chairman: Arthur S. Flemming
Vice-Chairman: William C. Taylor

Members:

Birch Bayh
William Brown III
Frankie Freeman
Aileen Hernandez
Erwin Griswold
Theodore Hesburgh
Ray Marshall
William Marutini
Eleanor Holmes Norton
Eliot Richardson
Rabbi Murray Saltzman
Harold Tyler

Counsel: Susan Liss

THE WHITE HOUSE

WASHINGTON

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Comments:

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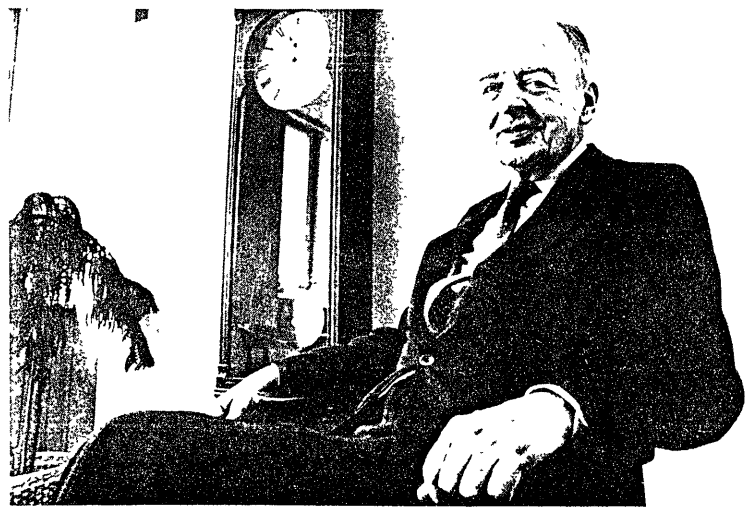
Encyclopedia of Associations, 1991

★14405★ CITIZENS' COMMISSION ON CIVIL RIGHTS (Civil Rights and Liberties) (CCCR)
2000 M St., N.W., Suite 400 Phone: (202) 659-5565
Washington, DC 20036 Dr. Arthur Flemming, Chm.
Founded: 1982. **Members:** 16. Bipartisan former federal cabinet officials concerned with achieving the goal of equality of opportunity. Objectives are to: monitor the federal government's enforcement of laws barring discrimination on the basis of race, sex, religion, ethnic background, age, or handicap; foster public understanding of civil rights issues; formulate constructive policy recommendations. **Telecommunications Services:** Fax, (202)293-2672.
Publications: *One Nation Indivisible: The Civil Rights Challenge For the 1990s*, *Barriers to Registration and Voting: An Agenda for Reform*, and reports on fair housing, busing and the Brown Decision, and affirmative action; provides press releases.

By Julie Kosterlitz



Richard A Bloom

A Resolute Believer In Bipartisan Solutions

He is chairman or board member of, or consultant to, so many health, welfare, education, civil rights, senior citizens and religious groups that his secretary recently had to type up a three-page list supplemented with hand-scrawled additions just to keep track of them all. At age 82, after a career in public service that spans nearly five decades, Arthur S. Flemming shows no sign of letting up.

Working out of an office given to him by the National Education Association, Flemming operates, without salary, as something of a one-man version of the Health, Education and Welfare (HEW) Department he once ran under President Eisenhower. "There's no end to the number of causes he's involved in," said Ralph G. Neas, executive director of the Leadership Conference on Civil Rights.

Flemming began the first of a series of periodic stints with the government as a member of the Civil Service Commission in 1939. Eventually he was appointed the third Secretary of HEW, where he served from 1958-61. While many of the department's former Secretaries fulminate over the unmanageable nature of the job, Flemming recalls it differently. "Every morning when I woke up, I would have the opportunity to take steps that could prove helpful to people," he said.

Although Flemming is still a member of a commission on civilian internment during World War II, his last major government appointment came to an abrupt end in 1982, when President Reagan dismissed him as chairman of the Civil Rights Commission—a post he had held for eight years—after a flurry of critical commission reports. "Under Flemming, the commission had criticized the Nixon, Ford, Carter and Reagan Administrations," Neas said. "That was part of the goal of the commission. But the Reagan Administration couldn't countenance disagreement."

Flemming, a lifelong Republican, appears to recall the event without rancor. "It's not one of those things one should take personally," he said. He subsequently set up the Citizens Commission on Civil Rights, hoping to reestablish outside of government the body that had once been called "the conscience of the country" on civil rights issues. Flemming still chairs the commission.

Having worked on legislation to create a national health insurance plan for the elderly during his tenure at HEW, Flemming has long been committed to the idea of national health care. Toward that end, he founded the National Health Care Campaign, a coalition of 50 religious and social welfare groups designed to drum up grass-roots support. "I'm absolutely convinced we have to go for a national health plan," he said. "We keep patching things together, and we keep finding millions of people outside the system—some 37 million people."

To charges that his vision is out of sync with fiscal realities, he answers that Canada's national health insurance system has proved to be a bargain and that in any event, the growing problem of the uninsured is already starting to turn the political tide, at least in the states. "There's no doubt in my mind the people are ready for it."

In the meantime, Flemming is trying to make the best of the present system. He recently teamed up with a Democratic colleague, former HEW Secretary Wilbur J. Cohen, to visit governors around the country to persuade them to take advantage of a new federal law allowing greater medicaid coverage of pregnant women and the elderly who don't qualify for welfare but live below the poverty line. Their expenses are being paid by the Villers Foundation, a Washington organization concerned with health care for low-income individuals, but the sentiments are their own. The governors, Cohen said, "are absolutely astounded that two former Cabinet members would come and visit them not representing anyone but themselves."

Recurring comments from those who have worked with Flemming center on his belief in bipartisan solutions to social problems, his gracious personal style, even toward those with whom he disagrees, and his sense of ethical obligation. "He'll approach every question by asking, 'What is the right thing to do?' " Cohen said.

Those qualities attracted former Arizona Gov. Bruce E. Babbitt, a Democratic presidential hopeful, to Flemming, whom he asked to co-chair a study of welfare reform. Jack Meyer, a health and welfare expert who directed the project, credits Flemming with being able to pull together the diverse political and philosophical views of contributing scholars. "He was a referee between contentious parties," Meyer said. "He put in a great deal of work. You have to get up early in the morning to keep up with him." □

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U.S. Department of Justice
Civil Rights Division

Deputy Assistant Attorney General

4-18-91

Phil Brady -

Per our conversation.

- Roger Clegg

URGENT

4-17-91

To: Dan Eramian
Amy Casner

Fm: Roger Clegg RC

Re: Report by Citizens Commission on Civil Rights

Based on the wire story, it sounds like the CCCR is conceding we have an excellent record on civil rights in most areas -- voting, housing, disability rights, etc. We have also, of course, recently gotten the Supreme Court to grant review in the Mississippi higher education case, and on Monday we will be arguing before the Supreme Court in three major voting rights cases. In all of this we are also on the side of the angels. I am attaching an earlier memo that summarizes our accomplishments during the first two years of the Bush Administration.

Therefore, I think we should seize upon this silly report as an opportunity to make this point: The only criticism that the civil rights establishment can make of our record is that we aren't supporting the establishment's efforts to institutionalize quotas and other reverse discrimination. The recent study, commissioned by Ralph Neas's group (Leadership Conference on Civil Rights) and reported in the Washington Post, found -- much to Neas's chagrin -- that most Americans support equal opportunity and nondiscrimination but oppose the efforts of the civil rights groups because they are perceived as supporting, not equality, but special preferences for some groups. And that is, unfortunately, an accurate perception, especially in the context of the civil rights bill. We should also make the point that it is ironic that it is our opponents who are supporting legislation favoring racial preferences, yet in opposing that legislation we stand accused of appealing to racism.

We should talk about our positive accomplishments, too: (1) our civil rights efforts, including our civil rights bill; and (2) the Administration's support of various empowerment initiatives, which is where there is now the most room for government to play a constructive role. I am also attaching some fact sheets on all this.

I would be happy to talk with reporters if you'd like.

cc: Tony Schall

AP Associated Press

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^For release at 10 a.m. EDT, TIME set by source(
^Group Rips Bush for Fanning 'Flames of Racial Intolerance'(
^By WILLIAM M. WELCH=
^Associated Press Writer=

WASHINGTON (AP) - President Bush has ''fanned the flames of racial intolerance'' and heightened racial tensions through his veto of the civil rights bill and other policies, a group of former federal civil rights officials contended today.

The Citizens' Commission on Civil Rights said in a report that Bush's actions have not matched his rhetoric in support of civil rights.

It charged Bush and his administration have made irresponsible political use of the issue of racial quotas in hiring and promotions, exploiting white resentment toward minorities and women for partisan advantage.

The president vetoed the 1990 civil rights act, arguing it would encourage employers to use such quotas despite the insistence of civil rights advocates that it would not. He has opposed on the same grounds a similar Democratic-sponsored bill this year.

''The administration's rhetoric in opposing the bill ... not only mischaracterized the legislation, but has also fanned the flames of racial intolerance and division,'' the commission said. ''In short, the Bush administration has failed its first critical test on civil rights.''

White House press spokesmen did not return phone calls seeking comment Tuesday in advance of the report's release.

The report did praise the Bush administration for supporting the Americans with Disabilities Act last year, which extended rights to people with physical handicaps. It credited the president with appointing women and minorities to top government jobs, and said the administration has improved enforcement of voting-rights and fair-housing laws.

But in most areas of civil rights policy and enforcement, the commission said, the administration ''has continued the policies of the Reagan years that constricted opportunities and curtailed remedies.''

It called Bush's judicial appointments disappointing and said the judiciary is increasingly hostile toward civil rights advocates. Of 70 vacancies on the federal bench filled by Bush in two years, eight were women, three were black and two were Hispanic, the report said.

''The administration's selections have been overwhelmingly white, conservative, wealthy and male,'' it said.

The commission said that in the face of increasing social problems among minorities, the administration continues to pursue ''abstract and sterile debates about the need for 'colorblind' remedies.''

The administration, it said, has made clear that it believes government has virtually no obligation to overcome the vestiges of past discrimination.

''By insisting on race and general neutrality, by refusing to acknowledge that unintended discrimination may well have discriminatory impact which reduces opportunity, the administration is significantly narrowing the scope of civil rights protections,'' the report said.

''On balance, at this point, these policies have contributed to an escalation - not a de-escalation - of racial tensions,'' the report said.

The commission, which is separate from the government's U.S. Commission on Civil Rights, was established in 1982 to monitor civil rights policies of the federal government and to encourage progress. Its members are former federal equal opportunity officials.

It is headed by Arthur Flemming, a former chairman of the federal commission and secretary of health, education and welfare in the Eisenhower administration.

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CIVIL RIGHTS ACCOMPLISHMENTS, JANUARY 1989 - JANUARY 1991

The Department is wholly committed to fighting discrimination and removing barriers to equal opportunity. The priorities of this Administration are to enforce existing civil rights laws vigorously and to work to obtain new protections where existing laws are inadequate. While it is difficult to single out particular areas as especially important, perhaps our three major accomplishments in the last two years are our record in prosecuting "hate crimes", our vigorous enforcement of the 1988 amendments to the Fair Housing Act, and our role in enacting and implementing the Americans With Disabilities Act. And, while we regret that true civil rights legislation was not enacted, we are proud of the role we played in opposing the pro-quota Civil Rights Act of 1990.

Hate Crimes

Great emphasis is being placed by the investigative and litigative branches of the Department on identifying and prosecuting those involved in "hate crimes," who act out their racial, ethnic, or religious hatreds with violence and acts of intimidation. The Department set records in the past two years for both the number and the quality of prosecutions involving hate crimes. In 1989 more than twice as many cases, and almost twice as many defendants, were prosecuted for hate crimes than in any previous year. In 1990, in all cases, defendants either entered guilty pleas or were convicted of at least one count, resulting in a record success rate of 100%. In these two years alone, over 100 defendants in twenty different states were convicted on federal criminal civil rights charges involving hate crimes. One-third of these cases involved acts by members of organized hate groups, and twice as many juveniles were charged in these two years as were charged in the entire preceding twelve-year period, owing in large part to an increase in organized hate groups such as racist Skinhead gangs.

To date, 38 Skinheads in Nashville, Dallas, and Tulsa have been prosecuted on federal charges for interfering with the civil rights of minority and Jewish individuals. Thirty-seven Skinheads have already been convicted for their crimes, which included the desecration of two synagogues with swastikas and anti-Semitic slogans and the intimidation and assault of black, Hispanic, and other minority citizens and people associating with them in public parks and live music clubs. The Department is examining the conduct of racist Skinhead gangs in numerous other cities. The Department's attention to hate crimes perpetrated by persons who do not belong to organized hate groups has also been successful. Recently, five California men pled guilty to threatening a Jewish pawn shop owner whom they harassed and threatened to kill in several hundred phone calls to his

business; four men were convicted of firebombing the home of a black family in a white neighborhood in Baltimore; a Los Angeles man was convicted of shooting into the home of his black neighbors, wounding an elderly woman; and a New Jersey television reporter and his mother pled guilty to threatening a young Chinese woman who sought to purchase a house they wanted to buy.

In the legislative arena, the Department worked closely with the White House on the "Hate Crime Statistics Act," signed into law in April 1990, which provides for collecting statistics on hate crimes nationwide. The availability of these statistics will help increase public awareness of racial, ethnic, sexual preference, and religious intolerance and will encourage greater efforts at the state and local level to combat hate crimes, complementing our efforts under the federal civil rights laws.

Housing Rights

Civil enforcement of housing rights is also being given a high priority. In 1988, the Fair Housing Act was amended to strengthen the Act's enforcement mechanisms by authorizing new federal recourses for fighting housing discrimination and by providing that monetary penalties can be imposed on those who discriminate. Since the Amendments went into effect in March 1989, the Civil Rights Division has more than doubled the number of housing discrimination lawsuits it files annually and has obtained over $800,000 in compensatory damages, punitive damages, and civil penalties.

The Division's attack on racial discrimination in housing includes 22 newly filed cases since January 20, 1989. In addition, the Division is enforcing new provisions of the law which extend the protections of the Fair Housing Act to families with children and to the handicapped. It has challenged discrimination against families with children in 50 cases and discrimination against the handicapped in 14 cases. Among these, the Division won cases in Illinois and Pennsylvania against local zoning provisions which blocked group housing for developmentally disabled persons who were capable of living successfully in group settings, and has brought two other cases on this issue. Also, it recently was successful in challenging three Virginia landlords for refusing to rent apartments to a drug treatment program for use by persons who had been in a closely supervised treatment program for a year without using any drugs or alcohol. The court found that these recovering persons were handicapped under the Fair Housing Act and were entitled to the Act's protections. This case serves to support the national goal of reducing drug use by establishing the rule that those who commit themselves to a rigorous treatment program to overcome a drug or alcohol abuse problem should not be discriminated against in housing as they continue their recovery.

Americans With Disabilities Act

In another initiative to remove barriers to equal opportunity, the Department led the Administration's efforts in developing and securing passage of the "Americans with Disabilities Act." This landmark legislation, signed by President Bush in July 1990, provides comprehensive protections for persons with disabilities in the contexts of employment, access to buildings, and access to transportation. The Attorney General has created a new office in the Civil Rights Division to carry out the Department's wide-ranging responsibilities for seeing that the ADA is properly implemented. The Division is drafting regulations to specify the obligations of State and local governments and over four million places of public accommodation affected by this law. In addition, the Division is providing technical assistance on the ADA to entities covered by the Act, is coordinating the government-wide plan to provide technical assistance to affected entities, and is taking a lead in informing the general public, including persons with disabilities, about this new law.

Institutional Litigation

More severely disabled persons benefit already from another Civil Rights Division program. On behalf of mentally and physically disabled persons and others confined in publicly operated institutions, the Division uncovers and forces the correction of conditions which jeopardize the health and safety of residents or in other ways violate their constitutional and statutory rights. The Division seeks relief from a wide variety of unconstitutional conditions, including the "Victorian" practices of physical and chemical restraints of mentally disabled individuals -- tieing them up, locking them alone in barren rooms, or drugging them into a state of stupor. Since January 1989, state institutions in California, Louisiana, and Kansas have made significant strides in eliminating such practices, and institutions in Connecticut and Colorado are undertaking steps to do so, in response to Division efforts. The Division also recently succeeded -- through vigorous enforcement actions against officials who were evading or ignoring previous court orders or decrees -- in stopping life-threatening practices at an Oregon mental retardation facility (including dangerously overusing and misusing mind-altering drugs); in requiring the State of Michigan to eliminate dangerous conditions which were resulting in an epidemic of stabbings in its three largest maximum security prisons; and in forcing the District of Columbia to start improving abysmal conditions in its institution for the developmentally disabled, after years of ignoring court orders to do so.

Voting Rights

In the area of voting rights, the Division works to remove barriers that curtail the opportunity of minority persons to

participate effectively in the political process. Recent highlights include bringing suit against the State of Georgia to challenge its requirement that there be a runoff whenever no candidate gains a majority of the votes cast in an election. The Division is seeking to have the requirement eliminated -- so that a candidate can win with a plurality of the vote -- in areas where the runoff system has had a discriminatory effect. The Division recently prevailed in its claim that the redistricting of the five single-member districts of the Los Angeles County Board of Supervisors in 1981 discriminated against Hispanic voters by fragmenting the core of the Hispanic community into three different districts. The Supreme Court has declined to review the lower courts' decisions in this case, and an election under a new nondiscriminatory plan providing a district in which Hispanics will be able to elect the candidate of their choice was held on January 22, 1991; two Hispanic candidates will meet in a run-off to be held on February 19.

Also, the Division is gearing up to examine new redistrictings that will take place in many jurisdictions pursuant to the 1990 Census. This program will help ensure the rights of minority voters to participate effectively in the electoral process throughout the next decade.

Seeing that the full force of the Voting Rights Act may be brought to bear against states and localities where judges are elected and their judicial election systems undermine minority citizens' opportunity to elect judges of their choice is another recent priority of the Division. We believe that when Congress amended the Voting Rights Act in 1982, it intended -- contrary to recent claims -- that the Act be used to challenge discriminatory provisions for electing judges as well as those for electing political officials. The Division has recently pressed this view in cases in Alabama, Louisiana, and Texas.

Equal Employment Opportunity

Since January 1989, the Division has pursued a vigorous and effective litigation program to enforce Title VII of the Civil Rights Act of 1964, as amended. Thirty-six new suits were initiated and decrees, through litigation or consent, were obtained in 31 cases. These cases affected the rights of hundreds of employees. Relief consisted of over $13.6 million in back pay, as well as entry-level and promotional opportunities for minorities, women and, in some cases, white males who were improperly denied employment opportunities. Highlights include an award of $9,000,000 in back pay to a class of more than 600 black, Hispanic, and female police officers whose careers were hurt by a discriminatory promotion system in the Chicago police department in the 1970's; $3,000,000 in back pay to a class of about 800 black persons who were denied employment with the Mississippi Department of Public Welfare in the 1970's; in excess

of $1,200,000 to a class of 35 females who were denied employment opportunities with the Massachusetts Department of Corrections; $500,000 in back pay for a class of about 200 black employees of the North Carolina Agricultural Extension Service who were paid lower salaries than their white counterparts until the early 1980's; and over $100,000 in back pay for a female employee of the California Department of Corrections, who was denied transfer to a medical technical assistant position at a male inmate facility because of her sex. Other litigation has involved unequal treatment, harassment, retaliation, or other direct discrimination against an individual. There, the Division has obtained appropriate corrective action and back pay awards ranging from $9000 to $60,000. The Division obtained relief against the city of Allentown, Pennsylvania, for using dual lists and race preference system for selecting entry-level police officers; and against the city of West Haven, Connecticut, for making laborer positions available only to male applicants and clerical positions available only to female applicants.

Equal Educational Opportunity

In the area of equal educational opportunity, the Division is working to eliminate remaining vestiges of racial segregation in public education. Our highest visibility cases in recent years have involved state university systems. Recently, for example, we filed a petition for a writ of certiorari in United States v. Mabus, the Mississippi higher education case, and we have litigation in district court underway against the Alabama higher education system. The Division also sued the State of Virginia and the Virginia Military Institute (VMI) to challenge the exclusion of female students from this state-supported college.

Office of Redress Administration

The Civil Liberties Act of 1988 authorized redress payments of $20,000 to Japanese Americans who were interned, evacuated, or relocated during World War II. Since the passage of the Act in April 1988, the Office of Redress Administration (ORA) has issued over 22,000 payments to eligible individuals, beginning last Fall, and expects to pay the 3,000 remaining cases for which funding has been provided in the current fiscal year over the next few months. In addition, ORA has already begun processing nearly 6,000 cases that are eligible for payment in FY 1992. Of these 6,000 cases, nearly 3,000 have been completed and are ready for payment once funding becomes available.

ORA's success in completing such a large number of cases results from close contact with the Japanese American community, including participation in over 35 redress seminars in 1990 alone. In addition, ORA has handled over 10,000 calls on its

toll-free help line and distributed over 300,000 pieces of literature dealing with various issues about the redress program.

U.S. Department of Justice

Office of Public Affairs

March 1, 1991

Washington, D.C. 20530

FACT SHEET ON ADMINISTRATION CIVIL RIGHTS BILL

- The Administration is committed to strengthening the strong employment discrimination laws that now exist. These improvements will operate to obliterate consideration of factors such as race, religion, sex, or national origin from employment decisions.

- A major objective of the Administration is to ensure that Federal law provides strong new remedies for harassment based on race, sex, religion, or national origin. The Administration proposes to create a new monetary remedy, up to $150,000, for these forms of discrimination.

- In addition, the Administration proposes to extend 42 U.S.C. 1981 to outlaw racial discrimination in the performance of contracts, overruling Patterson v. McLean Credit Union, 109 S. Ct. 2363 (1989).

- The Administration also proposes legislation overturning the Supreme Court's decision in Lorance v. AT&T Technologies, Inc., 109 S. Ct. 2261 (1989), which unfairly limits the time for challenging discriminatory seniority systems.

- The administration also proposes to codify the "disparate impact" cause of action for employment practices that unintentionally exclude disproportionate numbers of certain groups from some jobs. This codifies Griggs v. Duke Power Co., 401 U.S. 424 (1971). The Administration bill shifts the burden of proof to the employer to justify practices having a disparate impact under the rule of "business necessity." This overrules the contrary decision in Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115, 2126 (1989).

- In order to help curtail unnecessary litigation, the use of alternative dispute resolution mechanisms will be encouraged.

- The time has come for Congress to bring itself under the same antidiscrimination requirements it prescribes for others. This will promote both fair treatment for congressional employees and a greater appreciation by Congress of the consequences of new legislative initiatives.

(MORE)

- Other improvements, including changes in certain provisions affecting the statute of limitations and expert witness fees, will also enhance the administration of Title VII of the 1964 Civil Rights Act.

- The Administration bill strengthens our civil rights laws without encouraging the use of quotas or unfair preferences, without departing from the fundamental principles of fairness that apply throughout our legal system, and without creating a litigation bonanza that brings more benefits to lawyers than to victims.

- The Administration recognizes that equal opportunity can never be a reality unless there are decent schools, safe streets, and revitalized local economies. Therefore, in addition to this bill it seeks Congressional action to promote choice and opportunity on several fronts: educational choice and flexibility; home-ownership opportunity; enterprise zones and community opportunity areas; and heightened anti-crime efforts.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release February 27, 1991

FACT SHEET

EXPANDING CHOICE AND OPPORTUNITY
FOR INDIVIDUALS, FAMILIES, AND COMMUNITIES

In his State of the Union Address, the President said: "The strength of democracy is not in bureaucracy. It is in the people and their communities....We must return to families, communities, counties, cities, states and institutions of every kind the power to chart their own destiny, and the freedom and opportunity provided by strong economic growth."

The Administration is committed to strengthening the power and opportunity of individuals and families, to breaking down barriers to independence and self-reliance wherever they exist, and to providing hope to distressed communities.

This means giving people access to jobs and the ability to make choices that will better their lives and the lives of their families. People with access to housing, jobs, and quality education have a stake in their community, and a greater incentive to lead productive lives. More important, people with economic opportunity have hope for the future -- an important and powerful weapon against poverty and despair.

The Administration seeks to use numerous administrative, regulatory, and budgetary means to expand economic opportunity for low-income individuals. In addition to these continuing efforts, the President today announced that he will seek Congressional action to promote choice and opportunity on several fronts:

1. educational choice;
2. educational flexibility;
3. homeownership for low-income persons;
4. enterprise zones;
5. anti-discrimination laws;
6. community opportunity areas;
7. the social security earnings test; and
8. anti-crime efforts.

Legislation, where required, will be transmitted to Congress in the next several weeks to implement these proposals.

GIVING PARENTS AND STUDENTS CHOICE IN EDUCATION:

Choice programs provide parents the opportunity to select the most appropriate school for their children -- based on informed judgments about which school offers the best education. Choice leads to healthy competition among schools by focusing on proven educational quality as the way to attract students. Clearly, parents should have the opportunity to send their children to schools of their choice. Choice can lift the performance and quality of all schools.

The President will propose a new **Educational Excellence Act** which contains strategic initiatives to improve the learning achievement of all Americans and to restructure the nation's educational system. Initiatives in the Educational Excellence Act will:

- o Stimulate fundamental reform and restructure our education system through promoting educational choice and alternative certification for teachers and principals.

- o Assist educators in their mission to improve student performance by: rewarding schools that demonstrate improved achievement among students; rewarding excellent teachers; and promoting innovation in training school administrators.

- o Provide incentives to school districts to design and implement innovative approaches to mathematics and science education; enhance the endowments of Historically Black Colleges and Universities; and contribute to improving literacy.

PROVIDING EDUCATIONAL FLEXIBILITY IN RETURN FOR ACCOUNTABILITY:

Federal Departments and agencies administer hundreds of separate programs that provide or support education services; each has its own statutory and regulatory requirements. Program requirements can impede the ability of local schools and districts to provide the best possible education. Flexibility in administering Federal education programs will allow Governors, school administrators, teachers, service providers, parents, and others in the community to work together to develop effective education programs that meet the needs of all students, particularly those students who are educationally disadvantaged.

- o **The Educational Excellence Act of 1991** would promote local control and innovation in education by providing increased flexibility in the use of Federal funding in exchange for enhanced accountability for results. The Administration's bill will be guided by the following principles:

  -- Flexibility should be linked to accountability for improvements in educational outcomes.

  -- Flexibility should result in delivering services to current target populations in a more effective manner.

  -- Flexibility should retain key protections in current laws (e.g., protection of the disabled).

PROVIDING HOMEOWNERSHIP OPPORTUNITIES:

Low-income Americans have a greater stake in their communities when they have the opportunity to own their own homes. The HOPE (Homeownership and Opportunity for People Everywhere) initiative is a new grant program to increase homeownership opportunities. By offering residents greater control and access to property, the HOPE program will instill pride of ownership and enhance incentives for maintenance and improvement. While HOPE was enacted into law last year, Congress provided no funding for the program in Fiscal Year 1991.

- o The President has requested $500 million in Fiscal Year 1991 supplemental funding to start the HOPE program immediately. The President's Budget also requests $1 billion in 1992 for the new HOME program -- a housing block grant program providing States and localities greater flexibility in meeting the housing needs of their low-income residents, with incentives for use of housing vouchers.

- o HOPE Grants will be made on a competitive basis to resident management corporations, resident councils, cooperative associations, non-profit organizations, cities and States, and public and Indian housing authorities. Funding will help participants design and execute their plans for resident management and buyouts of public and assisted housing.

- o The HOPE initiative also targets $258 million in 1992 for a new "Shelter Plus Care" program to help the homeless. The Shelter Plus Care program will link housing with the full range of services needed by the homeless. The program will combine shelter with the support services -- job training, health care, and drug treatment -- that help people achieve dignified and independent lives.

CREATING JOBS IN ENTERPRISE ZONES:

Enterprise zones will attack poverty by promoting investment in economically distressed neighborhoods. Enterprise zones will attract new seed capital for small business start-ups, create new incentives for entrepreneurial risk-taking, and reduce high effective tax rates on those moving to work from welfare.

- o The **Enterprise Zone and Jobs-Creation Act of 1991** will target tax incentives and regulatory relief to some of our nation's most economically depressed areas.

- o The Secretary of Housing and Urban Development would designate up to 50 (urban, rural, and Indian) enterprise zones over a four year period. Designation will be based on the level of distress, as well as on the nature and extent of State and local efforts to improve living conditions and to eliminate government burdens to economic activity. Designation will be for a maximum of 24 years.

- o The legislation will provide tax incentives to attract seed capital, stimulate employment, and increase the economic return from work for the working poor:

  - -- Workers will be eligible for a 5 percent refundable tax credit for the first $10,500 of wages earned in an enterprise zone business. This will put up to $525 more income in the pockets of low-income workers. The credit phases out between $20,000 and $25,000 of total annual wages.

  - -- To spur investment, capital gains taxes will be eliminated for gains on investment in tangible property (e.g., buildings and equipment) used in a business located in an enterprise zone for at least two years.

  - -- To encourage entrepreneurial risk-taking, individuals will be permitted to expense investments in the capital of corporations engaged in enterprise zone businesses. This essentially provides an immediate write-off for investments in enterprise zone businesses. Corporations must have less than $5 million of total assets. Expensing will be permitted up to $50,000 annually per investor, with a $250,000 lifetime limit.

- o The legislation would also give enterprise zone communities priority for free trade area status. Such status would, for example, allow a business in an enterprise zone to import materials duty-free if the materials are used to manufacture products for export to other countries.

- Enterprise zones would reduce Federal tax revenues by $1.8 billion over five years.

STRENGTHENING AND ENFORCING ANTI-DISCRIMINATION LAWS:

A vital element in the effort to protect the civil rights of all Americans is the vigorous enforcement of existing anti-discrimination laws. Over the past two years, the Bush Administration has moved aggressively to fight hate crimes and combat discrimination in housing, voting, employment, and education. A few examples:

- Enactment of the Americans with Disabilities Act in July 1990 was one of the most important expansions of civil rights protections in a quarter of a century. The Administration is now pursuing swift implementation of the landmark law.

- The Department of Housing and Urban Development (HUD) is aggressively enforcing the 1988 Fair Housing Amendments which prohibit housing discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability. The Bush Administration has resolved nearly 12,000 of the almost 16,000 fair housing cases.

- In 1989, the Justice Department prosecuted more than twice as many hate crimes cases as in any previous year. In 1990, the Justice Department had a 100 percent success rate in prosecuting hate crimes.

- In 1990, the Department of Education received and resolved more civil rights complaints than in any previous year of its history -- and in record time.

- The largest settlements in the history of the Department of Labor's Federal Contract Compliance cases have been achieved during the Bush Administration. A single case involving employment discrimination against women and minorities resulted in a payment of $14 million. In another case, a back pay settlement of $3.5 million will benefit approximately 1,000 women who were discriminated against in hiring.

The Administration is committed to strengthening the strong employment discrimination laws that now exist. These improvements will remove consideration of factors such as sex, race, religion, or national origin from employment decisions. This can be done without encouraging the use of quotas or preferential treatment, without departing from the fundamental principles of fairness that apply throughout our legal system, and without creating a litigation bonanza that brings more benefits to lawyers than to victims.

- o A major objective of the Administration is to ensure that Federal law provides strong new remedies for harassment based on sex, race, color, religion, or national origin.

- o The Administration will propose to codify a cause of action for "disparate impact," involving employment practices that unintentionally exclude disproportionate numbers of certain groups from some jobs. The burden of proof will be shifted to the employer on the issue of "business necessity."

- o The time has come for Congress to bring itself under the same anti-discrimination requirements it prescribes for others.

- o Other improvements, including changes in certain provisions affecting statutes of limitations and encouragement for the use of alternative dispute resolution mechanisms, will also enhance the administration of our comprehensive civil rights laws.

REDUCING FEDERAL BUREAUCRACY AND ESTABLISHING OPPORTUNITY AREAS:

Programs providing social, welfare, health, education, and nutritional services are often delivered in fragmented ways. Allowing services to be integrated will better serve the recipients of these programs and promote self-sufficiency and opportunity.

- o The **Community Opportunity Act of 1991** will enable local communities to develop "community opportunity systems" and allow them to restructure Federal programs to provide services and benefits in the way the community deems best to meet the needs of the individuals and families served.

- The legislation would allow a Federal administrator designated by the President to recommend a budget-neutral waiver of most Federal statutory and regulatory requirements for any Federally funded program to be included in the community's opportunity delivery system. The Federal administrator will make recommendations regarding the waiver requests to the relevant Federal agency heads.

- Communities will be able to develop community opportunity systems in which:

  -- services and benefits can be integrated, combined, and restructured at the community level;

  -- the system is neighborhood- or community-based, with a specified target group of beneficiaries;

  -- the individuals and families served can participate in the design of the system; and

  -- the delivery system offers individuals and families in the target group of beneficiaries the maximum choice and control over the range, source, and objectives of the services and benefits to be provided.

- Each community opportunity system will have clear and measurable goals and will be evaluated with regard to both the short- and long-term outcomes.

EXPANDING JOB OPPORTUNITIES FOR OLDER AMERICANS BY LIBERALIZING THE SOCIAL SECURITY EARNINGS TEST:

If social security recipients aged 65 to 69 wish to supplement their benefits with earnings, they may earn only up to $9,720 this year before their social security benefits are reduced. Beyond $9,720, each three dollars of earnings reduces their social security benefits by one dollar.

For retirees with sources of income other than earnings, such as private pensions and investment income, this limitation on allowable earnings may have little effect on their lives. Presently, the earnings test falls most heavily on elderly persons who do not have significant savings or income from pension plans, and can seriously constrain their choices of employment.

- The President's Fiscal Year 1992 Budget proposes an increase in the amount of allowable earnings for social security recipients aged 65 to 69.

  -- For 1992, allowable earnings would be increased $800, or 8 percent, from $10,200 to $11,000.

  -- For 1993, the increase would be $200, from $10,800 to $11,000.

  -- For 1994, allowable earnings would continue to rise to the level projected under current law, $11,400.

PROTECTING CITIZENS BY FIGHTING VIOLENT CRIME:

As President Bush has stated in the past, the right to be free from fear in our homes, streets, and neighborhoods is the first civil right of every American. Where streets are not safe and property is not secure, economic opportunity is impossible.

The President announced in his State of the Union Address that the Attorney General will soon convene a Crime Summit of our nation's law enforcement officials. A major objective of the Crime Summit is to strengthen the working relationship between the Administration and State and local law enforcement officials.

The Administration will again propose comprehensive violent crime control legislation to give law enforcement authorities the tools they need to apprehend, prosecute, and incarcerate violent criminals. The legislation will include:

- A meaningful Federal death penalty for the most heinous crimes with procedures to ensure its fair and colorblind application.

- Habeas corpus reform to reduce unnecessarily repetitive appeals that clog the courts and delay justice.

- Exclusionary rule reform to ensure that the evidence gathered by law enforcement officials in a good faith belief that they are acting lawfully can be used to help courts establish the truth.

- Provisions to strengthen Federal laws concerning the safety of women by modifying rules on the admissibility of evidence in cases of sex crimes, enhancing penalties for the distribution of illegal drugs to pregnant women, increasing penalties for recidivist sex offenders, and offering greater protection for victims below the age of sixteen.

ID# 266842

HU 010

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: AUGUST 30, 1991

NAME OF CORRESPONDENT: MR. PAUL FIREMAN

SUBJECT: ASKS THE PRESIDENT TO URGE THE CHINESE AUTHORITIES TO FULFILL THE REQUESTS OF THE HUNGER STRIKERS HELD IN CHINESE PRISONS

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
JIM SCHAEFER	ORG	91/08/30	A-JS A		91/09/12 LJ
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:F INDIVIDUAL CODES: 4200 4800 ____

PL MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF
*F-FURNISH FACT SHEET	*S-SUSPENDED	* OUTGOING
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

THE WHITE HOUSE

WASHINGTON

September 12, 1991

Paul Fireman
Chairman & CEO
Reebok International, Ltd.
100 Technology Center Drive
Stoughton, MA 02072

Dear Mr. Fireman,

On behalf of President Bush, I would like to thank you for your recent letter expressing your concern over the plight of student leader Li Lu, enduring a hunger strike on behalf of his pro-democracy colleagues who are currently in a Beijing prison. Please be rest assured that your comments have been shared with the appropriate officials and representatives of the NSC and that we are carefully reviewing this situation.

Again, let me thank you on behalf of the President for sharing your thoughts with us on this important issue.

Sincerely,

Jim Schaefer
Assistant Director
Office of Public Liaison

266842

Reebok Human Rights Award

August 27, 1991

President George Bush
White House
Washington, DC 20510

Dear Mr. President:

I write in support of Li Lu, a student leader at Tiananmen Square and winner of the 1989 Reebok Human Rights Award, who is in his 11th day of a hunger strike outside the Chinese Embassy in Washington, D.C.

Li Lu began his hunger strike to show solidarity with his pro-democracy colleagues, Chen Ziming and Wang Juntao, who began a hunger strike on August 13 in protest of the inhumane conditions they are subjected to in a Beijing prison. These two leaders are currently in solitary confinement with no access to medical attention or adequate food since early April.

Mr. President, I respectfully request that you use your good offices to communicate to the Chinese authorities the American people's profound disappointment in the manner in which they have treated these pro-democracy prisoners.

Furthermore, Mr. President, I respectfully request that you urge the Chinese authorities to fulfill the following reasonable requests put forth by these courageous hunger strikers:

(1) The immediate improvement of prison conditions for Wang Juntao and Chen Ziming, and the removal of the ban to adequate food and medical treatment;

(2) The granting of access to the International Red Cross and other human rights groups to visit Wang Juntao and Chen Ziming so as to verify that their treatment has improved;

(3) Allowing members of the families of these hunger strikers to visit and ascertain the condition of their loved ones.

Mr. President, the Chinese government and its judicial system are obliged to guarantee the basic health and welfare of Wang Juntao, Chen Ziming and other political prisoners.

I respectfully urge you, Mr. President, to help bring these requests to fruition.

Sincerely,

Paul Fireman.

Paul Fireman
Chairman and Chief Executive Officer
Reebok International Ltd.

REEBOK INTERNATIONAL LTD.
100 TECHNOLOGY CENTER DRIVE
STOUGHTON, MA 02072
FAX # 617-341-5087

Reference # RBKUSA _____

To: President George Bush

Fax #: (202) 456-2461

Company: White House

Country: _____

From: Mr. Paul Fireman

Dept.: Reebok International Ltd.

Extn: 7800

Floor: 6th

49

Pages including cover 3

Rev. 9/89

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J. Schaefer
see attached

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Reebok Human Rights Projects, 100 Technology Center Drive, Stoughton, MA 02072, U.S.A., 617-341-5000 FAX 617-341-5087

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Paul Fireman
Chairman and Chief Executive Officer
Reebok International Ltd.

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DOCDATE 910827
RECTYP IBA
MEDIA F
STAFF PRESIDENT BUSH
PRBUSH
NAME MR. PAUL FIREMAN
TITLE CHAIRMAN AND CHIEF EXECUTIVE
OFFICER
ORG REEBOK INTERNATIONAL LTD.
STREET 100 TECHNOLOGY CENTER DRIVE
ADDR STOUGHTON MA 02072
SUBJECT ASKS THE PRESIDENT TO URGE THE CHINESE
AUTHORITIES TO FULFILL THE REQUESTS OF
THE HUNGER STRIKERS HELD IN CHINESE PRISONS
SUBCODE HU010
CO034-02
INDCODE 4200 4800
RPTCODE PL
ACTION PLSCHA ORG 910830
COMMENTS ORIGINAL LTR. REC'D IN CORREP. ANALYSIS,
SEP 4 91 - SENT TO J. SCHAEFER

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