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HU010 R: 7/30 3:45

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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☐ H - INTERNAL
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Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Jerome Schlichter

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

Subject: Requests "greedy attorney" remark which the President made in reference to the Civil Rights Bill

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuoco	ORIGINATOR	DG 91 07 29		C	91 08 13 CS
Cuoco 10	Referral Note:				
	D	91 07 30	NL	A	91 08 13 CS
	Referral Note:	letter to Mr. Schlichter			
		/ /			/ /
	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:
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C - Completed
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
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5/81

THE WHITE HOUSE

WASHINGTON

August 13, 1991

Dear Mr. Schlicter:

Thank you for your recent letter to the President conveying your thoughts about the pending employment discrimination bills.

So far as I am aware, the President has never referred to any bill as a boon to "greedy" attorneys. The President does believe, and has said, that new civil rights legislation should not contain provisions that will encourage unnecessary litigation or discourage reasonable settlements. Provisions that would do more to enrich lawyers (representing either plaintiffs or defendants) than to give relief to victims are unneeded and undesirable.

The President is committed to strong enforcement of existing civil rights laws, and to the enactment of appropriate new employment discrimination laws. I am enclosing for your information a copy of the President's bill along with an explanatory section-by-section analysis.

Yours truly,

Nelson Lund
Associate Counsel to the President

Mr. Jerome J. Schlichter
Schlichter Law Associates
100 South Fourth Street
Suite 900
St. Louis, MO 63102

THE WHITE HOUSE
WASHINGTON

7/22/91

TO: Bev Ward

FROM: Joan Gibson/SLR

Dave Tiffany and I think that this incoming should go to Counsel's office to be answered. Do you agree? Or do you have a suggestion?

SCHLICHTER LAW ASSOCIATES
ATTORNEYS AT LAW

100 SOUTH FOURTH STREET, SUITE 900
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(618) 632-3329

JEROME J. SCHLICHTER
JOSEPH L. BAUER, JR.
DREW BAEBLER
Members Mo & Il Bars

R. DWIGHT HARDIN,
Legal Assistant

June 19, 1991

COUNSEL'S OFFICE
RECEIVED
JUL 24 1991

The Honorable George Bush, President
United States of America
The White House
Washington, D.C. 20005-0001

Re: Civil Rights Act of 1991

Dear President Bush:

I am a plaintiff's attorney and have always handled civil rights cases as a supplement to my practice, not because of a desire for large fees on those cases, but rather because I feel that this country is already far too racially divided and such cases deserve handling. They most certainly are not highly lucrative or lucrative at all and are extremely high risk in addition to facing hostility from the Federal Courts in recent years. In my experience, the lawyers who handle such cases do so out of a commitment to social justice transcending any "greediness" or attempt to make substantial fees, because the cases certainly do not warrant that. In addition, they are fought harder than any other cases in my experience and delay is a normal tactic. As an example, I currently represent a group of black applicants for employment discrimination who number over 500 and have been found by the Seventh Circuit Court of Appeals to have been the victims of intentional discrimination which the Court has stated is "the strongest case of discrimination one can imagine short of an announcement of it". The Seventh Circuit, which has been a conservative Court, also found that the company had used a pretext to intentionally discriminate against the people. This discrimination occurred in 1979, yet the damages have still not been determined by the Court some twelve years later. Indeed, it will be years more until appeals are exhausted and these innocent victims of intentional discrimination are compensated. Further, only by sheer perseverance has it been possible for me to continue with this case since its costs are prohibitive and obviously the people have no money with which to pay a lawyer.

Incredibly, under the current law, I would not have even taken this case because in my opinion it would have been impossible to win though the Court has found the plaintiffs are totally deserving. When you describe the pending Civil Rights Bill as a boon to "greedy" attorneys, I resent it and you simply do not know what you are talking about. Clearly your attempt to portray yourself as on the side of Civil Rights is a cynical maneuver, contradicting actions that have been divisive and hostile to civil rights.

Yours very truly,

Jerome J. Schlichter

JJS:lfs

cc: The Honorable John Danforth, U.S. Senate
The Honorable Christopher Bond, U.S. Senate

TJ

258281
HU010

THE WHITE HOUSE
WASHINGTON

July 25, 1991

MEMORANDUM FOR ROGER B. PORTER

FROM: CHARLES E.M. KOLB CEMK

SUBJECT: Civil Rights and Education

Secretary Alexander intends to send a letter to Senator Hatch explaining the extent to which Senator Danforth's proposed civil rights language would potentially undermine the ability of employers to require legitimate educational criteria in making hiring decisions. I have been working with Nelson Lund in the Counsel's office to shape Alexander's response.

Attached is the latest version of the letter. An earlier draft was a bit too "folksy" and neglected to make the substantive legal points about the Danforth language. This version is a much better and more substantive approach.

Attachment

TO: Nelsen Lund

FROM: Jeff Martin

DATE: July 25, 1991

Dear Senator Hatch:

Thank you for your recent letter requesting my views on the effects S. 1408 could have on the national crusade for education reform. I am deeply concerned about the possible effect that S. 1408 could have on student motivation to stay in school and to work hard in school. Although the "business necessity" language of the bill is ambiguous in some respects, it is my understanding that employers would often have difficulty in defending the use of legitimate educational criteria in making hiring decisions. I have grave doubts about the wisdom of legislation that would threaten employers with civil liability if they asked prospective employees for a high school transcript or a diploma. To tell employers not to consider such information when making hiring decisions would undermine the importance of staying in school and working hard in school. It would send precisely the wrong message to students and teachers. It would say to students that staying in school doesn't matter, because employers don't have the right to know whether you graduated or whether you did well. It would say to teachers that their work is unimportant in the outside world.

Virtually everyone who is concerned about the future of our nation understands that our population is not sufficiently well educated to meet the demands of the twenty-first century. Study after study has shown that neither our young people--nor our adult population--has the level of knowledge and skills that will be needed to succeed in a changing world. In order to change this situation, we must improve our schools. In order to improve our schools, we must enhance incentives for students to do well in school. We must send a message that attendance in school, achievement in school, and graduation from school are important. Our plans for improving the nation's educational system will be jeopardized by any legislation that inadvertently devalues schooling and depresses academic standards.

I am sure Congress is well aware that our national competitiveness depends on a better educated workforce. Because the global economy is rapidly changing, workers must have the skills to adapt to new work requirements or otherwise they will be left behind by change. Education is the key to equipping workers to respond to change. Employers in many competing nations routinely examine the educational credentials of prospective employees.

Contrary to this global reality, S. 1405 appears to say that employers will not be able to require entry-level employees to have the skills and knowledge necessary to perform functions other than those required by the exact job for which they are being considered. In effect, the bill seems to require that employers hire as if every job is a changeless and dead-end job.

I hope that the Congress will not do anything to remove or undercut the ability of the labor market to reward students who work hard and finish school.

Sincerely,

Lamar Alexander

ID # 258453 CU

HU010 R: 5/21 2:30P

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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☐ H - INTERNAL
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Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Edward I. Koch

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

Subject: Information regarding H.R. 1 legislation. (Civil Rights Bill) Sent to every member of Congress

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91.05.20		C	91.06.14 CS
CUAT 10	Referral Note: A	91.05.21	NL	A	91.06.14 CS
Cuat07	Referral Note: I	91.05.21 letter to ED KOCH		C	91.05.21 CS
Cuexec	Referral Note: I	91.05.21		C	91.05.21 CS
	Referral Note:	/ /			/ /
	Referral Note:				

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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
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5/81

THE WHITE HOUSE

WASHINGTON

June 14, 1991

Dear Ed:

Thanks for sending me a copy of the materials you provided to several Members of Congress before the vote last week, and for your May 15 note to Boyden.

As you know, the vote showed that opposition to legislation promoting quotas has grown since last year. I am confident that your efforts to explain and publicize the defects in the bill have helped bring this about. All of us here appreciate what you have done, and we are anxious to continue working with you on this issue.

Thanks again for everything.

Yours truly,

Nelson Lund
Associate Counsel to the President

The Honorable Edward I. Koch
Robinson Silverman Pearce Aronsohn & Berman
1290 Avenue of the Americas
New York, New York 10104

R: 6-7-91

ROBINSON SILVERMAN PEARCE ARONSOHN & BERMAN

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SHERRY WAKSBAUM
SUSAN STOLL ZEDECK
MICHAEL R ZIENTS

WRITER'S DIRECT NUMBER:

May 31, 1991

Mr. Nelson Lund
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Nelson:

I thought you would be interested in the enclosed correspondence that I sent to every Member of Congress from the State of New York and to selected others from throughout the country.

All the best.

Sincerely,

Edward I. Koch

encl.

EDWARD I. KOCH
1290 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10104

May 31, 1991

The Hon. Mel Levine
U.S. House of Representatives
Washington, D.C. 20515

Dear Mel:

You will be voting on H.R. 1 shortly. In prior correspondence, I have stated that I think the legislation will encourage quotas and create reverse discrimination. For that reason, you should oppose it.

I do not believe that the new amendments will rectify the situation at all. Indeed, as succinctly stated by the President's counsel, "it explicitly authorizes all quotas that are 'in accordance with employment discrimination law' now in place." Worse still, "The definition of 'quota' specifically allows quotas to be used so long as jobs are filled with individuals who have the 'necessary qualifications to perform the job.' Therefore, an employer is specifically permitted to fill quotas with less qualified persons of a particular race, sex, or religions, so long as they are marginally qualified."

Enclosed is my statement to the American Jewish Committee. I know that you will take what you ultimately conclude is the moral position in this debate.

All the best.

Sincerely,

Edward I. Koch

encl.

EDWARD I. KOCH

May 15, 1991

The Hon. Boyden Gray
Counsellor to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Boyden:

The enclosed information regarding the H.R.1 legislation was sent to every member of Congress. I oppose this legislation because I believe it will encourage quotas.

All the best.

Sincerely,

Edward I. Koch

EIK/mgl

enclosures

EDWARD I. KOCH
1290 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10104

May 15, 1991

SENT TO ENTIRE CONGRESS:

H.R.1 will soon be before you for a vote. I urge you to vote against it. You might ask, how can it be that I, your former colleague who voted for every civil rights bill when in Congress and as a young lawyer in 1964 went to Mississippi to defend black and white civil rights workers who were registering voters, could take such a position? The answer is simple. H.R.1 is not a civil rights bill. It is a bill which will encourage quotas based on race, ethnicity, religion and gender.

I am opposed to H.R.1 because it will adversely affect everyone in this country: The vast majority of our citizens will suffer reverse discrimination in employment, while others will be provided preferential treatment and, therefore, blamed for the resulting unfairness. Yet, tragically, this bill does nothing to assist those who need training and better education in order to compete in the labor market.

Over the years, those who now advocate H.R.1 concealed the impact of some of the legislation, court decisions and administrative agency rulings which in the past have encouraged quotas by referring to those measures benignly as affirmative action. I support affirmative action when it is defined as reaching out and encouraging minorities to apply for a position or contract, providing them with mentoring services where needed but always filling the position or awarding the contract solely on merit and never excluding any group on the basis of race, ethnicity, religion or gender. Regrettably, affirmative action pressed by the proponents of H.R.1 has too often included goals, timetables and sanctions: euphemisms for quotas.

One particularly egregious example which has treated job applicants unfairly based on race has been the little known technique of race norming. In case you are not familiar with race norming, enclosed is a memorandum describing what it is, why it's unfair and its impact in creating and encouraging quotas.

Many people fear that if they publicly oppose H.R.1 the proponents will, as some have already done, falsely and unfairly label them as racist. It takes courage, notwithstanding those false and sometimes deliberately unfair attacks, to publicly debate H.R.1 on the merits.

I recently received a letter from Ambassador Morris Abram. No one in the civil rights movement can dispute his credentials as one of the historical advocates of civil rights legislation. Let me cite his reasons for opposing H.R.1 in his own words. The legislation will:

"- rewrite twenty years of civil rights law by effectively making racial, ethnic, religious, and sex imbalance alone presumptively illegal;

- hold the employer guilty until proven innocent by forcing him to justify any racial, gender, religious, or ethnic statistical imbalance in any job in his workforce;

- eliminate the longstanding requirement that a plaintiff identify a specific employment practice causing a racial, ethnic, or gender imbalance;

- create a presumption of guilt so difficult to overcome and so costly to fight that employers will simply capitulate and hire by the numbers, impairing not only the principle of American equality but, inevitably, American efficiency and productivity;

- deny individuals their day in court by effectively barring challenges to civil rights consent decrees and litigated judgments to which they were not parties;

- in the real world of business, fear of litigation, in particular litigation with devastating publicity consequences, makes the temptation to hire by the numbers almost irresistible."

It cannot be said any better, so I won't try.

Also enclosed is a more detailed analysis of H.R.1 and some of the purported amendments that its sponsors are considering offering.

All the best.

Sincerely,

Edward I. Koch

enclosures

"Race Norming" and H.R. 1

What is "Race Norming"?

"Race norming" or "within-group scoring" refers to the practice of reporting test scores in a manner that compares test takers only with members of their own racial or ethnic group. This is done by altering raw scores so as to prevent the reported scores from reflecting the truth about disparities between the performances of various racial or ethnic groups. If, for example, a black, an Hispanic, and an Asian test taker each scored 270 points on a test, this might place the black applicant in the 53rd percentile among members of his group, the Hispanic in the 35th percentile among his group, and the Asian in the 16th percentile of the "non-minority" category. Race-normed reporting would give the black a score of 53 on a scale of 100, while the Hispanic would have a reported score of 35 and the Asian a reported score of only 16, although in truth each had an identical raw score.

Why Do Employers and Employment Agencies Use Race Norming?

Race-norming, in essence, is simply an efficient device for imposing racial quotas in cases where an employment test is used to fill jobs. The most profound pressures to engage in race-norming arise from the disparate impact theory of discrimination. Under this theory, a test used to screen applicants for jobs or promotions is presumptively illegal if members of one racial or ethnic group are selected in disproportionately lower numbers. The standard device for overcoming this presumption of illegality for written aptitude tests has been to conduct professional "validation studies" proving that the test accurately predicts job performance. Technical validation of ordinary aptitude tests, however, is often impossible; when it is possible, it is usually very expensive. Race-norming automatically eliminates disparate impact, and thereby eliminates the need to perform expensive validation studies.

The use of race-norming has been tacitly encouraged to some extent by the very existence of the disparate impact theory of discrimination. More immediate pressures, however, have been brought to bear through enforcement policies employed by the Department of Labor and the EEOC. The official statement of those policies, the "Uniform Guidelines on Employee Selection Procedures," was adopted during the Carter Administration (1978) and has not been revised since that time. In discussing "formal and scored procedures," the Guidelines provide:

> "Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or

otherwise justify continued use of the procedure in accord with Federal law." 29 C.F.R. 1607.6(B)(2); 41 C.F.R. 60-3.6 (B)(2) (emphasis added).

This is an open invitation to the use of race-norming. More important, it is a tool used by the government's enforcement bureaucrats to pressure employers into adopting race-norming techniques.

In a recent public statement (copy attached), the current Chairman of the EEOC has stated that the encouragement of race-norming is not <u>now</u> agency policy. The letter, however, does not deny that it previously was agency policy. Indeed, the Chairman's letter states that "we do know that policies promoting race and gender preferences have come about in the 25 years that EEOC has enforced Title VII."

In addition, the Department of Labor has for many years fostered the use of race-norming by state employment agencies that use an aptitude test developed by the Department. The justification for this program, which is still being operated despite objections from the Department of Justice, is that race-norming is an appropriate way to comply with the Uniform Guidelines without the need for validation studies. For employers anxious to achieve "goals and timetables" set by the Labor Department's Office of Federal Contract Compliance Programs, these referrals provide a low-cost mechanism for meeting their quotas. For employers who are unaware that the scores reported to them by the state employment agency are race-normed, the effect of this program is to make them unwitting accomplices in a government-sponsored quota scheme.

<u>How would H.R. 1 Increase the Use of Race Norming</u>?

H.R. 1 would support and encourage the use of race-norming in three main ways.

First, by creating new and almost insurmountable hurdles that employers would have to overcome in attempting to defend selection practices that have an adverse impact, H.R. 1 would create powerful new incentives for the use of quotas. For employers who rely on formal and scored tests, the most efficient way to meet these quotas will be through race-norming.

Second, we can expect legislative history specifically ratifying the Carter Administration's Uniform Guidelines. The House Judiciary Committee's Report on last year's bill (which was almost identical to H.R. 1) contained the following statement: "The Uniform Guidelines represent the interpretation of <u>Griggs</u> applied by the federal government in enforcing Title VII. Its provisions embody the legal principles that were accepted and applied prior to <u>Wards Cove</u>, and which the Committee intends to

restore." House Report No. 101-644, at pg. 18 (July 31, 1990). Similar language can be expected this year.

Third, it is possible that there will be legislative history specifically designed to increase the pressure for race-norming. Such legislative history would probably be slipped into a relatively technical and obscure discussion of testing and validation techniques, as it was last year. See Senate Report No. 101-315, at pg. 44 (June 8, 1990). The Committee Reports, written by sophisticated staffers and lobbyists, would likely be given great interpretive weight by the courts in this case because of the fact that race-norming is an especially apt device for employers to use in avoiding liability under the disparate impact provisions of the bill.

Can the Problem Be Solved by an "Anti-Race-Norming" Amendment to H.R. 1?

The pressures on employers to employ race-norming or equivalent devices would not be removed by an amendment specifically addressing the problem.

First, any language acceptable to the sponsors of H.R. 1 would probably include qualifiers designed to deprive the amendment of legal effect. The cosmetic and meaningless "anti-quota" language included in H.R. 1 shows that this is the preferred technique of the lawyers who control this bill.

Second, it would be difficult (though perhaps not impossible) for anyone to draft language both broad enough and precise enough to outlaw all the forms of race-norming that could possibly be imagined.

Third, even if such language were successfully drafted and then accepted by the Congress, it would do nothing to remove the pressures to adopt quotas created by the disparate impact provisions of H.R. 1. Race-norming is simply an efficient mechanism for imposing quotas when scored tests are used to screen applicants. If race-norming cannot be used, employers will simply be forced to adopt less efficient mechanisms for achieving the same result. One obvious alternative would be to switch to "multi-factor" or "whole-person" selection systems in which race plays some vague and unquantified role as a "factor" along with test scores. This is a widely used device for filling quotas at colleges and universities, as illustrated by the recent controversy at Georgetown, and it works just as well in the employment context.

Analysis of H.R.1 and Purported Amendments

I understand that, once again, proponents of H.R.1 are circulating cosmetic amendments aimed at masking the bill's quota effect. As was the case with the various proposals floated and repudiated last year, the language I have seen does not remotely solve the problem. The Wards Cove v. Antonio decision is consistent with Griggs v. Duke Power. In Griggs and subsequent Supreme Court disparate impact decisions, the Supreme Court, for example, defined "business necessity" as "manifest relationship to the employment in question." Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971); Albemarle Paper Co. v. Moody, 422 U.S. at 425 (1975); Dothard V. Rawlinson, 433 U.S. at 329 (1977); New York Transit Authority v. Beazer, 440 U.S. at 587 n. 31 (1979); and Watson v. Ft. Worth Bank and Trust, 487 U.S. at 997 (O'Connor plurality opinion). Even Justice Stevens' Wards Cove dissent cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

Any change in the Griggs "manifest relationship" phrase puts pressure on employers to resort to quota hiring and promotions in order to avoid costly lawsuits.[1] For example, I understand the proponents of H.R.1 are circulating a warmed-over definition of business necessity as meaning "substantial and manifest relationship to the requirements for effective job performance." (emphasis supplied). This definition goes well beyond Griggs. It does so by adding "substantial" to the definition -- repudiated in the Senate last year after less than two months. Moreover, by tying the definition to "effective job performance," this language makes it impossible for an employer to raise standards beyond those which produce a minimally qualified (i.e. minimally effective) employee if to do so results in disparate impact.

A new subparagraph circulated by proponents of H.R.1, purportedly addressing this problem and allegedly allowing employers to rely on relative qualifications, clearly fails.

If disparate impact results from the effort to raise standards, the higher standards must meet the new, onerous definition of business necessity -- which includes the need to show substantial relationship to effective job performance. Thus, this new subparagraph is circular and, thus, meaningless.

---

[1] The Wards Cove formulation, which uses language based on the Supreme Court's 1979 Beazer decision (the employment practice "serves in a significant way, the legitimate employment goals of the employer"), is fully consistent with Griggs.

Further, the proposed language does not solve H.R.1's flaw in allowing blanket challenges to an employer's practices. It does not require the plaintiff to identify a particular employment practice causing the alleged disparate impact.

I am concerned that while proponents of H.R.1 may offer these or other cosmetic changes to their bill, they will not relinquish the essential elements of the bill which will encourage quotas.

I urge you to vote no on H.R.1.

CS

ID # 258456 CU

HU010

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CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: G. Ratliff

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

Subject: Labor Proposed Report RE: H.R. 1, Civil Rights Act of 1991.

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91105130		C	91105130 CS
	Referral Note:				CS
CUATIO	A	91105130	[redacted]O	C	91105130
	Referral Note:	NL Memo to Gerr Ratliff - May 30 91			
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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: _____

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Always return completed correspondence record to Central Files.
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5/81

FAXED
Close and

THE WHITE HOUSE

WASHINGTON

May 30, 1991

MEMORANDUM FOR GERRI RATLIFF
OFFICE OF MANAGEMENT AND BUDGET

FROM: NELSON LUND
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Labor Proposed Report Re: H.R. 1, Civil Rights Act of 1991

Counsel's office has reviewed the captioned report. This letter is fundamentally misguided. It seems to contemplate research and activities by DOL designed to lead to interference with the free market.

Any letter on this subject should clearly state that existing anti-discrimination laws are sufficient to eliminate "discriminatory wage disparities." The letter should contain nothing that explicitly or implicitly undermines this proposition.

We appreciate the opportunity to review this matter.

THE WHITE HOUSE

1600 PENNSYLVANIA AVENUE
WASHINGTON

DATE 5/29/91

FACSIMILE TRANSMITTAL SHEET

TO Gerri Ratliff
FAX NUMBER 395-3109
TELEPHONE NUMBER
FROM Nelson Luna
TELEPHONE NUMBER 456-2896
NUMBER OF PAGES: TOTAL 2

COMMENTS

TRANSMISSION REPORT

THIS DOCUMENT (REDUCED SAMPLE ABOVE)
WAS SENT

** COUNT **
# 2

*** SEND ***

NO	REMOTE STATION I. D.	START TIME	DURATION	#PAGES	COMMENT
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		TOTAL	0:01'12"	2	

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R:5/29
11:30

FACSIMILE TRANSMITTAL SHEET

TO: White House Counsel

FROM: G.RATLIFF

DELIVERY TIME: 29-MAY-1991 15:30:04

DELIVERY NODE: 1, 3M FaxXchange

SESSION: 1 - 8958

PAGES: 7 (including this page)

Fax the key parts by 12 Noon

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

MAY 28 1991

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-676

TO: Legislative Liaison Officer -

CEA - Francine Obermiller - 395-5036 - 242 Mittornigan
JUSTICE - Steve Slessinger - 514-2061 - 217 Joe Desmonds - nds A1 hour
EEOC - James C. Lafferty - 663-4900 - 213 Dave Kyllo - will letter - methodology for comp - and object to whole idea - did for cost est. but object to idea
SBA - Michael P. Forbes - 205-6702 - 315

SUBJECT: LABOR Proposed Report RE: HR 1, Civil Rights Act of 1991

DEADLINE: ~~10:00 A.M.~~ 12:00 NOON MAY 29 1991

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

Questions should be referred to **GERRI RATLIFF (395-3454)**, the legislative analyst/attorney in this office.

You may respond to this request for views by: (1) faxing us the attached response sheet; (2) if the response is simple (e.g., concur/no comment), leaving a message with the secretary of the above-named analyst/attorney; (3) calling the analyst/attorney; or (4) sending us a memo or letter.

James J. Jukes

JAMES J. JUKES for
Assistant Director for
Legislative Reference

CC:
Nelson Lund
Bob Damus
Marianne McGettigan

Holly Williamson
Cora Beebe Abner, Silan MC 5/29
Ken Schwartz
Joe Wire
Ahmad Al-Samarrie 5/28 NOC

LRM #I-676

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

TO: GERRI RATLIFF
Office of Management and Budget
Fax Number: 395-3109
Phone Number: 395-3454

_____ (Date)

FROM: _____ (Name)

_____ (Agency)

_____ (Telephone)

SUBJECT: LABOR Proposed Report RE: HR 1, Civil Rights Act of 1991

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages _____

_____ Other: _____

THE WHITE HOUSE

WASHINGTON

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Comments:

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DRAFT
5/23/91

Letter to Congresswoman Mary Rose Oaker
From Secretary Martin

This is in response to your inquiry regarding the cost estimate we recently furnished to the Congressional Budget Office for implementing the proposed "Pay Equity Technical Assistance" legislation contained in H.R. 1. and the viability of incorporating this legislation, if authorized, into the Women's Bureau's Work and Family Clearinghouse functions.

At the time the total estimate was developed, we asked three agencies in the Department to independently review the proposed legislation and to develop cost estimates for that phase of the three-part program for which they had the most experience and expertise. It should be noted, that due to the time constraints imposed on the Department, these estimates were developed very quickly and do not represent official Administration estimates for this proposal. In addition, because the estimates were developed independently by each of the agencies, some duplication of implementation costs may be included in the total estimate provided to the CBO.

The estimate for the first phase regarding the dissemination of information was developed based on an information dissemination and technical assistance approach modeled on the Work and Family and Work Quality clearinghouses.

Based on the Department's experience with these clearinghouses, the first-year would require one Social Science Advisor staff person and $500,000 in contract services. This staff person would process information and technical assistance requests. The workload is generated both by the volume of inquiries and the need to meet acceptable response-time standards. Moreover, research specific to a request must often be undertaken if the request cannot be answered with information on file. Contract services would provide for the research required to establish the data base on which the information dissemination and technical assistance would be drawn. This has proven to be a labor intensive task that involves not only researching published references, but also contacting employers, private research organizations, other agencies and individuals who may be engaged in or have knowledge of "best practices" in pay equity and who have various information resources that would be appropriately part of the data base. In addition, if the data base is computerized, systems development and programming assistance would be essential. Additional software and hardware having adequate processing capacity would also be required since available hardware does not have the capacity to absorb any significant additions to clearinghouse data bases that have already been automated.

It was estimated that in the second year of operation, two additional staff would be needed. An economist would be needed to establish the research agenda on compensation and pay practices, pay rates by sex, race, age and occupation; determine approaches to analyzing and establishing a data base; conduct the analyses; write the reports, papers and publications emanating from the studies and identify policies and practices that might ultimately eliminate disparities by race and sex. A research assistant would also be needed to assist the professional staff. The duties would include verifying the accuracy of written statements, proof reading articles and publications, as well as, statistics used; performing library research; maintaining division resource statistics; and, maintaining records, tapes and other computerized data bases. The total annual resources needed for the second year of operation, therefore, would be three staff persons and $700,000, which includes staff and contract services costs.

It was determined that a total of ten staff persons and $10.7 million dollars would be required to carry out the second phase of the proposal regarding research on how wage disparities can best be eliminated. The estimate would provide for a limited study plan which would be the necessary first step to eliminating wage disparities. In order to identify wage disparities across occupations and industries, a methodology must be chosen which can determine comparable worth. The Department would proceed as follows:

- An in-house study. This would involve surveying available literature; conducting research to determine major approaches used in other comparable worth studies and setting parameters for additional work.

- First Contracts/Grants. The Department would let contracts to do in-depth literature search which would cover possible methodologies and identify key persons or experts in this field. Additional contracts would then be let which would provide detailed plans for pilot studies to determine comparable worth. These plans would include detailed proposals on survey work, including questionnaires, sample size, survey methodology, estimates of computer and personnel resources, etc.

- Selection of Pilot Studies. DOL staff would determine which, if any, of the proposed plans would be most feasible/cost effective/etc. Two or three different approaches would be selected for testing.

- Pilot Studies. The next set of contracts would be let to set up, test, and run the selected pilot studies. This survey work would require extensive travel, computer time (including access to existing data bases) and personnel (including computer programmers, statisticians, economists, personnel specialists). These pilot studies would likely

have to be tested in different markets (metropolitan vs. rural; manufacturing vs. services; private vs. public; and so forth).

- Evaluation and Recommendations. The Department would be responsible for preparing an evaluation of the results of these various pilot studies. These findings would be subject to peer review (including other government agencies). Recommendations would be prepared on whether a nationwide, all occupation study of comparable worth is feasible, what the Federal government's role would be, and whether conducting this study would further the goal of elimination of wage disparities.

In developing the estimate for the third phase of the proposal regarding the provision of technical assistance to employers to correct wage-setting practices or eliminate such disparities, the Department assumed that the following responsibilities would be undertaken. Staff would identify pay equity problems; provide technical assistance to help eliminate the disparities; and, develop the research base and provide the training to identify and properly assess these problems.

It was estimated that fifteen additional staff would be required for this purpose. Ten would be for regional experts, one for each regional office to provide the technical assistance and guidance on the detection and handling of pay equity problems. The five additional staff would be for a central research unit to handle the more complex issues of pay equity and to support the regional efforts. First year costs were estimated at $850,000. Second year costs were estimated at $775,000.

As far as incorporating these legislative requirements into the Women's Bureau's Work and Family Clearinghouse is concerned, the Department would be reluctant to do so for the following reasons. The objectives of the Work and Family Clearinghouse and the proposed Pay Equity Technical Assistance provisions are entirely different. The Clearinghouse focus is on dependent care and related workforce quality issues such as flexible leave policies, employee program benefits, and education and training opportunities. The proposal involves wage differentials. The Clearinghouse was established to provide information to employers who want to develop human resource policies which enhance the benefits available to the employees, enabling them to recruit and retain a skilled, stable workforce. In addition to employers, the information available through the Clearinghouse is also used by unions, academicians, and special interest groups.

With the additional resources outlined above, the Women's Bureau could provide the dissemination services proposed without any significant adjustments to its overall mission and functions. If the Women's Bureau was also responsible for the research and technical assistance phases, the character of the organization would be fundamentally changed. Historically, the Bureau has

never been in the business of interpreting laws and their research experience is far more limited than that which is contemplated by this proposal. In addition, the Women's Bureau was established to address issues affecting women in the workforce. This proposal encompasses far wider issues and groups and is, therefore, beyond their scope of authority.

Finally, you should be aware that a bill with similar purposes was introduced in the 101st Congress, and, at that time, the Department raised questions about unresolved legal issues on wage discrimination, duplication of work of the American Compensation Association, confidentiality of data, etc. An additional concern raised by the present bill is the difficulties the Department would face in determining "techniques that will promote the establishment of wage rates based on the work performed and other appropriate factors, rather than the sex, race, national origin, or ethnicity of the employee..." Even if one agrees with the goal of comparable worth, there is no widespread agreement on how best to go about achieving it and the Administration does not believe this kind of legislation is appropriate.

I hope this response adequately addresses your concerns. If you have any further questions regarding these issues, please do not hesitate to contact me.

CS

ID # 258458 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: G. Ratliff

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

Subject: Civil Rights. - EEOC to recover attorneys' fees in actions brought pursuant to Title VII

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CMOFC	ORIGINATOR	91 06 04		C	91 106 104 CS
	Referral Note:				CS
CMATIO	A	91 106 04		C	91 106 104
	Referral Note:		See comments.		
	_	1 1		_	1 1
	Referral Note:				
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	_	1 1		_	1 1
	Referral Note:				

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

Comments: NLO Phoned G. Ratliff on 6/4/91 + advised that "DOJ's objections appear to be well founded." CS

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TO: White House Counsel

FROM: G.RATLIFF

DELIVERY TIME: 04-JUN-1991 13:42:41

DELIVERY NODE: 1, 3M FaxXchange

SESSION: 1 - 9106

PAGES: 4 (including this page)

COMMENTS:

Per N. Lang:
Phoned Geri Ratliff & advised that "DOJ to
Objections appear to be well founded."
6.4.91 —

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

pg 1 of 3

ROUTE SLIP

TO Dave Kyllo, EEOC	Take necessary action ☐
	Approval or signature ☐
	Comment ☐
	Prepare reply ☐
	Discuss with me ☐
	For your information ☐
	See remarks below ☐
FROM Gerri Ratliff	DATE 6/4

REMARKS

DOJ wants an EEOC draft report on LRM — to allow attorney fee awards to the EEOC — please respond.

(The EEOC draft report was circulated on 4/22, LRM #M-194, with a copy of the draft bill attached.)

cc: Nelson Lund
Marianne McGettigan

OMB FORM 4
Rev Aug 70

U.S. Department of Justice
Office of Policy Development

Deputy Director

Washington, D.C. 20530

03 JUN 1991

Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C.

Dear Mr. Darman:

This responds to your request for the views of the Department of Justice on the Equal Employment Opportunity Commission's (EEOC) draft report on a draft bill to authorize the EEOC to recover attorney fees in actions brought pursuant to Title VII of the Civil Rights Act of 1964. Although we can understand the desire of the EEOC to be able to recover attorney fees, on balance the Department is convinced that the dangers outweigh any possible benefit.

As EEOC suggests in its draft, it would be inappropriate to authorize it to collect attorney fees for conciliation activity, but the reasoning that EEOC applies to conciliation carries equal or greater force in the context of litigation. Basically, EEOC contends that authorizing fees in cases resolved through conciliation might interfere with the dynamics of conciliation and present the Commission with a conflict of interest: "i.e., whether to forgo attorneys' fees to achieve a settlement beneficial to complainants or, instead, to litigate the matter to successful resolution in court to obtain fees." While this conflict would not appear to be substantial, so long as nothing in the proposal prohibited EEOC from waiving a fee award as part of a conciliation agreement, it highlights the real problem, which is authorizing the recovery of fees by the EEOC in litigation. Plainly, the EEOC's ability to recover fees incurred in litigation would make the failure of conciliation more palatable and resort to litigation less painful. Conversely, because of the low hourly rates paid to government attorneys, few defendants are likely to be dissuaded from litigating by the threat of attorney fees. In view of the widely perceived need to explore alternative methods of dispute resolution, this incentive to litigate appears ill-advised.

Moreover, the principal rationale behind awarding attorney fees to successful private Title VII plaintiffs is that this incentive enables them to serve as private attorneys general, in addition to making them whole. This incentive rationale simply does not apply to a governmental body charged with the mission of enforcing the law. Rather, the EEOC is required to enforce the law and Congress is able to establish the level of that enforcement through the appropriations process.

In addition, we think it inappropriate to address in a

piecemeal fashion the question whether government litigants should recover attorney fees. Numerous statutes authorize recovery of fees by prevailing litigants, but except the government. See, e.g., Americans With Disabilities Act of 1990, 42 U.S.C. 12205; Rehabilitation Act of 1975, as amended, 29 U.S.C. 794a(b); Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988; Civil Rights Act of 1964, 42 U.S.C. 2000a-3(b); Fair Housing Act of 1968, as amended, 42 U.S.C. 3612(p), 42 U.S.C. 3613(c)(2), and 42 U.S.C. 3614(d)(2); and Voting Rights Act of 1965, as amended, 42 U.S.C. 1973(e). Any change in this broad exclusion of the government from recovery of attorney fees should be addressed in a broader context.

For these reasons, the Department of Justice does not think that the original judgment of Congress -- withholding from the Commission authority to recover attorney fees -- should be reversed. We, therefore, advise against sending EEOC's draft letter in its present form.

Sincerely,

Paul J. McNulty
Principal Deputy Director

CS

ID # 258469CU

HU010

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Darcel Gayle

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

Subject: Civil Rights

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
		ACTION		**DISPOSITION**	
CUOFC	ORIGINATOR	91/05/14		C	91/05/14 CS
	Referral Note:				
CUATIO	A	91/05/14	~~NLO~~	C	91/05/14 CS
	Referral Note:	see comments			
	_	1 1		_	1 1
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	Referral Note:				
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	Referral Note:				

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Completion Date = Date of Outgoing

Comments: NLO - See Comments - CS

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FACSIMILE TRANSMITTAL SHEET

TO: White House Counsel

FROM: Darcel Gayle

DELIVERY TIME: 13-MAY-1991 19:59:12

DELIVERY NODE: 1, 3M FaxXchange

SESSION: 1 - 8605

PAGES: 10 (including this page)

Comments:

Advised Debra you would have comments by 8:30 tomorrow a.m.

5-14-91 Phoned Anna -- Advised M. Lund had no legal objections. 5-14-91

Typago

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Ken Schwartz
Bob Damus
Marianne McGettigan
Nelson Lund
David Taylor

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Jim Jukes/G. Ratliff DATE 5-13

REMARKS

Proposed final SAP on HR 1 - Civil Rights

This draft has been approved by Justice and WH Counsel. Houm Rules action could be as early as tomorrow.

May I please have any edits by 5:00 today?

THE WHITE HOUSE

WASHINGTON

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May 13, 1991
(House Rules)

H.R. 1 - Civil Rights Act of 1991
(Brooks (D) Texas and 169 others)

If H.R. 1 were presented to the President in the form reported by the House Judiciary or Education and Labor Committees, the President's senior advisers would recommend a veto.

H.R. 1

The President vetoed a very similar bill last year because it did not meet the criteria he announced on May 17, 1990.

First, civil rights legislation must operate to obliterate consideration of factors such as race, color, religion, sex, or national origin from employment decisions. However, Section 4 as drafted would force employers to adopt quotas and unfair preferences. Unless an employer's bottom-line numbers are "correct," he or she will almost certainly face lawsuits in which a successful defense will be virtually impossible. If a suit is brought and a sweetheart deal is struck, Section 6 would then insulate unlawful quotas from challenge in court. And Section 9 will subject plaintiffs unsuccessfully challenging quota settlements to attorney fees, even where their challenge was not frivolous and was brought in good faith.

Section 4 also violates another principle stated by the President: any bill must reflect the fundamental principles of fairness that apply throughout our legal system. In addition, Section 6 would encourage the settlement of certain cases at the expense of innocent non-parties; close the courts to many individuals whose civil rights have been violated; and insulate consent decrees that impose quotas from appropriate judicial review. Similarly, Section 13 would shield "affirmative action," "court-ordered remedies," and "conciliation agreements" from the neutral application of the bill's other provisions.

Third, a civil rights bill should deter workplace harassment, but it must do so in a manner that is reasonable and does not produce a windfall for lawyers. Section 8 would provide for jury trials and the award of unlimited compensatory and punitive damages in all Title VII disparate treatment cases. This would radically transform the employment provisions of the Civil Rights Act by undermining its carefully balanced system of mediation and conciliation. This system would be scrapped and replaced with a new system modeled on our Nation's tort litigation -- which is now widely recognized to be in crisis.

Indeed, H.R. 1 is even worse than the bill vetoed last year. For instance, H.R. 1 does not include the limit on the amount of

damages that may be awarded for cases of intentional discrimination included in last year's bill. To give another example, under H.R. 1, an employee would only have to identify specific employment practices that result in a disparate impact if the court finds that the employee can identify the practices from reasonably available information. (Last year's bill required this identification unless the court found that the employer destroyed, concealed, refused to produce, or failed to keep records necessary to make that showing.)

The Administration also believes that the protections of Title VII should be extended to employees of Congress in a meaningful way, which necessarily includes redress in the courts. It is fundamentally unfair to allow an employer to be the judge of its own case.

Other provisions are also objectionable, including: ill-advised rules on attorney's fees; an unclear provision affecting "mixed motive" discrimination cases; unconstitutional retroactivity provisions; unreasonable new statutes of limitations; and an improper rule of construction.

The Administration's Proposal

The Administration's proposal would strengthen our Nation's civil rights laws without institutionalizing reverse discrimination or subjecting American businesses and the victims of discrimination alike to endless and costly litigation. Like H.R. 1, the Administration's proposal would overturn the Lorance and Patterson decisions, and would place on the employer the burden of proving the business necessity (as defined by past Supreme Court decisions) of an employment practice that has a disparate impact on a class of workers. The Administration's proposal also makes available new monetary remedies, with a $150,000 cap, for victims of harassment in the workplace. In sum, the Administration's bill achieves every legitimate end of H.R. 1. These important new protections for American employers should not be held hostage for measures that will produce quotas, disproportionately disadvantage small and medium-sized businesses, and unduly enrich the plaintiffs' bar.

* * * * *

(Not to be Distributed Outside Executive Office of the President)

This draft Statement of Administration Policy was developed by the Legislative Reference Division (Ratliff), in consultation with the Departments of Justice (Wise), and Labor (McDaniel), EEOC (Kyllo), SBA (Dean), White House Counsel (Lund), Office of Policy Development (McGettigan), TCJ (Silas), and LVE (Wire).

H.R. 1 is identical to S. 2104, a civil rights bill vetoed by the President in 1990, except for the following new provisions:

- Employers would have to demonstrate that challenged employment practices not involving selection bear a significant relationship to a "significant business objective." (S. 2104 required only a "manifest business objective.")

- An employee would only have to identify specific employment practices that result in a disparate impact if the court finds that the employee can identify the practices from reasonably available information. (S. 2104 required this identification unless the court found that the employer destroyed, concealed, refused to produce, or failed to keep records necessary to make that showing.)

- H.R. 1 does not include S. 2104's limit on the amount of punitive damages that may be awarded for cases of intentional discrimination.

- In the version reported by the Education and Labor Committee, a "Glass Ceiling Commission" would be required to be established to study artificial barriers to the advancement of women and minorities to senior positions of employment, and (2) the Department of Labor would be directed to develop a pay-equity program.

Recent Supreme Court Decisions and Related Provisions of H.R. 1

H.R. 1 is designed to reverse six recent Supreme Court decisions. These decisions and the related provisions of H.R. 1, as ordered reported by the House Judiciary Committee, are described below.

-- Wards Cove

Supreme Court Decision. In "disparate impact" cases under Title VII of the Civil Rights Act, the burden is on plaintiffs to identify a particular employment practice and show that the employment practice does not serve "in a significant way, the legitimate employment goals of the employer." (A "disparate impact" case is one in which no intentional discrimination is alleged but an employment practice is alleged to have an unjustified, though inadvertent, disparate impact based on race, color, religion, sex, or national origin.)

H.R. 1 (Sections 3 and 4) overrides the Supreme Court in three ways. First, it places the burden on the defendant to demonstrate that an employment practice is "required by business necessity" if significant numerical disparities

are found. Second, Section 3 contains a lengthy definition of the term "business necessity" which states that it is intended to codify the definition of "business necessity" in the Griggs case and to overrule Wards Cove. Third, Section 4 would relieve many plaintiffs of the obligation to identify specific practices and to prove causation.

-- Price Waterhouse

Supreme Court Decision. Where an employment decision is proven to have been based in part on race, color, religion, sex, or national origin, Title VII has not been violated if a defendant can show that the same decision would have been reached if such factors had not been considered.

H.R. 1 (Section 5) provides that a violation of Title VII is proven if a contributing factor in an employment decision is shown to have been a complainant's race, color, religion, sex, or national origin. The term "contributing factor" is not defined, and it may not mean "causal factor." However, a court could not order a hire, promotion, or reinstatement if the defendant showed that complainant would have not been hired, promoted, or retained even if discrimination had not been a factor.

-- Wilks

Supreme Court Decision. Persons not party to, but adversely affected by, consent decrees mandating unlawful racial preferences can challenge them in court.

H.R. 1 (Section 6) bars challenges to such consent decrees by non-parties if: (1) they had notice of the proposed judgment; (2) their interests were "adequately represented" by another person who challenged the decree; or (3) a court determines that "reasonable efforts" were made to provide notice to them.

-- Lorance

Supreme Court Decision. The statute of limitations with respect to a discriminatory seniority system begins to run on the date it is adopted by the employer, not the date the complainant is adversely affected by it.

H.R. 1 (Section 7) specifies that where a seniority system has been adopted "with the intent to discriminate," the "application" of the system constitutes an unlawful practice throughout the period that it is in effect.

-- Patterson

Supreme Court Decision. The statutory guaranty of the right to "make and enforce contracts" regardless of race ("Section 1981") applies only during the formation of a contract.

H.R. 1 (Section 12) specifies that the right to "make and enforce contracts" regardless of race extends beyond the formation of the contract to "the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship." H.R. 1 would further specify that the prohibition applies to private as well as governmental discrimination.

-- Shaw

Supreme Court Decision. Prevailing plaintiffs in job discrimination cases against the Federal Government may not recover interest to compensate for delays in obtaining relief.

H.R. 1 (Section 10) permits plaintiffs prevailing in Title VII discrimination cases against the Federal Government to recover "the same interest to compensate for delay in payment" as would be available in cases involving non-public parties, "except that prejudgment interest may not be awarded on compensatory damages."

Other Provisions of H.R. 1

In addition, H.R. 1 would:

-- Amend the current requirement that an employment discrimination complaint be filed within 180 days after "the alleged unlawful employment practice occurred" to permit complaints to be filed within two years after the practice "occurred or has been applied to affect adversely the person aggrieved, whichever is later." (Section 7)

-- Authorize jury trials and compensatory damages for intentional violations of Title VII and punitive damages when violations are committed with malice or callous indifference to the rights of others. (Section 8)

-- Authorize awards of expert witness fees to prevailing parties in Title VII cases. (Section 9)

-- Authorize prevailing parties to recover attorneys fees in addition to other costs, even for work performed after they have rejected a settlement offer more favorable than the final judgment. H.R. 1 would also guarantee

plaintiffs' lawyers a fee unless the parties or their counsel attest that waivers of attorney fees were not "compelled as a condition of settlement." (Section 9)

-- Authorize prevailing parties, where judgments or orders granting relief are subsequently challenged, to recover from the original defendants the costs of defending (as a party, intervenor, or otherwise) the judgment or order. If the party attacking the judgment prevails, then the defendant must pay <u>those</u> costs. (Section 9)

-- Lengthen the statute of limitations from 30 to 90 days for filing suits against the Federal Government following final agency actions. (Section 10)

-- Specify, with respect to Federal laws protecting the civil rights of persons, that: (1) all such laws shall be "broadly construed to effectuate the purpose of such laws to provide equal opportunity and provide effective remedies;" (2) that no such laws shall "be construed to repeal or amend by implication any other Federal law protecting such civil rights;" and (3) agencies and courts, in interpreting such laws, shall not use this bill as "a basis for limiting the theories of liabilities, rights, and remedies available" under such laws unless the law has been specifically amended by this bill. (Section 11)

-- Specify that the bill shall not be construed to "require or encourage an employer to adopt hiring or promotion quotas," provided that the bill shall not "be construed to affect court-ordered remedies, affirmative action, or conciliation agreements that are otherwise in accordance with the law." The bill does <u>not</u> forbid quotas. (Section 13)

-- Provide that H.R. 1 shall apply to Congress, but that the means for its enforcement shall be determined by each House. (Section 16)

<u>Presidential Statement</u>

On May 17, 1990, the President stated that he would support civil rights legislation which met three stated principles. These principles were restated in the President's October 22, 1990, veto message.

The first principle was that legislation must operate to obliterate considerations of factors such as race, color, religion, sex, or national origin from employment decisions. In this regard, the President said, "I will not sign a quota bill," and expressed concern that quotas could be an unintended

consequence of legislation.

Second, the legislation must reflect fundamental principles of fairness. Specifically, individuals who believe their rights have been violated are entitled to their day in court, and an accused is innocent until proved guilty.

Third, the civil rights laws should provide an adequate deterrent against workplace harassment. They should not, however, benefit lawyers by encouraging litigation at the expense of conciliation or settlement.

The President also stated that Congress "should live by the same requirements it prescribes for others."

The President affirmed his desire to strengthen employment discrimination laws "without resorting to the use of unfair preferences" in the State of the Union address on January 29, 1991.

Administration Bill

On March 1, 1991, the Justice Department transmitted an Administration bill that was subsequently introduced as H.R. 1375/S. 611. Like H.R. 1, the Administration bill would place the burden of proof on the employer to demonstrate "business necessity," overruling a contrary ruling in Wards Cove. However, the bill's definition of business necessity would be closer to the Wards Cove definition than H.R. 1. The bill would also reverse Lorance and Patterson, consistent with H.R. 1.

The bill does not contain the provision in H.R. 1 that would bar certain challenges to consent decrees by non-parties. Instead, the bill expressly provides that the Federal Rules of Civil Procedure apply in determining who is bound by employment discrimination decrees.

The bill would make available new monetary remedies for victims of sexual harassment in the workplace. The provision provides for bench trials, and caps awards at $150,000. H.R. 1, by contrast, would grant women and religious minorities the right to jury trials and unlimited monetary damages for intentional discrimination.

Administration Position to Date

The President's May 17, 1990, statement is summarized above.

A Justice Department report of March 12, 1991, on H.R. 1 stated that the Attorney General "and other senior advisers" would recommend a veto of the bill.

Scoring for the Purpose of Pay-As-You-Go and the Caps

According to TCJ (Silas), H.R. 1 is not subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990 because it would not require any direct spending.

CS

ID # 258473 CU

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WHITE HOUSE
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Name of Correspondent: Nelson Lund

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Subject: Civil Rights - Revised Fact Sheets

ROUTE TO:

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CLOFC	ORIGINATOR	91/05/29		C	91/05/29 CS
CLATIO	Referral Note:				CS
	A	91/05/29	[redacted]	C	91/05/29
	Referral Note: NL Memo to CBG - May 29, 91				
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THE WHITE HOUSE

WASHINGTON

May 29, 1991

MEMORANDUM FOR C. BOYDEN GRAY

FROM: NELSON LUND

SUBJECT: Revised Fact Sheets on Civil Rights

Attached are revised versions of the fact sheets Gov. Sununu asked for. I have also attached some talking points on the anti-quota language in the new bill.

Attachements

THE WHITE HOUSE

WASHINGTON

THE PRESIDENTS CIVIL RIGHTS BILL

- The President's bill -- H.R. 1375 -- includes <u>all</u> the worthwhile measures supported by a bipartisan consensus:
  - Overturns the Patterson and Lorance decisions.
  - Overturns the Wards Cove decision by shifting the burden of proof to the employer in defending "business necessity."
  - Creates new monetary remedies under Title VII with <u>meaningful caps</u>.
  - Authorizes expert witness fees in civil rights cases.
  - Extends the statute of limitations and authorizes the award of interest against the U.S. Government.
- The President's bill will avoid creating new pressures on employers to engage in "race norming."
- <u>Only</u> the President's bill uses the <u>exact</u> language from the holding in Griggs in defining "business necessity" -- "manifest relationship to the employment in question."
- <u>Only</u> the President's bill includes the <u>exact</u> "business necessity" language from the 1979 Beazer opinion, which was accepted in the Wards Cove <u>dissent</u> (written by the author of Beazer).
- <u>Any</u> deviation from the <u>exact</u> language of the Supreme Court's pre-Wards Cove holdings will inevitably raise the risks for employers who do not have the "right" numbers. Years of litigation will be needed to sort out the meaning of the new definition, and employers who cannot endure that litigation will have to use quotas.
- <u>Only</u> the President's bill will permit the President's <u>educational reform</u> initiative to go forward unimpeded (see attached op-ed by Dr. Chester Finn).
- <u>Only</u> the President's bill preserves the right of victims of illegal quotas to have their day in court and be treated like other civil rights plaintiffs.
- <u>Only</u> the President's bill will avoid a new litigation explosion and new attorneys fees -- a lawyers' bonanza.

THE WHITE HOUSE

WASHINGTON

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Education Reform vs. Civil Rights Agendas

By Chester E. Finn Jr.

Tough tests will aid minority students.

WASHINGTON

The Achilles' heel of education renewal is the lack of real-world incentives for young Americans to excel in school. Creating such incentives without triggering charges of discrimination is harder still.

Sure, it's important to get a diploma. But among those who complete high school, it matters little which courses they take, how hard they study or what grades they earn.

The reason, said the Commission on the Skills of the American Workforce in its 1990 report, is that employers have come to see the diploma as more a clue to character than to learning. "They realized long ago," the commission tartly notes, "that it is possible to graduate from high school in this country and still be functionally illiterate."

An ever growing proportion of high school graduates now heads for college rather than the workplace. But not more than 50 U.S. campuses reject more applicants than they admit. Most of our 3,400 degree-offering institutions welcome anyone with a heartbeat and a checkbook — and the latter may be waived if you qualify for financial aid.

Open access to higher education is a prized feature of American society. But what message does it send to the 11th grader deciding whether to stay home on Tuesday night to revise his chemistry lab report or go out and party with his friends?

President Bush's new education strategy, introduced last month, would change all this. The plan, developed by Secretary of Education Lamar Alexander and a group of advisers (myself included), proposes to set world-class standards in English, math, science, history and geography, and to accompany these with new national tests that colleges and employers will use in their admissions and hiring decisions.

When that day dawns, young people will have incentives to study. Admissions and personnel offices will confer real rewards on those who attain the new, higher standards in school and will levy unwelcome consequences on those who don't. In response, millions of students will alter their behavior. Americans, regardless of background, will take learning seriously because it will make a practical difference in their lives.

What happens in the meantime, however, if those new standards and tests yield results that differ by gender, race or ethnic group? Will any college or employer dare to use them?

Federal law already makes it difficult for employers to require any educational credentials or test scores that have a "disparate impact." Pending civil rights legislation would make this harder still. The Democrats' bill requires employers to prove that tests bear a "significant relationship to successful performance of the job." Even the Administration's milder version expects any education credentials to show a "manifest relationship" to the job.

How many personnel directors will be able to convince a Federal enforcer or judge that a young person's command of science and geography is germane to the work of a forklift operator or receptionist? Yet so long as employers are inhibited from examining a candidate's test scores, "rational" students will see no payoff for buckling down to learn such subjects. High marks won't matter.

Colleges could easily justify stiffer academic prerequisites. But few campuses can afford to be persnickety in their admissions decisions — and virtually all are determined to enroll more minority students at any cost. Never mind that the soaring dropout rate among minority college students is a sign of the weak educational foundation that reformers hope to strengthen.

A thoroughly revamped education system would help end this paralysis. Each year we would have millions more young Americans schooled to world standards as proved by test results that are indistinguishable by race, gender or ethnicity.

Today, however, we face a Catch-22 situation in which few students are apt to change their study habits because neither employers nor colleges reward academic achievement. The President is urging them to do so. Yet any that respond may be accused of discriminating. Is that any way to reach our national education goals?

Chester E. Finn Jr., professor of education at Vanderbilt University, is author of "We Must Take Charge: Our Schools and Our Future." He was an Assistant Secretary of Education during the Reagan Administration.

THE WHITE HOUSE

WASHINGTON

Why the Latest Democratic "Compromise" Version of H.R. 1 Is Still a Quota Bill

Situation	H.R. 1 "Compromise"	H.R. 1375 President's Bill
A 21 year old Hispanic woman applies to be a fire fighter. Because of a court approved quota system created when she was a child, the job goes to someone with a much lower score on the exam. She wants to challenge the quota scheme in court. Can she do it?	NO	YES
She goes to court and her case is thrown out. Other civil rights plaintiffs must pay their own lawyers, but not their opponents'. Is she treated the same?	NO. SHE MUST PAY ALL LAWYERS.	YES. SHE PAYS ONLY HER LAWYER.
A lawyer wants to hire law students as interns because she chooses new lawyers based on their performance as interns. Can she do this?	NO	YES
A black-owned business, located in a white suburb where there is prejudice against working for blacks, hires mostly blacks by word-of-mouth from a nearby city. EEOC sues. What happens next?	EMPLOYER MUST PROVE HE DID NOT CAUSE THE PROBLEM	EEOC MUST IDENTIFY WHAT THE EMPLOYER DID WRONG
The American Cancer Society refuses to hire smokers. Can this meet the "business necessity" test?	NO	YES
A factory is located near a bus stop for a line that goes to a mainly white area but not to any black neighborhoods. The factory has three criteria for new hires: 1. High School Degree. 2. Must be 18. 3. No drug use. No intentional discrimination takes place, but the factory winds up with "bad numbers."	COURT FINDS HIGH SCHOOL DEGREE NOT REQUIRED BY "BUSINESS NECESSITY." EMPLOYER GUILTY.	PLAINTIFF MUST IDENTIFY WHICH OF THE SIX PRACTICES. IF ANY, CAUSED "BAD NUMBERS."
The lawyer wants to hire only law students as interns, the black businessman wants the best workers he can find, the Cancer Society wants to avoid smokers, and the factory owner wants to keep its three criteria. But each is	**QUOTAS**	**HIRE ON MERIT**

THE WHITE HOUSE

WASHINGTON

WHY THE DEFINITION OF "BUSINESS NECESSITY" MATTERS

Situation	"New" H.R. 1	H.R. 1375 President's Bill
At the mayor's request, a fast food chain rejects dropouts below age 18 for jobs during school hours.	NO DEFENSE	DEFENSIBLE POLICY
A trucking company promotes from within. Dock workers (the pool for future drivers) are not allowed to have drunk driving convictions.	NO DEFENSE	DEFENSIBLE POLICY
A struggling company must close one of two plants. It closes the older one (80% female employees), not the newer one (50% females).	NO DEFENSE	DEFENSIBLE POLICY
A local school district requires all new faculty to have master's degrees in a substantive subject.	NO DEFENSE	DEFENSIBLE POLICY
A state police force denies employment to any applicant with a criminal conviction.	NO DEFENSE	DEFENSIBLE POLICY
To reduce health insurance costs, a mining company refuses to hire those who smoke (on or off the job).	NO DEFENSE	DEFENSIBLE POLICY
An employer routinely rejects all applicants who lie on their applications.	NO DEFENSE	DEFENSIBLE POLICY
None of these employers is biased against women or minorities. They want to keep their policies without being sued. How?	**USE QUOTAS**	**TREAT EVERYONE THE SAME**

THE NEW "ANTI-QUOTA" AMENDMENT TO H.R. 1 IS ACTUALLY A PRO-QUOTA PROVISION

- The amendment does not make quotas or racial preferences illegal.

- The definition of "quota" specifically allows quotas to be used so long as jobs are filled with individuals who have the "necessary qualifications to perform the job." Therefore, an employer is specifically permitted to fill quotas with less qualified persons of a particular race, sex, or religion, so long as they are minimally qualified.

  For example, suppose an employer decided he did not want more than 3% Jews working in his company, so long as there were other qualified persons available. This would not be outlawed by the new amendment so long as all those he hired were qualified.

- The amendment explicitly authorizes all quotas that are "in accordance with employment discrimination law" now in place. Therefore, any applicable state law or Federal judicial decision permitting quotas would provide a defense to the use of quotas under this amendment.

- This is the first time the architects of H.R. 1 have acknowledged in public that they favor quotas. They are cynically counting on public gullibility to allow them to pass off pro-quota language as an "anti-quota" amendment.

- IT WON'T WORK.

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Office of Legislative Affairs

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Honorable Robert H. Michel
Minority Leader
United States House of Representatives
Washington, D.C.

Dear Representative Michel:

This letter responds to your request for the views of the Administration regarding certain proposed amendments to H.R. 1 [that have been offered by the Majority Leader.] Analysis of the proposed amendments reveal that they do not address the concerns expressed by the President in vetoing similar legislation in the last Congress. Therefore, if H.R. 1 were presented to the President with the amendments discussed below, I and other senior advisors would recommend that he veto it.

Section 101. Business Necessity

The proposed definition of business necessity would require that "the practice or group of practices must bear a substantial and manifest relationship to the requirements for effective job performance." Once again, the proponents of H.R. 1 have declined to use the language found in the Supreme Court's seminal decision in this area, Griggs v. Duke Power Co., 401 U.S. 426, 432 (1971), notwithstanding their stated desire to codify that decision. Griggs adopted the standard that "any given requirement must have a manifest relationship to the employment in question." This definition of business necessity has been relied on repeatedly by the Supreme Court. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975); Dothard v. Rawlinson, 433 U.S. 321, 329 (1977); New York Transit Authority v. Beazer, 440 U.S. 568, 587 n.31 (1979); Connecticut v. Teal, 457 U.S. 440, 446 (1982). Indeed, Justice Stevens' dissent in Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115, 2129, 2130 n.14 (1989), which was joined by Justices Brennan, Marshall, and Blackmun, cited the "manifest relationship" standard repeatedly.

In at least three ways the new language imposes a significantly more onerous burden on employers than did Griggs. First, it adds the requirement that the relationship must be substantial, as well as manifest. Plainly, the addition of this term is intended to inform courts that the manifest relationship required by Griggs is somehow not enough. While there may be some dispute about whether or to what degree Griggs itself led to the adoption of quotas, certainly any legislation that is more burdensome than Griggs raises legitimate concerns in that regard. Moreover, the meaning of this new "substantial and manifest" standard is unclear and appears in no reported Supreme Court, court of appeals, or district court decision. Accordingly, it will generate considerable confusion and litigation. That

uncertainty will itself encourage employers to adopt surreptitious quotas to avoid unpredictable litigation.

Second, the definition requires employers to justify all employment practices in relation to "effective job performance." But plainly many legitimate practices that affect employment are not adopted solely to enhance individual job performance and cannot be justified as such. For example, consider a decision to close a plant for financial reasons. The plant closing will necessarily entail layoffs. If the firm has been successful in hiring minorities to work in that plant, the layoffs may have a disproportionate impact on minorities, but there is no way that the employer can show that the decision to close the plant was related to job performance. This standard also suggests that performance of the particular job at issue is the only factor that can be considered in a hiring or promotion decision. But an employer should also be entitled to consider, for example, potential for future advancement when hiring at an entry-level position. These and other legitimate considerations would be excluded by the phrase "effective job performance"; that this problem is real is confirmed by the amendments' rather limited list of recognized "requirements for effective job performance."

Third, the requirement that an employment practice bear a relationship to "effective" job performance makes the employer's burden more difficult still. The meaning of effective is unclear, but it does not appear to allow an employer to demand optimal performance of a job.

Section 102. Causation

The proposed amendment would retain H.R. 1's abrogation of the requirement that plaintiff identify the specific practice that caused an alleged disparate impact. As we have noted in the past, in every Supreme Court disparate impact case, the plaintiff has identified with the requisite particularity the employment practice being challenged. Elimination of this requirement -- coupled with shifting the burden of proof to the employer -- would effectively place the burden on the employer to identify its own practices as causing a disparate impact and to prove that each of its employment practices was free of disparate impact or met the new, onerous "business necessity" test. This is in marked contrast to the rules and principles followed in all other civil litigation, and ignores the fact that a statistical imbalance need not be caused by anything the employer is doing.

Section 102(C)(5). Relative Qualifications

The proposed amendment would add language allowing employers to "rely upon relative qualifications or skills as determined by relative performance or degree of success on a selection factor, criterion or procedure" -- unless such reliance results in a

disparate impact, in which event the employer must demonstrate business necessity. This provision ~~adds nothing to the law and certainly does not mitigate the impact of the bill's other~~ changes. It merely restates that an employer may engage in employment practices that do not produce a disparate impact. The provision is, therefore, ~~circular and~~ meaningless.

Section 103. Mixed Motive Cases

The proposed amendment would, like H.R. 1 itself, overrule Price Waterhouse v. Hopkins, 109 S. Ct. 1775 (1989). But this case was clearly a victory for plaintiffs; indeed, our latest monitoring indicates that, in the Title VII cases that have applied Price Waterhouse, plaintiffs have won over 80 percent of the time. The sole difference between the proposal and H.R. 1 is that H.R. 1 would require that discrimination be a "contributing" factor in an employment decision, while the proposal would require that it be a "motivating" factor. The distinction intended by the proponents of H.R. 1 between the two terms is elusive. And if, as Price Waterhouse held, an employer can show that the employee would have been denied the job regardless of any discrimination, there appears to be no basis for liability. Indeed, the effect of H.R. 1 and the proposal would be to give plaintiffs hollow victories in which they would not recover any relief. The only beneficiaries would be attorneys, who would recover fees from employers. That appears to be the only rationale for the provision overturning Price Waterhouse.

Section 105. Statute of Limitations

The proposed amendment would increase the statute of limitations for filing a Title VII claim to 540 days. We are unpersuaded that any lengthening of the present 180 day period (300 days when a matter is referred to a state agency) is warranted. The danger that memories will fade, records will be lost or destroyed, and the search for the truth will be impeded increases with the period for filing. In our experience, the present period is adequate.

Section 106. Damages

This section authorizes unlimited awards of compensatory damages in cases of intentional discrimination. It caps punitive damages at the greater of $150,000 or "an amount equal to the sum of compensatory damages awarded." Thus, if a plaintiff receives $1 million in compensatory damages, he or she may receive another $1 million in punitive damages. The failure to cap ~~punitive~~ damages -- which include awards for such things as ~~pain and~~ suffering -- and the "unlimited" cap on punitive damages do nothing to allay the concern that this bill will promote expensive and prolonged litigation.

Section 107. Coerced Waiver of Attorney Fees

Under the proposed amendment, this section would state: "No waiver of all or substantially all attorneys' fees shall be compelled as a condition of a settlement of a claim under this title, except that nothing in this section shall be construed to limit the right to negotiate settlements in which attorneys' fees are voluntarily waived in whole or in part." The meaning of this section is unclear, but it appears to be another exercise in circularity. The second sentence states flatly that a waiver of attorney fees can be a part of a settlement. We agree with that position. The first sentence, however, suggests that it is possible to have a settlement -- which, of course, must be voluntary to be valid -- in which a part of the settlement is impermissibly compelled. Either the first sentence swallows the second, or the second swallows the first. We would oppose the former; and the latter requires no legislative change.

Section 111. Additional Qualifications Language

The first part of this paragraph would add another circular proviso: "Nothing in the amendments made by this Act shall be construed . . . to limit an employer in establishing its job requirements, provided that such requirements are lawful under this Title as amended." In other words, the amended Title VII would only render unlawful those job requirements that it rendered unlawful. This language is, therefore, meaningless, and does nothing to alleviate the pro-quota pressure the bill would place on employers.

The second part of this paragraph would state that nothing in the amendments should be construed "to require, encourage, or permit an employer to adopt hiring or promotion quotas." Once again, this language does not address the problem, which is that H.R. 1 would make it so difficult for employers to defend their practices against disparate impact claims based upon alleged statistical imbalance that they would be induced to adopt preemptive, surreptitious quotas to maintain racial and sexual balance.

In any event, Section 111(b) defines quota for purposes of subsection (a) in such a narrow way as to render the admonition against quotas ineffective. According to this section, a quota is "a fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained, or which cannot be exceeded, regardless of whether such persons meet necessary qualifications to perform the job." Thus, employers could not hire unqualified people according to race or gender, but, apparently, they would be free to hire on the basis of race or gender from among those who possess the necessary minimal qualifications for the job. This section, therefore,

rather than condemning quotas -- generally understood as the selection of individuals on the basis of race or gender -- is an explicit endorsement of their use.

Section 115. Discriminatory Use of Tests

This section would amend section 703(h) of Title VII to permit the use of a test only if "such test validly and fairly predicts without regard to race, color, religion, sex, or national origin of such test takers, the ability of such test takers to perform the job with respect to which such test is used." The section does not define "validly and fairly," but the apparent intention is to go beyond the present requirement that a test validly predict job performance in order to limit further the use of tests by employers.

Section 116. Prohibition of Race Norming

This section would prohibit the adjustment of test scores "on the basis of the race, color, religion, sex, or national origin of individual test takers." The practice of race norming test results, which is another means of implementing quotas, should be eliminated. We question, however, why the prohibition refers to "individual test takers." Is this language intended to mean that scores may be adjusted for groups of test takers? As written, it is ambiguous and potentially ineffective.

Section 120. Expert Witness Fees and Attorney Fees

This section would amend 42 U.S.C. 1988 to authorize awards of unlimited expert witness fees pursuant to that statute. It would also, by eliminating "as part of the cost" render Rule 68 of the Federal Rules of Civil Procedure inapplicable with regard to attorney fee awards pursuant to 42 U.S.C. 1988. This provision would overturn Marek v. Chesny, 473 U.S. 1 (1985), which held that where a plaintiff rejects a good faith pretrial offer and fails to recover more at trial, he or she may not recover from the defendant attorney fees incurred after the offer. The existing rule discourages unnecessary litigation and is fair. It should not be changed.

Section 201. Glass Ceiling Commission

This provision, which would establish a commission to study artificial barriers to the advancement of women and minorities is unnecessary. The Department of Labor has already launched a "Glass Ceiling Initiative" which is already working to identify and alleviate such barriers. In addition the manner of appointment of the members of the commission -- some by the Executive branch and others by the Legislative branch -- ~~would be inconsistent with at least the spirit of~~ the doctrine of separation of powers.

~~inconsistent with at least the spirit of~~ inappropriate in light of

Section 202. Pay Equity Technical Assistance

This provision would require development of a pay equity program to promote the establishment of wages through means other than the free market. The Administration has consistently opposed such plans and continues to do so.

Section 203. EEOC Data

This section would require the Commission to submit regular summaries and analyses of data submitted by employers regarding "employment opportunities by sex, race, national origin, or ethnicity occurring among and within industries and occupational groups." The compilation and analysis of these data will be expensive and we do not see what useful purpose the data can serve. We can envision destructive purposes, such as the pursuit of racial balance within industries and occupational groups.

We would also note that, in major respects, the amendments fail even to attempt to address the problems with H.R. 1. For instance, the Administration has opposed H.R. 1 as a quota bill, not only with respect to its disparate impact provisions, discussed above, but also because it would overturn Martin v. Wilks, 109 S. Ct. 2180 (1989), thereby barring many challenges to consent decrees containing quotas; and International Federation of Flight Attendants v. Zipes, 109 S. Ct. 2732 (1989), thereby making individuals filing good faith challenges to quotas liable for attorney fees. The proposed amendments would, however, apparently leave intact these features of H.R. 1.

Nonetheless, we are gratified that there is at least implicit recognition now that H.R. 1 is fundamentally flawed. The amendments, however, offer only cosmetic surgery. We are frustrated and perplexed that the House of Representatives has not given any serious consideration to the Administration's civil rights bill. It will overturn the Patterson and Lorance decisions; allow awards of up to $150,000 in cases of on-the-job harassment; and, in disparate impact cases, will put the burden of proof on the employer and adopt verbatim the definition of "business necessity" from Griggs and New York Transit Authority v. Beazer, a decision written ten years before Wards Cove by Justice Stevens, the author of the principal dissent in Wards Cove. It will not institutionalize reverse discrimination; promote costly and endless litigation; or inhibit American businessmen and businesswomen from hiring the best qualified and most productive workers they can, so that they can compete effectively in an increasingly global economy.

In addition, the Administration recognizes that equal opportunity can never be a reality until there are decent schools, safe streets, and revitalized local economies.

Therefore, in addition to our antidiscrimination legislation, we are seeking congressional action to promote choice, opportunity, and empowerment on several fronts: educational choice and flexibility; home-ownership opportunity; enterprise zones and community support areas; and heightened anti-crime efforts.

Therefore, for the foregoing reasons, if H.R. 1 were presented to the President in its present form or with the proposed amendments, I and other senior advisors to the President would recommend that he veto it.

Sincerely,

Dick Thornburgh
Attorney General

CS

ID # 258499 cu

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: Beverly Ward

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

Subject: Civil Rights Reply.

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/06/07		C	91/06/10 CS
	Referral Note:				
CUAT10	A	91/06/07		C	91/06/10
	Referral Note:				see comments.
	_	/ /		_	/ /
	Referral Note:				
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	Referral Note:				

ACTION CODES:
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- X - Interim Reply

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- C - Completed
- S - Suspended

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

Comments: Recommendation on Document CS

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

K: 6-7 10:

TO: Nelson Lund

Closeout

Councel's Office

DATE DUE:	TYPE OF RESPONSE:
6/10/91	☐ Multiple Mailing ☐ Form Reply ☒ One-Time Reply

SUBJECT:

Reply re: Civil Rights

REQUESTED BY/ADDRESSED TO:

Beverly Ward

BACKGROUND:

Attached is a draft reply to a letter on civil rights that we want to send over in the President's Sample for him to see/sign. It was drafted from a letter that you wrote for Boydn Gray on the Roundtable matter and from the President's address to Indedpendent Business people (copy attached) 6/3.

Thanks for your review.

SIGNATURE: Beverly Ward	DATE: 6/6

Presidential Messages
Old Executive Office Building
Room 94
(202) 456-7610

Your Recommendation/Comments:

APPROVED _____

DISAPPROVED _____

Comments: A few changes are marked on the attached. In light of the comments near the bottom of the second page of the incoming, you might consider adding a paragraph on the America 2000 initiative.

Nelson Lund 6-10-91

SIGNATURE.	DATE:

Dear Mr. Chandler:

Thank you for your heartfelt letter. I appreciate your thoughtful comments.

I believe that every individual should have equal opportunity to participate fully in our society. Government has a role to play in advancing economic growth so that opportunities exist, and government must take the lead in ensuring the right of all people to ~~purse~~ pursue their dreams without fear of discrimination.

I understand your concern about the importance of civil rights legislation that ensures that ability, not color or ~~gender~~ sex, is the ~~criteria~~ criterion for employment, and that is the foundation of the civil rights bill that I've sent to Congress. I want a fair, strong antidiscriminaton civil rights bill that will guarantee ~~workers's rights, women's rights, and~~ a workplace ~~rights~~ open to all. If Congress will work with our Administration, we can enact legislation that will both encourage and require employers to provide equal opportunity for all workers without resorting to quotas or unfair preferences.

You also asked about news reports of discussions among private parties regarding this legislation. Please be assured that the Administration certainly does not object to private discussions. At the same time, we do not believe that representatives of two or three very large corporations could pretend to represent American business as a whole.

I'm hopeful that we will be able to work out an agreement that will bring all sides together. I can tell you that I will not waiver in my commitment to building a society of shared hopes and helping hands -- a society in which all benefit from prosperity and all enjoy equality of opportunity and access.

Best wishes.

Sincerely,

GB

Mr. Craig Chandler
6630 Brighton Pl.
Alta Loma, CA 91701

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID# 258499cu

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

__✓__ Remainder of case not scanned.

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_____ Statement not scanned.

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Comments:

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BW- for Sampl

May 22, 1991

The White House
Shirley M. Green
Special Asst. to the President
for Messages and Correspondance
Washington, D.C.20001

Dear Ms. Green:

First of all, I would like to thank you for your response to my concerns about the passing of a Civil Right Act during President Bush's administration. The information you sent was very expository, but it also gave me some questions about how President Bush's plan can become a reality in the world as we know it today.

"A major objective of his proposal is to ensure employers are encouraged to provide equal opportunity for all people without quotas or unfair preferences"., as quoted by your letter. Although this all seems simple enough on paper, my question is: How can you control the hiring practices of White Male Corporate Managers, without some standards they have to meet and be measured on?. For the government to say, that the same individuals who were at the forefront of discrimination in the past are now ready to accept all races as equal, is to say that the President feels racism and hatred of a person simply because of his color is behind us. This we all know is not true at this time in America, and these decisions simply can not be left up to the status quo, 'old boy network' we presently have in place in Corporate America.

The President feels that this can be done without encouraging the use of quotas, or preferential treatment. The word quota must be stricken from the mind of our President, if he really has his sights set on a passable Civil Rights Bill. If you examine the definition of the word quota in the American Heritage Dictionary you will find the following:<u>Quota</u>-allotment, share, proportion, and percentage. As an African-American, I personally do not want a quota bill. I do feel though that African-Americans do have a right to their <u>fair share</u>, an equal <u>proportion</u>, of the American dream. Mr. President, you must remember that less than 200 years ago, we tilled this land for nothing.

African-Americans were not given reparations for being chained and taken from their homeland. We were not given land, businesses, railroads, or any of the other things that are attributed to power in this country. The Japanese, who came to this country by choice, were taken from their homes, and driven from their land to be locked away during the War. Yet, Congress saw fit to pay these people their fair share, given an equal proportion of money as an apology for the atrocities they had to endure. This, I believe was fair, but for African-Americans to expect reparations from our government for the atrocities our ancestors had to endure is totally out of the question. So, How do we get our fair share from America ?, How are we to receive an equal proportion of the wealth so many former Slave Owning families are presently living off of ?, without a bill that entitles the Minorities of this country a chance to become a Trump, or a Goldwater, who is not 7'0' or a 225lb. linebacker. Do you really think that the heads of Corporate America, will give these opportunities to Minorities on their own !, I surely do not, and I have the skills needed to perform in their world.

Some of my concerns with the current administration are:1) Why did they interfere with the negotiations taking place between Corporate heads, and Civil Rights leaders ?. These groups were taking a lead role in trying to come up with a fair and equitable plan that would be beneficial to all Americans. Was it simply because, Mr. Sununu felt that no decisions on this matter could be made without him. I hope not, because we sure do not have a chance for a Civil Rights Bill if we must depend upon him. Also since he is your Chief of Staff, why is'nt he trying to direct Congress towards a bill, any bill that would satify the administration. and the needs of Minorities in America ?., 2)Ms. Linda Chavez, who I hope is not speaking for the President, spoke of "race-norming" as a reason for not passing the current Civil Rights Bill. Using the General Aptitude Test Battery case as an example, she said that the scores of these tests are compared against members of the same race, instead of the body as a whole. Well I disagree here as well, because for anyone to be expected to score well on a standardized test is to assume that everyone has the same educational level taking the test, this we know is not true. Therefore, any test or qualification used in determining someone's qualifications for a job, must be given to people with the same backround and education in order to really be considered standard. There can be no standardized test, because the schools are all not up to the same standards themselves.

The bottom line is this Mr. President, the Urban Institute continues to prove that discrimination exists for Minorities in America. They proved it by taking job candidates with the same background, and abilities, and sent them into Corporate America seeking positions with companies. Yet, these same people had one difference the color of their skin. Over and over Corporate America continued to disaprove your theory. that they can solve the Civil Rights issue on their own. By continually discriminating against African-Americans seeking these positions the 'old boy network' is sending you, Mr. President a message. They are saying that if you do not pass a Civil Rights Bill that has standards and measures they must meet. That they will continue to discriminate against Minorities in this country.

Mr.President, if you really care about the future of America then think about this: Minorities will make up 1/3 of our population by the year 2010. If they do not feel that they have equal opportunities to run Mobil Oil, Proctor & Gamble, IBM, or any major corporation in this country. There is no future for this country. You as the leader of this great nation must open your eyes to what is really going on in this country, and do something about it. Do you feel slavery would have ended on it's own without an act of Congress ?, and what about the practices of separate but equal !, would they have ceased without an act of Congress ?. The way things are today, I do not think these changes would have come to pass.

When we discuss Civil Rights in the African-American society, we speak of getting opportunities to prove we can handle important careers. We are not happy with equality in Sports, or Music, because Ownership and Management are more important than dunks or touchdowns. If the requirements are an College Education to get a job. and an African-American has these qualifications he or she has a right to that job. In receiving the job, this person receives it based on his skills, and not his color. That is the kind of Civil Rights Bill that America needs. One that guarantees a qualified person (Black or White) a job based on skills, and not because African-Americans make up 10% of society so they should receive 10% of the jobs.

If there are any quotas attached to a Bill it should not guarantee jobs, but be used as a measurement or guide, to make up for the atrocities of the past that America has perpetrated on people of color. After all, if White Americans were in the Minority, do you think that they would be satisfied with 1 position for every 10 available, just because they make up 10% of the population. Would'nt you think that they would want 5 out 10 jobs if they had enough qualified candidates. That's what African-Americans want, jobs based on abilities and skills in our Civil Rights Bill. Mr. President. This is what we are owed for 200 years of slavery, racism. and predetermination of our lives in White America. It is time for us to receive our fair share.

The beltway interest groups and their spokepersons want to make me accept or veto a quota bill. And the fact is we have tried to compromise, but not to accept quotas. And at one point last year, we had an agreement that would bring all sides together. But the beltway interest groups refused: They wanted a political win. They wanted to grind me into the political dirt.

And we have a good record on civil rights. And we had a good history of fair play. And I want a fair, strong antidiscrimination bill that will guarantee worker's rights, women's rights, workplace rights, but will not create quotas. (Applause.) And P.S. -- P.S. -- (laughter) -- I want a bill that will help all working men and women and not one that will produce a bonanza for avaricious lawyers. And now you know my position. (Applause.)

If you listen to these talk shows you wouldn't even know we have a civil rights bill up there. (Laughter.) You see the same ones, hey? (Laughter.)

Today, you have my word: Whatever happens to this bill -- and I feel this in my heart -- I will continue to work for racial harmony and fair play and against discrimination in the workplace.

We want to build a society of shared hopes and helping hands -- a society in which all benefit from growth and prosperity. We want to make this kind of society -- a good society -- the hallmark of our administration.

In closing, let me say that this administration will not waver in its devotion to free enterprise. All of us here know that no experience can match the scary thrill of striking out and starting a business. Nothing better tests your mettle. And as we prepare to launch ourselves into the next American century, we must do the three things I've outlined today: We must encourage enterprise; sweep away unnecessary barriers to growth; and fend off attempts to place chains on entrepreneurs.

We want a free society, a just society, a fair society. But we also want a society brightened by growth and hope. And you know, each in your own way, in your own communities, you promote that dream every day. And we will encourage you every single step of the way.

Thank you. May God bless you all. And may God bless the United States of America. Thank you very much. (Applause.)

END 1:22 P.M. EDT

m valuable.
ıce of policy-makers'
nce needs, says Cline.
wing the policy decl
king apparatus is cru
an intelligence officer,"
ıe.

Blacks face more bias

By Julia Lawlor
and Jeffrey Potts
USA TODAY

Young black males looking for entry-level jobs in Chicago or Washington are discriminated against 20% of the time, a new study says.

The study by the Urban Institute, a non-profit research group focusing on social and economic problems, found whites were given job offers and interviews and allowed to submit applications when their black counterparts were not.

Whites faced discrimination 7% of the time; applicants faced no bias 73% of the time.

In the summer of 1990, institute researchers recruited 10 two-man teams of black and white college students, matched closely in age, size, experience, energy level and speaking ability.

Members of each team applied for the same entry-level jobs chosen randomly from the classified sections of *The Washington Post* and *The Chicago Tribune*.

"From the employer's perspective, these were two men making an equal effort, who were equally attractive as job candidates," said co-author Margery Turner. "We're confident the only difference was their race."

In all, 1,052 job applications were made. The findings:

▶ Blacks were discriminated against most when applying for white-collar jobs that involve client contact, like retail sales and hotel services. They were just as likely to get unequal treatment in the city as in the suburbs.

▶ 15% of whites received job offers vs. 5% of blacks. Blacks were sometimes steered into less desirable jobs. One white applicant was offered a job in new car sales while his black colleague was offered a job selling used cars.

▶ In Washington, 23% of whites advanced further than blacks in the hiring process. In Chicago, 17% of whites advanced further than blacks.

Turner said researchers were struck by the number of discouraging interviews of blacks in Washington.

In one case, a black applicant was told the job was "nothing but drudge work." The white applicant was told the job was "a great opportunity for advancement."

President and Congress

DEBATE

New civil rights b
would battle bias

This nation has a long way to go to realize the promi
the 1964 Civil Rights Act to "eliminate the last vestig
injustice."

Sadly, discrimination against women and minorities
haunts the workplace.

▶ An Urban Institute report found that black males
face discrimination in hiring. The study showed that w
males were denied equal job opportunities 7% of the t
but equally qualified black job-seekers were denied e
treatment 20% of the time.

▶ An Older Women's League report showed middle-a
and older women are paid $15,000 less than their m
counterparts and are still locked in "women's jobs."

▶ The Journal of the American Medical Association e
torialized that the USA's health-care system discrimina
against minorities when it comes to basic, preventive ca

That's why Congr
where House acti
is expected soon
must move quickly
pass a civil rights b
that would overturn s
Supreme Court rulin
reducing fair emplo
ment protections.

President Bus
should sign it despit
the views across th
page.

This bill deserve
support because:

▶ Discrimination
complaints increased
from more than 53,000
in 1981 to 62,135 in 1990.

Diversity in our society is growing; minorities will
e up nearly a third of the population by the year 2010.
Minorities and women still lag far behind their white
terparts in income, jobs and medical coverage.
s bill not only protects minorities, but women and the
ed. It would make it easier to prove bias, make com-
prove "business necessity" in hiring and promotions,
ow for punitive damage awards.
bill is not about quotas, but about protecting rights.
4 law did not lead to quotas; neither will this one.
bill is not about politics, but about moral leadership.
rate and civil rights leaders set aside their differ-
d worked together to seek a compromise on the
l rights bill. That was moral leadership.
were close to an agreement
nexplained acts derailed

Fighting job bias

Enforcement of discrimination charges by Equal Employment Opportunity Commission:

	1981	1990
Equal Pay Act suits	50	8
Age bias suits	89	138
General job bias suits	229	353
Total suits resolved	237	546
Settlements/ jury awards	$91.7m	$98.9m

Source: EEOC

LINDA CHAVEZ

An opposing view

This civil rights bill would add more bias

Fact: It is the policy of the Equal Employment Opportunity Commission to threaten to sue employers who use employment tests to select prospective employees unless the employers adjust the test scores of blacks and Hispanics so that their scores appear higher than they are. The practice is called "race-norming," and it works in the following way:

Three people — a white, a black and a Hispanic — applying for a job take the same standardized test, such as the General Aptitude Test Battery used by most state employment agencies. All three receive the same raw score based on the number of questions answered correctly, let's say 300. However, before those scores are reported to prospective employers, they're converted to percentile rankings to reflect how well the applicant did compared to others taking the same test.

Linda Chavez, a senior fellow at Manhattan Institute, was an Reagan White House aide and a GOP candidate for the Senate in 1986.

Now here's the rub. The white person taking the test would be reported to have scored only 44 (meaning that 44% of the whites taking the test scored below 300) because his score would be compared only to other whites. The black would be reported scoring 83 and the Hispanic 67, because both would be compared only to the members of their own group. Race-norming makes it possible for whites who score significantly higher on a standardized test to appear to have actually done substantially worse than blacks or Hispanics.

The publicity about this practice forced the government to put it "under review." But when U.S. Rep. Henry Hyde, R-Ill., tried to amend the so-called Civil Rights Act of 1991 to forbid this practice, his amendment was soundly defeated in the House Judiciary Committee on a strict party-line vote.

Fact: If the Civil Rights Act of 1991 becomes law, we can expect to see more of this racializing of employment decisions. Despite its proponents' protests to the contrary, the bill will force employers to make decisions on the basis of race, ethnic origin and gender — not on actual qualifications.

No one thinks this is fair, not even the proponents of the bill, who steadfastly claim they are not promoting quotas. But the whole purpose of the bill is to make it possible for lawyers to "prove" discrimination if proportionately fewer minorities are hired than are available in the labor force generally.

Such gimmicks won't do anything to improve the education and skills of black and Hispanic job-seekers, which remain a serious impediment to their ability to move up the economic ladder. Nor will it do anything to further ensure that a truly well-qualified black or Hispanic is protected from actual discrimination. Employers forced to hire by quotas can just as quickly use them to exclude qualified minorities once they've satisfied their quota.

Fact: Practices such as these are likely to increase the kind of racial prejudice and polarization that all of us deplore.

ID # 258518 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: J. M. Hunnie, Jr.

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

Subject: Jax Employment Coalition letter expressing reservations about Senator Danforth's civil rights proposal.

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
		ACTION		**DISPOSITION**	
Cuoco	ORIGINATOR	91/07/29 CS		C	91/08/15 CS
Cuat 10	Referral Note: A	91/07/30 CS		C	91/08/15 CS
Cuat07	Referral Note: I	ATTN: FYI 91/07/30 CS	See comments	C	91/07/30 CS
Cuguay	Referral Note: I	91/07/30 CS		C	91/07/30 CS
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	Referral Note:				

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Type of Response = Initials of Signer
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Comments: No Further Action Required 8/15/91 CS

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FAIR EMPLOYMENT COALITION

DEDICATED

TO

EQUAL

OPPORTUNITY

FOR

ALL

AMERICANS

1331 Pennsylvania Avenue, NW
Suite 1500 - North Lobby
Washington, DC 20004
(202) 637-3129
Fax: (202) 637-3182

COPY

July 22, 1991

The Honorable John C. Danforth
United States Senate
249 Russell Senate Office Building
Washington, DC 20510

COUNSEL'S OFFICE
RECEIVED
JUL 24 1991

Dear Senator Danforth:

Attached is a copy of a letter sent by the Fair Employment Coalition to your colleagues concerning your new proposed civil rights bills, S. 1407, S. 1408 and S. 1409. As indicated, we remain unable to support them in their current form.

The Coalition acknowledges that the new proposals reflect improvement in certain areas. We remain, however, concerned about other provisions, among them, those providing for jury trials for recovery of punitive and compensatory damages. While there are a number of other issues that contributed to the Coalition's opposition to the Kennedy-Hawkins bill last year and H.R. 1 in the current session, jury trials and damages have been central to our position.

The Fair Employment Coalition would again like to request a meeting with you to discuss your proposals. We recognize that the nomination of Judge Thomas to be an Associate Justice of the Supreme Court has placed significant demands on your schedule but hope some time might be set aside so that we could share our concerns directly.

The more than 250 companies, associations and professional societies of the Fair Employment Coalition share your desire to avoid the divisiveness and recriminations that have characterized the debates on civil rights during the past eighteen months. The Coalition would like to play a constructive role in bringing that about and believes the views of the employer community might contribute to such an outcome.

Again, we commend your initiative in attempting to reconcile divergent points of view and look forward to meeting with you at your earliest convenience.

On behalf of the Fair Employment Coalition, I am,

Sincerely,

F.M. Lunnie, Jr.
Executive Director

Attachment

FAIR EMPLOYMENT COALITION

DEDICATED

TO

EQUAL

OPPORTUNITY

FOR

ALL

AMERICANS

1331 Pennsylvania Avenue, NW
Suite 1500 - North Lobby
Washington, DC 20004
(202) 637-3129
Fax: (202) 637-3182

IDENTICAL LETTERS TO ALL SENATORS

COPY

July 22, 1991

The Honorable George J. Mitchell
Majority Leader
United States Senate
176 Russell Senate Office Building
Washington, DC 20510

Dear Senator Mitchell:

Several weeks ago, the Fair Employment Coalition wrote to express its reservations about the civil rights proposals offered by Senator John Danforth. The Coalition remains concerned with the most recent set of proposals and cannot support them in their current form.

The Fair Employment Coalition acknowledges that S. 1407, 1408 and 1409 reflect improvements in some areas. However, they fail to address the most fundamental objection the Coalition has expressed during the past eighteen months: jury trials and compensatory/punitive damages. We are also troubled by other provisions, for example, those dealing with the *Price Waterhouse* decision and their effect on voluntary employer outreach and diversity programs.

The Coalition would welcome the opportunity to meet with you or your staff to discuss these issues. Should such a meeting be desired, please contact Pete Lunnie at (202) 637-3129.

In closing, the Fair Employment Coalition continues to support the Administration proposal, S. 611. We believe it provides a means of resolving the current debate on civil rights in a manner that is equitable both to the intended beneficiaries and those of whom compliance would be required.

Sincerely,

THE FAIR EMPLOYMENT COALITION

CS

ID # 258928 CU

R: 7/30

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: Judy Card

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

Subject: Forwards copy of letter from Slade Gorton re conversation between Danforth and Chafee on civil rights. attached speech on Clarence Thomas),

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	Cuofc	ORIGINATOR	91/07/29		C	91/12/02 CS
	Cuat10	Referral Note: A	91/07/30		C	91/12/02 CS
	Cuat07	Referral Note: I	ATTN: FYI-see comments 91/07/30		C	91/07/30 CS
	Cuguay	Referral Note: I	91/07/30		C	91/07/30
		Referral Note:				
		Referral Note:	/ /			/ /

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Code = "A"
Completion Date = Date of Outgoing

CS

Comments: No further action required per N. Lund 12/2/91

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Send all routing updates to Central Reference (Room 75, OEOB).
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Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

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SLADE GORTON
WASHINGTON

730 HART SENATE OFFICE BUILDING
(202) 224-3441

TOLL FREE ISSUES HOTLINE
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TDD 202-224-8273

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INDIAN AFFAIRS
INTELLIGENCE

AC HAS SEEN

United States Senate

WASHINGTON, DC 20510-4701

To Boyden Gray

FYI
7/28
Andy

July 26, 1991

The Honorable John Sununu
The White House
Washington, D.C. 20500

Re: Civil Rights

Dear John:

Last night during a vote on the Senate floor I approached Jack Danforth in order to compliment him on the way in which he has managed the Thomas nomination, after a 30 minute visit with the two of them in my office earlier in the afternoon. As I'm sure you know, I am strongly in support of Clarence Thomas and have already made a floor speech on his behalf, a copy of which I enclose.

As I approached, Senator Danforth was discussing the Civil Rights bill with Senator Chafee. Senator Danforth reported that he had had a one on one visit with the President, presumably yesterday, and that he had told the President that only one question with respect to the Civil Rights bill remained unresolved. He said that he had told the President that it was a policy matter which was relatively easy to decide.

As Senator Danforth characterized it, an employer should not be permitted to consider imposing qualifications greater than those necessary capably to perform the job in question, should hiring the more capable candidate create a racial or other imbalance. He said that he could not understand why anyone could argue that proposition, and Senator Chafee agreed.

I do not agree, and I cannot conceive that you do either. In fact, that seems to me to be as profoundly destructive a philosophy as any policy making body could impose upon American society.

The Army recruiting slogan is "Be all that you can be." The civil rights community slogan seems to be "Be the least that you can be and still get away with it." Presumably, under that proposal, if an employer had ten candidates for a job and seven were determined to be capable of performing it adequately, the

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697 U.S. COURT HOUSE
W 920 RIVERSIDE AVENUE
SPOKANE, WA 99201
(509) 353-2507

MORRIS BUILDING, ROOM 119
23 SOUTH WENATCHEE AVENUE
WENATCHEE, WA 98801
(509) 663-2118

employer would be required to hire the seventh best candidate if hiring any of the six better candidates would create a racial imbalance. It is a prescription for mediocrity, the further loss of American competitiveness, and bitter and justified resentment.

I also believe that it is a characterization which can be blown out of the water in the course of any debate. I hope that you will strongly encourage the President to reject it out of hand.

Sincerely,

SLADE GORTON
United States Senator

SG:v
Enclosure

THE WHITE HOUSE

WASHINGTON

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Comments:

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SPEECH ON CLARENCE THOMAS
SENATOR SLADE GORTON

"I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is first established. ***

"I don't believe in quotas. America was founded on a philosophy of individual rights, not group rights. The civil rights movement was at its greatest when it proclaimed the highest principles on which this country was founded -- principles such as the Declaration of Independence, which were betrayed in

the case of blacks and other minorities."

These are the words of Judge Clarence Thomas who is black, the grandson of a sharecropper, educated in Catholic schools, a conservative.

He is decidedly <u>not</u> politically correct. And that is why he is now at the heart of the furious attacks upon him after his nomination for the Supreme Court.

What <u>is</u> politically correct? An administrator at the University of Pennsylvania redlined a student's phrase referring to her

"regard for the individual"

and added:

> "the word 'individual' is a red flag phrase today which is considered by many to be racist."

The administrator went on to warn of the inequities that result from championing individual over group rights.

The "politically correct" believe that American society is sick. Their attitude is expressed clearly by Kirkpatrick Sale, the author of "The Conquest of Paradise: Christopher Columbus and The Columbian Legacy". He says that American civilization:

> "*** is founded on a set of ideas that are fundamentally

pernicious, and they have to do with rationalism and humanism and materialism and nationalism and science and progress. These are, to my mind, just pernicious concepts."

If these are pernicious, consider then their opposites -- emotionalism, anti-intellectualism, incomprehensibiliity, sophistry, anti-humanism, anarchy, superstition and regression. These are -- to my mind-- pernicious concepts, and these are, indeed, the foundations, the walls, and the cornerstone of political correctitude.

William Phillips, for more than 50 years the editor of the Partisan

Review, and hardly a right-winger, summarizes this "politically correct" philosophy as

> "*** a vague but inauthentic radical outlook [that] still dominates the culture of the academy, the media, and the educated classes.***
>
> [That culture includes] a belief in a widespread relativism in moral, political, and philosophical matters; *** a general rejection of the existing social system; a radical revision of academic curricula; with an atmosphere of leftism and anti-Americanism permeating the whole."

The "politically correct" reject the concept of individual rights and believe that one's race, gender, ethnic background, sexual preference and the like are more important than our common humanity or American citizenship. They ignore or are indifferent to the fact that lesser tribalism has destroyed half the emerging nations in Africa and is about to destroy Yugoslavia -- has divided Canada and is at the root of the ethnic hatreds and divisions that so plague Eastern Europe and the Soviet Union. And <u>tribalism</u> is the future that the politically correct promise the United States.

Because he does not share their terribly destructive views the "politically correct" seek to destroy Clarence Thomas. They fully understand that the next Supreme Court Justice will be a conservative -- at least as conservative as Clarence Thomas -- but they react to the prospect of a <u>black</u> conservative with special fury. Because Clarence Thomas, by his very life and attitudes, destroys the thesis upon which their culture has built its castles -- fortresses of division, mistrust and hatred. But the fact that the grandchild of a black sharecropper, who has felt, and continues to decry, racism in our

society, should nevertheless believe in the promises on which this nation was founded in 1776 --

> "that all men are created equal, and are endowed by their creator with certain unalienable rights" --

illustrates more clearly than a thousand essays the moral bankruptcy of the "politically correct."

For many reasons, not least his great courage and independence of mind, Clarence Thomas richly deserves to be confirmed by the Senate of the United States. He represents the redemption of the true promise of America, that all Americans <u>are</u> created free and equal and that any

American can surmount the circumstances of birth, to arise, like Clarence Thomas himself, with a sense of history and pride, and with eyes open to the light ahead.

# # #

ID# 259134

HU 010
PL VOGT

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: AUGUST 05, 1991

NAME OF CORRESPONDENT: MR. ROBERT J. VERDISCO

SUBJECT: CONCERNS REGARDING THE CIVIL RIGHTS BILL
(H.R. 1)

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	DISPOSITION TYPE RESP	C D	COMPLETED YY/MM/DD
JEFF VOGT		ORG	91/08/05	~~A~~		91/10/21
~~Po Kell~~	REFERRAL NOTE:	~~A~~	~~91/08/05~~			~~91/08/05~~
99 DOJ	REFERRAL NOTE:	D	91/08/05	LJ	C	91/09/04
	REFERRAL NOTE:		__/__/__			__/__/__
	REFERRAL NOTE:		__/__/__			__/__/__
	REFERRAL NOTE:					

WS

COMMENTS: _____

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

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LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

THE WHITE HOUSE

WASHINGTON

October 21, 1991

Dear Mr. Verdisco:

On behalf of President Bush, thank you for your letter of July 31 regarding the proposed civil rights bills. I apologize for my delay in responding to you.

Your comments regarding the proposed legislation are appreciated, and the President has asked me to address them. President Bush and the entire Administration are committed to eliminating all forms of discrimination through enforcement of constitutional and existing statutory guarantees, as well as a series of affirmative action and equal opportunity measures that ensure that no individual is denied opportunities on the basis of race, religion, sex, color, national origin or disability. Any legislation that is enacted should further these goals, and you can be assured that the Administration will only support legislation that is consistent with these principles.

The bill that has been introduced by the Administration, S. 611, would provide for jury trials in Title VII cases in only limited circumstances, that is, "when the court holds that a monetary award cannot constitutionally be granted unless a jury determines liability on one or more issues with respect to which such award is sought, a jury may be empaneled to hear and determine such liability issues and no others."

Thank you for taking the time to write and share your views.

Sincerely,

Jeff Vogt
Associate Director
Office of Public Liaison

Mr. Robert J. Verdisco
President
International Mass Retail Assoc., Inc.
1901 Pennsylvania Avenue, NW
Washington, D.C. 20006

DRAFT REPLY

Mr. Robert J. Verdisco
President
International Mass Retail
Association, Inc.
1901 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Dear Mr. Verdisco:

Your letter to President Bush concerning the proposed Civil Rights Act of 1991 has been referred to this Department for response. As we are sure you can understand, the President does not have time personally to respond to all the correspondence he receives.

Your comments regarding the proposed civil rights bills are appreciated. President Bush and the entire Administration are committed to eliminating all forms of discrimination through enforcement of constitutional and existing statutory guarantees and through the use of a broad range of affirmative action and equal opportunity measures that ensure that no individual is denied opportunities on the basis of race, religion, sex, color, national origin or disability. Any legislation that is enacted should further these goals and you can be assured that the Administration will support only legislation that is consistent with these principles.

The Bill that has been introduced by the Administration, S. 611, would provide for jury trials in Title VII cases in only limited circumstances, that is, to quote from the language of the Bill, when "the court holds that a monetary award [sought by the complaining party] cannot constitutionally be granted unless a jury determines liability on one or more issues with respect to which such award is sought, a jury may be empaneled to hear and determine such liability issues and no others."

Thank you for taking the time to write and share your views.

Sincerely,

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

REFERRAL

AUGUST 13, 1991

TO: DEPARTMENT OF JUSTICE

ACTION REQUESTED:
DRAFT REPLY FOR SIGNATURE OF:
WHITE HOUSE STAFF MEMBER

DESCRIPTION OF INCOMING:

ID: 259134

MEDIA: LETTER, DATED JULY 31, 1991

TO: PRESIDENT BUSH

FROM: MR. ROBERT J. VERDISCO
PRESIDENT
INTERNATIONAL MASS RETAIL
ASSOCIATION, INC.
1901 PENNSYLVANIA AVENUE, N.W.
WASHINGTON DC 20006

SUBJECT: CONCERNS REGARDING THE CIVIL RIGHTS BILL
(H.R. 1)

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

U.S. Department of Justice
Civil Rights Division

Assistant Attorney General *Washington D.C. 20530*

SEP 4 1991

TO: Robert M. Yahn
Director, Information Management
Staff
Department Executive Secretariat

FROM: John R. Dunne
Assistant Attorney General
Civil Rights Division

Attached is a draft reply to a White House referral of a letter dated July 31, 1991 from Mr. Robert J. Verdisco, President, International Mass Retail Association, Inc., 1901 Pennsylvania Avenue, N.W., Washington, D.C., addressed to President Bush.

Attachment

International
Mass Retail
Association, Inc.

1901 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 861-0774
Fax # 202-785-4588

Robert J. Verdisco
President

July 31, 1991

The Honorable George Bush
The White House Offices
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

The International Mass Retail Association (IMRA), on behalf of the nation's discount retail industry, strongly opposed the badly flawed House-passed civil rights bill (H.R. 1). You have been asked to consider some modified form of that bill. IMRA asks that you oppose any measure which does not remove two major -- but so far unaddressed -- problems for all employers.

While in IMRA's view no Congressional proposals to date have satisfactorily addressed questions of standards of evidence and persuasion in disparate impact cases, IMRA is also deeply concerned, that much of the discussion to date has overlooked equally serious flaws in H.R.1 and in all modifications and revisions proposed to date. Even if the litigation standards issues were completely resolved, the nation's employers would still face unsupportable new burdens from other provisions in H.R. 1 and addressed inadequately or not at all in S. 1209 and S. 1409.

IMRA urgently asks that you oppose any proposal which creates an automatic right of jury trial in all Title VII cases, or which provides tort-type damages -- "pain and suffering," "mental anguish" and the like -- in all employment disputes. If these problems are not resolved, any civil rights bill will end up creating serious, unwarranted new jeopardy for all employers.

Automatic jury trials would tremendously raise the costs and stakes employers would face in contesting job bias claims. This would clog Federal courts, and build in serious delays to resolving workplace disputes. In addition, it would undermine the Equal Employment Opportunity Commission's long-standing role in screening claims, promoting conciliation and encouraging prompt dispute settlement. It would also drastically shift the emphasis in Title VII to favor litigation. This would benefit trial lawyers, but not workers or employers.

Although limits or caps on damages have been variously proposed, none has addressed a fundamental problem: the dramatic and unwarranted shift away from Title VII's emphasis on "make whole" remedies, such as back pay and promotions, in favor of "make rich" damages. By including such tort-like elements as "mental anguish," "pain and suffering" and the like, this would transform routine employment disputes into potential litigation bonanzas. Once again, a few litigators would profit, at the expense of the efficiency and workability of the nation's basic system of employment law.

Sincerely,

Robert J. Verdisco
President

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Clover

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ROBERT J. VERDISCO
IMRA

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General Counsel
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McDermott, Will & Emery

ID# 259623

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HU 010

INCOMING

DATE RECEIVED: AUGUST 06, 1991

NAME OF CORRESPONDENT: MR. JOSEPH HERZENBERG

SUBJECT: URGES THE PRESIDENT TO REMOVE THE POLICY THAT EXCLUDES GAY MEN AND LESBIANS FROM THE U.S. ARMED FORCES

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
**BILL CANARY		ORG	91/08/06	DA	A	91/8/8 LJ
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COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 2600 ____ ____

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*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
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*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.

THE WHITE HOUSE

WASHINGTON

August 8, 1991

Dear Mr. Herzenberg:

On behalf of the President, thank you for your recent letter regarding the current personnel regulations within the Armed Forces. I appreciate your taking the time to write the Administration on this matter.

I have taken the liberty of forwarding a copy of your letter to the appropriate officials at the Defense Department, as well as here at the White House, for their further review and action. Please be assured that they will give your thoughts the utmost consideration.

With the President's best wishes and my own,

Sincerely,

Debra Anderson
Deputy Assistant to the President and
Director of Intergovernmental Affairs

Mr. Joseph Herzenberg
Councilman
Town of Chapel Hill
306 North Columbia Street
Chapel Hill, North Carolina 27516

4

259623

B Canning

TOWN OF CHAPEL HILL

306 NORTH COLUMBIA STREET
CHAPEL HILL, NORTH CAROLINA 27516

Telephone (919) 968-2700

July 30, 1991

Dear President Bush:

Please help make American kinder and gentler by removing the policy of excluding gay men and lesbians from the armed forces of the United States.

Thanks for your attention to this matter.

Yours sincerely,

Joseph Herzenberg

Joseph Herzenberg
Member, Town Council

R: 9/5 51500

ID # 259874 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Ted Maness

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

Subject: Copy of U.S. Chamber of Commerce letter with attachment sent to the full Senate in support of the President's civil rights

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cu ofc		ORIGINATOR	91/08/05		C	91/09/09 CS
Cuat to		Referral Note: A	91/08/06		C	91/09/09 CS
Cuat07		Referral Note: I	91/08/06	ATTN: FYI	—	See comments
Cuflay		Referral Note: I	910806		C	91/08/06 CS
		Referral Note:				CS
		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
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DISPOSITION CODES:
A - Answered
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: Noted: May Be Closed out -- G. Lund CS

9-9-91 -

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Send all routing updates to Central Reference (Room 75, OEOB).
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5/81

U.S. Chamber of Commerce

LEGISLATIVE AND POLITICAL AFFAIRS

1615 H Street, N.W. Washington, D.C. 20062 202/463-5600 Fax 202/887-3430

Ted Maness
Senate Liaison

July 31, 1991

Mr. C. Boyden Gray
Counsel to the President
Second Floor, West Wing
The White House
Washington, D.C. 20500

Dear Mr. Gray:

The enclosed U.S. Chamber of Commerce letter, with attachment, was recently sent to the full Senate. The Chamber remains firmly committed to the President's bill and opposed to S. 1407, S. 1408 and S. 1409.

Sincerely,

Ted Maness

U.S. Chamber of Commerce
LEGISLATIVE AND PUBLIC AFFAIRS
1615 H Street, N.W. Washington, D.C. 20062 202/463-5406 Fax 202/463-3173

July 26, 1991

Donald J. Kroes
Vice President

The Honorable Brock Adams
United States Senate
Washington, D.C. 20510

Dear Senator Adams:

As you know, last month the House passed H.R. 1, the Civil Rights Act of 1991. The vote, 273-158, is insufficient to override a promised veto. The U.S. Chamber of Commerce urged opposition to H.R. 1 because, among other things, it called for complete revision of the 20-year-old definition of "business necessity" articulated by the Supreme Court in Griggs v. Duke Power Co. It also introduced an entirely new damages provision allowing jury trials and unlimited punitive and compensatory damages in addition to the "make-whole" relief already provided in Title VII. These provisions, combined with other objectionable sections, certainly would have forced an employer to make decisions based upon the number of covered individuals in his work force. The bill's antiquota language was virtually meaningless in light of its definition of "quota." H.R. 1 failed to meet the stated objectives of its proponents and promised only a bonanza for lawyers.

Senator Danforth has introduced a series of bills, S. 1407, S. 1408, and S. 1409, with the expressed hope of striking a balance between proponents and opponents of H.R. 1. The Chamber commends Senator Danforth for his efforts to forge a compromise on this difficult and critical issue. However, these proposals, like H.R. 1, remain very troublesome. Among the concerns the Chamber has with the Danforth proposals are the following:

- Despite the fact that "business necessity" is now defined as it was in Griggs, a plaintiff can still allege in a general way that all or some of the employer's practices caused a disparity. This violates a basic tenet of American jurisprudence -- that the plaintiff not only show he suffered a harm, but also what, in particular, caused the harm.

- Although the Danforth proposal says that nothing in the bill "requires or encourages an employer to adopt ... quotas," this language does nothing to alleviate the problem of quotas. The Chamber never claimed that these or any other civil rights proposals would require quotas, only that quotas would be the

result. Forced to choose between hiring by a de facto quota system or facing the prospect of extended, frequent, and expensive lawsuits, employers will take the quotas option every time.

- Jury trials are still available under the Danforth proposal. Although Senator Danforth is to be commended for trying to limit available damages, two problems remain. First, there exist loopholes in the language that allow damages to exceed the cap. Second, one only has to look at medical malpractice and product liability cases to know what happens when these cases go to a jury.

To explain our concerns in greater detail, particularly the "group of practices" problem, attached is an analysis prepared by James C. Paras. Mr. Paras is a senior partner in the San Francisco office of Morrison and Foerster and has extensive experience in employment law.

Again, the efforts of Senator Danforth to strike a compromise on this issue are appreciated. However, the Chamber strongly believes that the proposal set forth by the Bush Administration, and embodied in Senator Dole's bill, S. 611, addresses the concerns of both the proponents and opponents of the civil rights bill that was passed by the House this year.

Thank you for your consideration of our views. If I can provide further information, please do not hesitate to contact me.

Sincerely,

Donald J. Kroes

Donald J. Kroes

Attachment

MORRISON & FOERSTER

LOS ANGELES
ORANGE COUNTY
WALNUT CREEK
PALO ALTO
DENVER

ATTORNEYS AT LAW

345 CALIFORNIA STREET
SAN FRANCISCO, CA 94104-2675
TELEPHONE (415) 677-7000
TELEFACSIMILE (415) 677-7522
TELEX 34-0154 MRSN FOERS SFO

NEW YORK
WASHINGTON, D.C
LONDON
HONG KONG
TOKYO

DIRECT DIAL NUMBER

(415) 677-7087

July 22, 1991

Peter J. Eide, Esq.
Manager, Labor Law
Labor & Human Resources Department
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C. 20062

Dear Peter:

At your request, we have reviewed Senator Danforth's recently-introduced civil rights bills (S 1407, S 1408 and S 1409) and have concluded that, although they constitute an improvement over the provisions contained in HR 1, they still do not resolve certain fundamental problems that have been at the heart of the controversy surrounding earlier legislative proposals. More specifically, it has been the contention of the proponents of civil rights reform that legislation is needed to restore the law to the state at which it existed prior to the Supreme Court's 1988-89 term. Senator Danforth's bills, as is the case with the recently passed House bill, do not merely seek a restoration of preexisting law. Instead, they contain provisions that would constitute a major expansion of the civil rights laws, under any interpretation accepted by the Supreme Court during the last two and one-half decades. No justification for such an expansion of the civil rights laws has ever been offered or established.

Although S 1407 and S 1409 retain several features to which we have previously stated our objections, e.g., the unwise injection of compensatory/punitive damages and jury trials into Title VII cases and the wholly unnecessary reversal of Justice Brennan's mixed-motive decision in Price Waterhouse v. Hopkins, 109 S. Ct. 1775 (1989), our principal concern remains the modified disparate impact analysis that would be created by S 1408.

In analyzing the disparate impact language in S 1408, it is useful to recall specifically what the Supreme Court held in Griggs v. Duke Power Co., 401 U.S. 424 (1971). First, the Court noted that "[d]iscriminatory preference for any group, minority or majority, is precisely and only what Congress proscribed." Id. at 431. With this in mind, the Court concluded that Title VII requires "the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." Id. In Griggs and each succeeding Supreme Court disparate impact case, the Court required a plaintiff to identify and establish a causal relationship between each specific challenged practice and the alleged disparate impact in order to establish a prima facie case. See, e.g., New York City Transit Authority v. Beazer, 440 U.S. 568, 548 (1979) ("A prima facie violation of the Act may be established by statistical evidence showing that an employment practice has the effect of denying the members of one race equal access to employment opportunities."). Once such a prima facie showing is made, the defendant has been required to show that each specific practice challenged by plaintiff has "a manifest relationship to the employment in question." Griggs, 401 U.S. at 423.

Unlike Griggs and its progeny, S 1408 fails to require a plaintiff to prove that any specific employment practice caused, or even significantly contributed to, an imbalance in the workforce. Instead, under Section 3 of S 1408 a plaintiff may, and in the typical case would, subject an entire "decision-making process" to a disparate impact attack.

As written, S 1408 in effect states that a plaintiff must show a causal relationship between a specific employment practice or practices and an underlying workforce imbalance, unless plaintiff cannot satisfy this basic element of proof. This renders the specific identification and causation "requirement" of S 1408 entirely illusory. The elimination of the specific identification and causation requirement from established Title VII law shifts the focus solely to an employer's bottom line statistics. It is at this point that the threat of quotas, however described, becomes manifest.

In a widely cited case, the Fifth Circuit persuasively rebuffed an effort to convert disparate impact analysis from an evaluation of specific practices to an evaluation of an employer's employment statistics alone. In Pouncy v. Prudential Insurance Co. of America, 668 F.2d 795 (5th Cir. 1982), the court reiterated that a prima facie case of disparate impact requires "identification of a neutral employment practice coupled with proof of its discriminatory impact." Id. at 800. The court concluded that "[t]he discriminatory impact model of proof . . . is not, however, the appropriate vehicle from which to launch a wide ranging attack on the cumulative effect of a company's employment practices." Id. The reason for this conclusion is a consideration of basic fairness within the context of the litigation process. "We require proof that a specific practice results in a discriminatory impact on a class in an employer's work force in order to allocate fairly the parties' respective burdens of proof at trial. The aggrieved party must prove a disparate impact due to the selection procedure. The employer then has the burden of proving that the selection procedure is justified by a legitimate business reason. . . . Identification by the aggrieved party of the specific employment practice responsible for the disparate impact is necessary so that the employer can respond by offering proof of its legitimacy." Id. at 800-801.

Under S 1408, however, plaintiff will generally be free to challenge the entire employment process without identifying any specific practice that is allegedly an arbitrary obstacle to employment opportunities. Indeed, if neither the plaintiff nor the defendant can determine which factors may contribute to a bottom line imbalance, the employer may be found liable based solely upon that imbalance and the parties inability to determine, much less justify, the factors contributing to that imbalance. This is not only manifestly unfair, but a dramatic shift in Title VII law.

In summary, S 1408, as well as S 1407 and S 1409, fail to conform to the purposes allegedly underlying the push for civil rights legislation, i.e., a restoration of prior law. S 1408's repeal of the requirement that specific practices be shown to constitute arbitrary barriers to the advancement of protected groups, in particular, alters long-standing Supreme Court precedent. In short,

Senator Danforth's proposals suffer from the same defect as the bills introduced by the original proponents of this legislation. Contrary to their claim, the so-called Wards Cove amendments do not result in a return to Griggs, rather they constitute an unwarranted legislative expansion of adverse impact liability which can only result in making employers "quota conscious" in their employment decisions.

Very truly yours,

James C. Paras

R: 8/5 5:50P

ID # 259878 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Fred McClure

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

Subject: copy of letter from Senator Danforth to Potts re 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
CU OFC	ORIGINATOR	910805		C	910909 CS
CU AT 10	Referral Note: A	910805		C	910909 CS
CU AT 07	Referral Note: I	ATTN: FYI — See comments 910805		C	910805 CS
CU PAY	Referral Note: I	910805		C	910805 CS
	Referral Note:	/ /			/ /
	Referral Note:				

ACTION

DISPOSITION

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: NOTED: CAPTIONED MAY BE CLOSED OUT. CS

M LUND 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

THE WHITE HOUSE
WASHINGTON

August 5, 1991

TO: BOYDEN GRAY

FROM: **PHILLIP D. BRADY**
Assistant to the President and
Staff Secretary

The attached has been forwarded to the President

For action and consultation with Justice as appropriate.

THE WHITE HOUSE
WASHINGTON

August 5, 1991

MR. PRESIDENT:

Fred McClure will acknowledge the attached, and Boyden Gray will prepare a more substantive response for your signature after consultation with Justice.

Thank you.

Phil

Phillip D. Brady

P.S. Fred advises Senator Danforth will be out of Washington for the next two weeks—

THE WHITE HOUSE

WASHINGTON

COUNSEL'S OFFICE
RECEIVED
AUG 05 1991

August 5, 1991

MEMORANDUM FOR PHIL BRADY

FROM: Fred McClure

SUBJECT: Letter for the President's Reading File

I would like to place the attached letter from Senator John Danforth (R-MO) in the President's reading file.

Attachment

cc: Governor Sununu
Boyden Gray

UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C. DANFORTH
MISSOURI

August 2, 1991

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

Dear Mr. President:

Thanks so much for your more than generous comments in your Rose Garden press conference this morning. I especially appreciate your invitation to further communication on the civil rights issue. Here are my thoughts on how you might resolve this matter.

You have said that the specific problem with the legislation I have proposed is that it discourages employers "from relying on educational effort and achievement." In addition, Dick Thornburgh has raised the concern that employers should be able to hire people not only for the immediate job at hand, but for positions to which an employee might be promoted.

I propose that the legislation address each of these concerns, but not in the overly broad way suggested by the Administration.

This could be accomplished by using the same "business necessity" definition in my bill, but including two provisos.

The first would state that:

> Nothing in this act shall be construed to prevent an employer from refusing to hire applicants under the age of 18 because they do not have a high school diploma or have not passed a high school equivalency exam.

The second would state:

> The term "class of jobs" means jobs to which an employee or applicant may reasonably be expected to be promoted or transferred within a reasonable period of time.

If you could propose these provisos as addenda to my definition of business necessity, I am convinced that I could gain acceptance for the proposal and that we could get this matter behind us.

In addition, I have several other specific suggestions for compromising the other outstanding issues that are between us. I have shown these to Dick Thornburgh, but there has been no response.

Mr. President, I cannot overstate how important I think it is to the country, and more particularly to our party, to resolve the civil rights dispute before it reaches the Senate floor. The present position of the Administration is truly a turning back of the clock on civil rights. It is in direct contradiction to the Supreme Court's 1971 Griggs decision. I am convinced that your objectives can be met in the manner outlined above without doing violence to civil rights law.

Surely, it cannot serve the cause of education for civil rights and education to be put in conflict with one another. There is no doubt in my mind that your education objectives can be squared with existing civil rights law.

Please know my high regard for you. It has never flagged in the slightest throughout this long controversy.

Sincerely,

Jack

260082

HU010

THE WHITE HOUSE

WASHINGTON

June 13, 1991

Dear Mr. Chandler:

Thank you for your heartfelt letter. I appreciate your thoughtful comments.

I believe that every individual should have an equal opportunity to participate fully in our society. Government has a role to play in advancing economic growth so that opportunities exist, and government must take the lead in ensuring the right of all people to pursue their dreams without fear of discrimination.

I understand your concern about the importance of civil rights legislation that ensures that ability, not color or sex, is the criterion for employment, and that is the foundation of the civil rights bill that I've sent to Congress. I want a fair, strong, antidiscrimination civil rights bill that will guarantee a workplace open to all. If the Congress will work with our Administration, we can enact legislation that will both encourage and require employers to provide equal opportunity for all workers without resorting to quotas or to unfair preferences.

You also asked about news reports of discussions among private parties regarding this legislation. Please be assured that the Administration certainly does not object to private discussions. At the same time, we do not believe that representatives of two or three very large corporations could pretend to represent American business as a whole.

I'm hopeful that we will be able to work out an agreement that will bring all sides together. I can tell you that I will not waver in my commitment to building a society of shared hopes and helping hands -- a society in which all benefit from prosperity and all enjoy equality of opportunity and access.

Finally, I appreciate your comments about standardized tests and our educational system. One of the goals of AMERICA 2000, our National Education Strategy, is the development of national standards in five core-subject areas. We're proposing the development of standards that represent what children need to know and need to be able to do if they are to live and to work successfully in today's world. In addition, AMERICA 2000 proposes that a new, voluntary, nationwide examination or assessment system be developed. This means looking beyond the multiple-choice tests that are relied on so heavily in current testing.

Thanks again for sharing your concerns about these important issues. Best wishes.

Sincerely,

Mr. Craig Chandler
6630 Brighton Place
Alta Loma, California 91701

910614

Dear Mr. Chandler:

Thank you for your heartfelt letter. I appreciate your thoughtful comments.

I believe that every individual should have an equal opportunity to participate fully in our society. Government has a role to play in advancing economic growth so that opportunities exist, and government must take the lead in ensuring the right of all people to pursue their dreams without fear of discrimination.

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Thanks again for sharing your concerns about these important issues. Best wishes.

Sincerely,

GEORGE BUSH

Mr. Craig Chandler
6630 Brighton Place
Alta Loma, California 91701

GB/BW/SMG/bws (6PRESG)

cc: Beverly Ward, Rm. 94

SAMPLE

Dear Mr. Chandler:

Thank you for your heartfelt letter. I appreciate your thoughtful comments.

I believe that every individual should have equal opportunity to participate fully in our society. Government has a role to play in advancing economic growth so that opportunities exist, and government must take the lead in ensuring the right of all people to pursue their dreams without fear of discrimination.

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pretend to represent American business as a whole.

I'm hopeful that we will be able to work out an agreement that will bring all sides together. I can tell you that I will not waiver in my commitment to building a society of shared hopes and helping hands -- a society in which all benefit from prosperity and all enjoy equality of opportunity and access.

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Best wishes.

Sincerely,

Mr. Craig Chandler
6630 Brighton Place
Alta Loma, California 91701

cc: Bev Ward, Room 94

Dear Mr. Chandler:

Thank you for your heartfelt letter. I appreciate your thoughtful comments.

I believe that every individual should have equal opportunity to participate fully in our society. Government has a role to play in advancing economic growth so that opportunities exist, and government must take the lead in ensuring the right of all people to ~~purse~~ pursue their dreams without fear of discrimination.

I understand your concern about the importance of civil rights legislation that ensures that ability, not color or ~~gender~~ sex, is the ~~criteria~~ criterion for employment, and that is the foundation of the civil rights bill that I've sent to Congress. I want a fair, strong antidiscriminaton civil rights bill that will guarantee ~~workers's rights, women's rights, and~~ a workplace ~~rights~~ open to all. If Congress will work with our Administration, we can enact legislation that will both encourage and require employers to provide equal opportunity for all workers without resorting to quotas or unfair preferences.

Insert →

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Best wishes.

Sincerely,

GB

Mr. Craig Chandler
6630 Brighton Pl.
Alta Loma, CA 91701

Suggested insert pg 2

I also appreciate your comments about standardized tests and our educational system. One of the goals of America 2000, our National Education Strategy, is the development of national standards in five core subject areas. We're proposing that standards be developed ~~for~~ that represent what children ~~should be able~~ need to know and be able to do if they are to live and work successfully in today's world. In addition, America 2000 proposes that a new, voluntary, nationwide examination or assessment system be developed. This means looking beyond the multiple-choice tests which are relied on so heavily in current testing.

Texoissa —
This is the sample letter Nelson Lund has cleared. As you can see, he's suggesting we add language ATT Am. 2000. This is suggested insert & where I'd put it is marked in text. Good Luck!!
SW

DRAFT OF PRESIDENTIAL LETTER

DRAFT DATE: 6/10/91	COMPUTER DRAFT DOCUMENT TITLE:
INITIALS: GB/ BW/Counsel	CC:
CLEAR WITH:	WHCC:
ENCLOSURES, SPECIAL INSTRUCTIONS: ~~This is simply a re-typed version of the attached~~ (includes NL corrections + BW additions) ltd	

The beltway interest groups and their spokepersons want to make me accept or veto a quota bill. And the fact is we have tried to compromise, but not to accept quotas. And at one point last year, we had an agreement that would bring all sides together. But the beltway interest groups refused: They wanted a political win. They wanted to grind me into the political dirt.

And we have a good record on civil rights. And we had a good history of fair play. And I want a fair, strong antidiscrimination bill that will guarantee worker's rights, women's rights, workplace rights, but will not create quotas. (Applause.) And P.S. -- P.S. -- (laughter) -- I want a bill that will help all working men and women and not one that will produce a bonanza for avaricious lawyers. And now you know my position. (Applause.)

If you listen to these talk shows you wouldn't even know we have a civil rights bill up there. (Laughter.) You see the same ones, hey? (Laughter.)

Today, you have my word: Whatever happens to this bill -- and I feel this in my heart -- I will continue to work for racial harmony and fair play and against discrimination in the workplace.

We want to build a society of shared hopes and helping hands -- a society in which all benefit from growth and prosperity. We want to make this kind of society -- a good society -- the hallmark of our administration.

In closing, let me say that this administration will not waver in its devotion to free enterprise. All of us here know that no experience can match the scary thrill of striking out and starting a business. Nothing better tests your mettle. And as we prepare to launch ourselves into the next American century, we must do the three things I've outlined today: We must encourage enterprise; sweep away unnecessary barriers to growth; and fend off attempts to place chains on entrepreneurs.

We want a free society, a just society, a fair society. But we also want a society brightened by growth and hope. And you know, each in your own way, in your own communities, you promote that dream every day. And we will encourage you every single step of the way.

Thank you. May God bless you all. And may God bless the United States of America. Thank you very much. (Applause.)

END 1:22 P.M. EDT

R: 6-7 10:0[redacted]

REQUEST FOR CLEARANCE COMMENTS

TO: Nelson Lund

Councel's Office

DATE DUE:	**TYPE OF RESPONSE:**
6/10/91	☐ Multiple Mailing ☐ Form Reply XX☒ One-Time Reply

SUBJECT:

Reply re: Civil Rights

REQUESTED BY/ADDRESSED TO:

Beverly Ward

BACKGROUND:

Attached is a draft reply to a letter on civil rights that we want to send over in the President's Sample for him to see/sign. It was drafted from a letter that you wrote for Boydon Gray on the Roundtable matter and from the President's address to Indedpendent Business people (copy attached) 6/3.

Thanks for your review.

SIGNATURE: Beverly Ward	**DATE:** 6/6

Presidential Messages
Old Executive Office Building
Room 94
(202) 456-7610

Your Recommendation/Comments:

APPROVED _____

DISAPPROVED _____

Comments: A few changes are marked on the attached. In light of the comments near the bottom of the second page of the incoming, you might consider adding a paragraph on the America 2000 initiative.

Nelson Lund 6-10-91

SIGNATURE:	**DATE:**

BW- for Sample

May 22, 1991

The White House
Shirley M. Green
Special Asst. to the President
for Messages and Correspondance
Washington, D.C.20001

Dear Ms. Green:

First of all, I would like to thank you for your response to my concerns about the passing of a Civil Right Act during President Bush's administration. The information you sent was very expository, but it also gave me some questions about how President Bush's plan can become a reality in the world as we know it today.

"A major objective of his proposal is to ensure employers are encouraged to provide equal opportunity for all people without quotas or unfair preferences"., as quoted by your letter. Although this all seems simple enough on paper, my question is: How can you control the hiring practices of White Male Corporate Managers, without some standards they have to meet and be measured on?. For the government to say, that the same individuals who were at the forefront of discrimination in the past are now ready to accept all races as equal, is to say that the President feels racism and hatred of a person simply because of his color is behind us. This we all know is not true at this time in America, and these decisions simply can not be left up to the status quo, 'old boy network' we presently have in place in Corporate America.

The President feels that this can be done without encouraging the use of quotas, or preferential treatment. The word quota must be stricken from the mind of our President, if he really has his sights set on a passable Civil Rights Bill. If you examine the definition of the word quota in the American Heritage Dictionary you will find the following:<u>Quota</u>-allotment, share, proportion, and percentage. As an African-American, I personally do not want a quota bill. I do feel though that African-Americans do have a right to their <u>fair share</u>, an equal <u>proportion</u>, of the American dream. Mr. President, you must remember that less than 200 years ago, we tilled this land for nothing.

African-Americans were not given reparations for being chained and taken from their homeland. We were not given land, businesses, railroads, or any of the other things that are attributed to power in this country. The Japanese, who came to this country by choice, were taken from their homes, and driven from their land to be locked away during the War. Yet, Congress saw fit to pay these people their fair share, given an equal proportion of money as an apology for the atrocities they had to endure. This, I believe was fair, but for African-Americans to expect reparations from our government for the atrocities our ancestors had to endure is totally out of the question. So, How do we get our fair share from America ?, How are we to receive an equal proportion of the wealth so many former Slave Owning families are presently living off of ?, without a bill that entitles the Minorities of this country a chance to become a Trump, or a Goldwater, who is not 7'0' or a 225lb. linebacker. Do you really think that the heads of Corporate America, will give these opportunities to Minorities on their own !, I surely do not, and I have the skills needed to perform in their world.

Some of my concerns with the current administration are:1) Why did they interfere with the negotiations taking place between Corporate heads, and Civil Rights leaders ?. These groups were taking a lead role in trying to come up with a fair and equitable plan that would be beneficial to all Americans. Was it simply because, Mr. Sununu felt that no decisions on this matter could be made without him. I hope not, because we sure do not have a chance for a Civil Rights Bill if we must depend upon him. Also since he is your Chief of Staff, why is'nt he trying to direct Congress towards a bill, any bill that would satify the administration, and the needs of Minorities in America ?., 2)Ms. Linda Chavez, who I hope is not speaking for the President, spoke of "race-norming" as a reason for not passing the current Civil Rights Bill. Using the General Aptitude Test Battery case as an example, she said that the scores of these tests are compared against members of the same race, instead of the body as a whole. Well I disagree here as well, because for anyone to be expected to score well on a standardized test is to assume that everyone has the same educational level taking the test, this we know is not true. Therefore, any test or qualification used in determining someone's qualifications for a job, must be given to people with the same backround and education in order to really be considered standard. There can be no standardized test, because the schools are all not up to the same standards themselves.

The bottom line is this Mr. President, the Urban Institute continues to prove that discrimination exists for Minorities in America. They proved it by taking job candidates with the same background, and abilities, and sent them into Corporate America seeking positions with companies. Yet, these same people had one difference the color of their skin. Over and over Corporate America continued to disaprove your theory. that they can solve the Civil Rights issue on their own. By continually discriminating against African-Americans seeking these positions the 'old boy network' is sending you, Mr. President a message. They are saying that if you do not pass a Civil Rights Bill that has standards and measures they must meet. That they will continue to discriminate against Minorities in this country.

Mr.President, if you really care about the future of America then think about this: Minorities will make up 1/3 of our population by the year 2010. If they do not feel that they have equal opportunities to run Mobil Oil, Proctor & Gamble, IBM, or any major corporation in this country. There is no future for this country. You as the leader of this great nation must open your eyes to what is really going on in this country, and do something about it. Do you feel slavery would have ended on it's own without an act of Congress ?, and what about the practices of separate but equal !, would they have ceased without an act of Congress ?. The way things are today, I do not think these changes would have come to pass.

When we discuss Civil Rights in the African-American society, we speak of getting opportunities to prove we can handle important careers. We are not happy with equality in Sports, or Music, because Ownership and Management are more important than dunks or touchdowns. If the requirements are an College Education to get a job, and an African-American has these qualifications he or she has a right to that job. In receiving the job, this person receives it based on his skills, and not his color. That is the kind of Civil Rights Bill that America needs. One that guarantees a qualified person (Black or White) a job based on skills, and not because African-Americans make up 10% of society so they should receive 10% of the jobs.

If there are ~~any quotas attached to a~~ Bill it should not guarantee jobs, but be used as a measurement or guide, to make up ~~for the~~ atrocities of the past that America has perpetrated on people of color. After all, if White Americans were in the Minority, do you think that they would be satisfied with 1 position for every 10 available, just because they make up 10% of the population. Would'nt you think that they would want 5 out 10 jobs if they had enough qualified candidates. That's what African-Americans want, jobs based on abilities and skills in our Civil Rights Bill, Mr. President. This is what we are owed for 200 years of slavery, racism, and predetermination of our lives in White America. It is time for us to receive our fair share.

Thanks for the opportunity to express my views on this very crucial decision in the future of our Country.

Sincerely,

Craig Chandler

Craig Chandler
Chairman, The ACE Alliance Consortium Investment Group

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID# 260082

_____ 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.

_____ Proclamation not scanned.

_____ Incoming letter(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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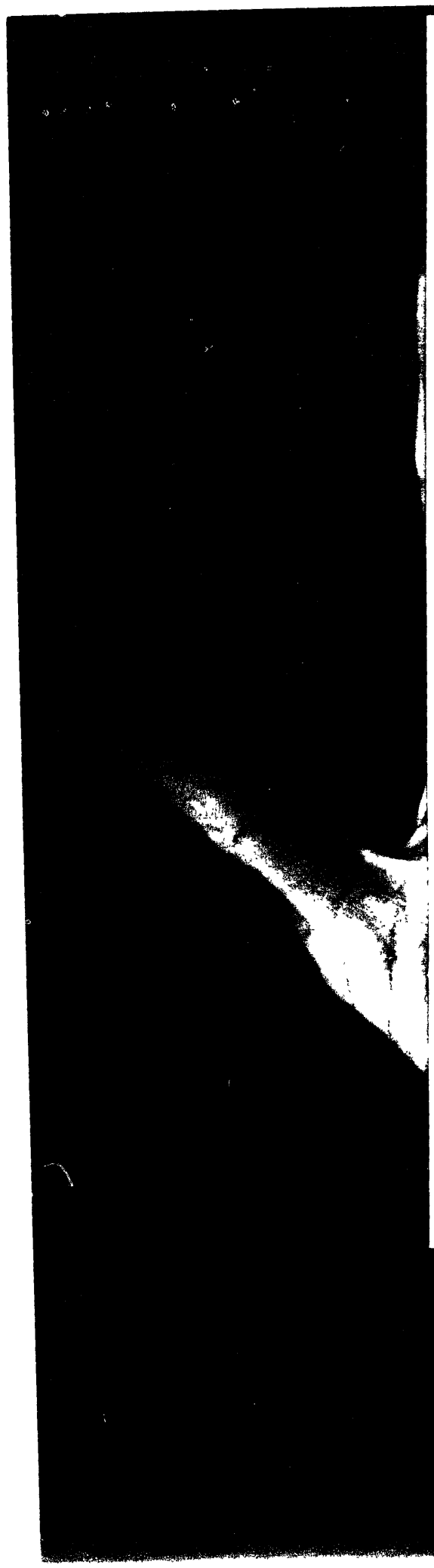

I. For Today's Students: Better and More Accountable Schools

Goals served: All six, but especially #2 (90 percent graduate from high school), #3 (competence in core subjects) and #4 (first in the world in science and mathematics).

Strategy: Through a 15-point accountability package, parents, teachers, schools and communities can all be encouraged to measure results, compare results and insist on change when the results aren't good enough.

Specifics:

New World Standards: Standards will be developed, in conjunction with the National Education Goals Panel. These New World Standards—for each of the five core subjects—will represent what young Americans need to know and be able to do if they are to live and work successfully in today's world. These standards will incorporate both knowledge and skills, to ensure that, when they leave school, young Americans are prepared for further study and the work force.

American Achievement Tests: In conjunction with the National Education Goals Panel, a new (voluntary) nationwide examination system will be developed, based on the five core subjects, tied to the New World Standards. These tests will be designed to foster good teaching and learning as well as to monitor student progress.

Encouragement to use the tests: Colleges will be urged to use the American Achievement Tests in admissions; employers will be urged to pay attention to them in hiring.

Presidential Citations for Educational Excellence: Citations will be awarded to high school students who do well on American Achievement Tests. Until those tests become available, Presidential Citations for Educational Excellence will be awarded based on

President and Publisher

DEBATE

LINDA CHAVEZ
An opposing view

This civil rights bill would add more bias

Fact: It is the policy of the Equal Employment Opportunity Commission to threaten to sue employers who use employment tests to select prospective employees unless the employers adjust the test scores of blacks and Hispanics so that their scores appear higher than they are. The practice is called "race-norming," and it works in the following way:

Three people — a white, a black and a Hispanic — applying for a job take the same standardized test, such as the General Aptitude Test Battery used by most state employment agencies. All three receive the same raw score based on the number of questions answered correctly, let's say 300. However, before those scores are reported to prospective employers, they're converted to percentile rankings to reflect how well the applicant did compared to others taking the same test.

Linda Chavez, a senior fellow at Manhattan Institute, was a Reagan White House aide and a GOP candidate for the Senate in 1986.

Now here's the rub. The white person taking the test would be reported to have scored only 44 (meaning that 44% of the whites taking the test scored below 300) because his score would be compared only to other whites. The black would be reported scoring 83 and the Hispanic 67, because both would be compared only to the members of their own group. Race-norming makes it possible for whites who score significantly higher on a standardized test to appear to have actually done substantially worse than blacks or Hispanics.

The publicity about this practice forced the government to put it "under review." But when U.S. Rep. Henry Hyde, R-Ill., tried to amend the so-called Civil Rights Act of 1991 to forbid this practice, his amendment was soundly defeated in the House Judiciary Committee on a strict party-line vote.

Fact: If the Civil Rights Act of 1991 becomes law, we can expect to see more of this racializing of employment decisions. Despite its proponents' protests to the contrary, the bill will force employers to make decisions on the basis of race, ethnic origin and gender — not on actual qualifications.

No one thinks this is fair, not even the proponents of the bill, who steadfastly claim they are not promoting quotas. But the whole purpose of the bill is to make it possible for lawyers to "prove" discrimination if proportionately fewer minorities are hired than are available in the labor force generally.

Such gimmicks won't do anything to improve the education and skills of black and Hispanic job-seekers, which remain a serious impediment to their ability to move up the economic ladder. Nor will it do anything to further ensure that a truly well-qualified black or Hispanic is protected from actual discrimination. Employers forced to hire by quotas can just as quickly use them to exclude qualified minorities once they've satisfied their quota.

Fact: Practices such as these are likely to increase the kind of racial prejudice and polarization that all of us deplore.

New civil rights bill would battle bias

This nation has a long way to go to realize the promise of the 1964 Civil Rights Act to "eliminate the last vestiges of injustice."

Sadly, discrimination against women and minorities still haunts the workplace.

▶ An Urban Institute report found that black males still face discrimination in hiring. The study showed that white males were denied equal job opportunities 7% of the time, but equally qualified black job-seekers were denied equal treatment 20% of the time.

▶ An Older Women's League report showed middle-aged and older women are paid $15,000 less than their male counterparts and are still locked in "women's jobs."

▶ The Journal of the American Medical Association editorialized that the USA's health-care system discriminates against minorities when it comes to basic, preventive care.

That's why Congress — where House action is expected soon — must move quickly to pass a civil rights bill that would overturn six Supreme Court rulings reducing fair employment protections.

President Bush should sign it, despite the views across the page.

This bill deserves support because:

▶ Discrimination complaints increased from more than 53,000 in 1981 to 62,135 in 1990.

Fighting job bias

Enforcement of discrimination charges by Equal Employment Opportunity Commission:

	1981	1990
Equal Pay Act suits	50	8
Age bias suits	89	138
General job bias suits	229	353
Total suits resolved	237	546
Settlements/ jury awards	$91.7m	$98.9m

Source: EEOC

Diversity in our society is growing; minorities will
e up nearly a third of the population by the year 2010.
Minorities and women still lag far behind their white
terparts in income, jobs and medical coverage.
s bill not only protects minorities, but women and the
ed. It would make it easier to prove bias, make com-
prove "business necessity" in hiring and promotions,
ow for punitive damage awards.
bill is not about quotas, but about protecting rights.
4 law did not lead to quotas; neither will this one.
bill is not about politics, but about moral leadership.
rate and civil rights leaders set aside their differ-
nd worked together to seek a compromise on the
l rights bill. That was moral leadership.
were close to an agreement when [illegible]

m valuable first-
ice of policy-makers'
nce needs, says Cline.
ving the policy deci-
king apparatus is cru-
an intelligence officer,"
ie.

Blacks face more bias

By Julia Lawlor
and Jeffrey Potts
USA TODAY

Young black males looking for entry-level jobs in Chicago or Washington are discriminated against 20% of the time, a new study says.

The study by the Urban Institute, a non-profit research group focusing on social and economic problems, found whites were given job offers and interviews and allowed to submit applications when their black counterparts were not.

Whites faced discrimination 7% of the time; applicants faced no bias 73% of the time.

In the summer of 1990, institute researchers recruited 10 two-man teams of black and white college students, matched closely in age, size, experience, energy level and speaking ability.

Members of each team applied for the same entry-level jobs chosen randomly from the classified sections of *The Washington Post* and *The Chicago Tribune*.

"From the employer's perspective, these were two men making an equal effort, who were equally attractive as job candidates," said co-author Margery Turner. "We're confident the only difference was their race."

In all, 1,052 job applications were made. The findings:

▶ Blacks were discriminated against most when applying for white-collar jobs that involve client contact, like retail sales and hotel services. They were just as likely to get unequal treatment in the city as in the suburbs.

▶ 15% of whites received job offers vs. 5% of blacks. Blacks were sometimes steered into less desirable jobs. One white applicant was offered a job in new car sales while his black colleague was offered a job selling used cars.

▶ In Washington, 23% of whites advanced further than blacks in the hiring process. In Chicago, 17% of whites advanced further than blacks.

Turner said researchers were struck by the number of discouraging interviews of blacks in Washington.

In one case, a black applicant was told the job was "nothing but drudge work." The white applicant was told the job was "a great opportunity" for advancement."

ID# 260198

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

HU 010

PL VOGT

DATE RECEIVED: AUGUST 07, 1991

NAME OF CORRESPONDENT: REVERAND PAUL D. GEHRIS

SUBJECT: URGES THE PRESIDENT TO PASS THE CIVIL RIGHTS ACT

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
JEFF VOGT	ORG	91/08/07	~~AFR~~	C	91/10/29 TC
REFERRAL NOTE: co hill	A	91/10/2_		C	91/10/04
REFERRAL NOTE: 99 DOS	K	91/10/29 LW		H	91/10/21
REFERRAL NOTE:		__/__/__			__/__/__
REFERRAL NOTE:		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 4500 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 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.

U.S. Department of Justice

Civil Rights Division

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

October 21, 1991

The Reverend Paul D. Gehris, Director
Pennsylvania Council of Churches
900 South Arlington Avenue, Room 100
Harrisburg, Pennsylvania 17109-5089

Dear Reverend Gehris:

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

THE WHITE HOUSE OFFICE

REFERRAL

OCTOBER 9, 1991

TO: DEPARTMENT OF JUSTICE

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: 260198

MEDIA: LETTER, DATED AUGUST 2, 1991

TO: PRESIDENT BUSH

FROM: REVEREND PAUL D. GEHRIS
DIRECTOR
PENNSYLVANIA COUNCIL OF CHURCHES
ROOM 1000
900 SOUTH ARLINGTON AVENUE
HARRISBURG PA 17109

SUBJECT: URGES THE PRESIDENT TO PASS THE CIVIL RIGHTS ACT

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

760198

Pennsylvania
council
of churches

900 South Arlington Ave./Room 100/Harrisburg, PA 17109-5089 • 717/545-4761

Office for Social Ministry
The Rev. Paul D. Gehris, D.Min, Director

August 2, 1991

President George H. W. Bush
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Bush:

The Pennsylvania Council of Churches urges you to revisit H.R. 1, the Civil Rights Act of 1991, out of your concern for all of our nation.

In Pennsylvania we have seen the ugly head of racism rising in all too many communities. We need the leadership of yourself and your office to say to all Americans that you believe in and support equality of all persons.

The Council urges you to work with the appropriate persons in the Senate to get the Civil Rights Act passed promptly and in positive form. It is our desire that history will indicate that the Civil Rights Act of 1991 is not only good politics, it is also just public policy.

Sincerely for the Council,

Paul Gehris

Paul D. Gehris

ac

CS

ID # 260407 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Nancy Bearg Dyke

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

Subject: International Covenant on Civil and Political Rights

ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CMOF	ORIGINATOR	91,08,06 WS		C	91,08,07 CS
CMAT 14	Referral Note: I	91,08,07 WS		C	91,08,07 CS
CMGray	Referral Note: I	91,08,07 WS		C	910807 CS
CMAT 02	Referral Note: I	91,08,07 WS		C	910807 CS
	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: _____

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

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01a. Cover Memo	Case Number 260407CU From Nancy Bearg Dyke (NSC) to Brent Scowcroft RE: International Covenant on Civil and Political Rights (1 pp.)	07/17/91	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Records Management, White House Office of (WHORM)
Series: Subject File - General
Subseries: Scanned
WHORM Cat.: HU010
File Location: 258280CU to 261189CU

Open on Expiration of PRA
(Document Follows)
By [signature] (NLGB) on 2.14.05

Date Closed: 1/10/1999	**OA/ID Number:** 00002-001
FOIA/SYS Case #: 1999-0285-F **Re-review Case #:** **P-2/P-5 Review Case #:**	**Appeal Case #:** **Appeal Disposition:** **Disposition Date:**
AR Case #: **AR Disposition:** **AR Disposition Date:**	**MR Case #:** **MR Disposition:** **MR Disposition Date:**

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
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(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

2604014

4683

NATIONAL SECURITY COUNCIL
WASHINGTON, D C 20506

July 17, 1991

ACTION

MEMORANDUM FOR BRENT SCOWCROFT

THROUGH: R. RAND BEERS, Acting N/A

FROM: NANCY BEARD DYKE NBD

SUBJECT: International Covenant on Civil and Political Rights

After review of all pending human rights treaties, State recommends that the President urge renewed Senate consideration on the International Covenant on Civil and Political Rights, which was originally forwarded to the Senate by President Carter in a group of four human rights treaties. The Senate held hearings in 1979 but took no action.

The time is propitious for Presidential action on this in the context of our current foreign policy emphasis on the rule of law and underlining US commitment to human rights. The Senate Foreign Relations Committee is urging that the Administration seek action on one or more treaties. State believes this one is the least controversial, and no other agency has objected to pushing for positive Senate action.

Your memo at Tab I to the President gives more detail. The letter at Tab A for him to send to the Chairman and Ranking Minority Member of the Senate Foreign Relations Committee urges renewed consideration of the Covenant and notes that the other treaties are under review. The latter point is a nod to those who are pressing for action on other human rights treaties, but it makes no commitment.

Concurrences by: Nick Rostow SR for, Mike Andricos CC, Boyden Gray SR for, Andy Card, and Bobbie Kilberg BK for

RECOMMENDATION

That you sign the memorandum to the President at Tab I.

COUNSEL'S OFFICE
RECEIVED
AUG 05 1991

Attachments
Tab I Memo to the President
Tab A Letters to Senators Pell and Helms
Tab B Summary of Provisions
Tab C Issues to be Addressed
Tab D International Covenant on Civil and Political Rights
Tab E Secretary of State Memo

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01b. Memo	Case Number 260407CU From Brent Scowcroft to POTUS RE: International Covenant on Civil and Political Rights (2 pp.)	n.d.	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Records Management, White House Office of (WHORM)
Series: Subject File - General
Subseries: Scanned
WHORM Cat.: HU010
File Location: 258280CU to 261189CU

Open on Expiration of PRA
(Document Follows)
By JC (NLGB) on 4.5.05

Date Closed: 1/10/1999	**OA/ID Number:** 00002-001
FOIA/SYS Case #: 1999-0285-F	**Appeal Case #:**
Re-review Case #:	**Appeal Disposition:**
P-2/P-5 Review Case #:	**Disposition Date:**
AR Case #:	**MR Case #:**
AR Disposition:	**MR Disposition:**
AR Disposition Date:	**MR Disposition Date:**

RESTRICTION CODES

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

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

PRM. Removed as a personal record misfile.

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(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: BRENT SCOWCROFT

SUBJECT: International Covenant on Civil and Political Rights

Purpose

To urge renewed Senate consideration of the International Covenant on Civil and Political Rights.

Background

As part of your emphasis on support for democratization and the rule of law in the New World Order, State has recommended that the Administration immediately seek renewed Senate consideration of the International Covenant on Civil and Political Rights. I agree with this recommendation. It is an appropriate time to demonstrate leadership on human rights treaties beginning with the Covenant, both because of our own foreign policy emphases and because the Senate has shown increased interest in such treaties. There is strong support among non-governmental organizations as well.

The Covenant codifies the essential freedoms people must enjoy in a democratic society, essentially those civil and political rights reflected in the western liberal democratic tradition, the Universal Declaration of Human Rights, and our Bill of Rights. Its provisions, summarized at Tab B, include freedom of thought, conscience and religion, opinion and expression, association, peaceful assembly, movement; right to vote, equal protection of the law, right of peoples to self-determination.

Internationally, US ratification would be widely viewed as a welcome reaffirmation of our human rights commitments, strengthening our ability to influence the development of appropriate human rights principles and observance in the international community.

Over 90 countries, including most of our democratic allies (including all major CSCE countries except Greece and Turkey) have ratified the Covenant. It would be appropriate that the US begin to move on this before the CSCE human rights conference in Moscow in September.

cc: Vice President
Chief of Staff

The State Department has reviewed all human rights treaties pending before the Senate plus the UN Convention on the Rights of the Child, which is yet unsigned, and determined that the Covenant on Civil and Political Rights is the least likely to meet Senate resistance. No agency has objected to pressing for ratification, subject to appropriate reservations paralleling those in the original submission (1978), as covered in Tab C. The Department of Justice specifically advised that the federal-state issue did not raise an obstacle to ratification but could be adequately addressed through a reservation.

The customary opposition within the US legal community to human rights treaties should present no obstacle to approval of this treaty at the present time. After President Carter sent this and three other treaties to the Senate in 1978, hearings in 1979 revealed no real problems with the Covenant, but no action was taken. Now, following 1986 action on the Genocide Convention and prompt bipartisan endorsement of the Torture Convention last fall, a favorable attitude exists in the Senate. The Senate Foreign Relations, and in particular Chairman Pell, is pressing the Administration to move one or more of the conventions. Although some Senators will be skeptical or opposed, State is unaware of any organized or strong opposition to the Covenant on the Hill or in the public.

The letters for signature at Tab A to the Chairman and Ranking Minority Member of the Senate Foreign Relations Committee urge that the Senate renew its consideration of the Covenant on Civil and Political Rights and note that other human rights treaties are being reviewed.

Boyden Gray, Andy Card, and Bobbie Kilberg concur.

RECOMMENDATION

That you sign the letter at Tab A to Chairman Pell and Ranking Minority Member Helms.

Attachments

Tab A	Letters to Senators Pell and Helms
Tab B	Summary of Provisions
Tab C	Issues to be Addressed
Tab D	International Covenant on Civil and Political Rights
Tab E	Secretary of State (Acting) Memo

THE WHITE HOUSE

WASHINGTON

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____ Duplicate letters attached - not scanned.

____ Only table of contents scanned.

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Comments:

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THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

I am writing to urge the Senate to renew its consideration of the International Covenant on Civil and Political Rights with a view to providing advice and consent to ratification.

The end of the Cold war offers great opportunities for the forces of democracy and the rule of law throughout the world. I believe the United States has a special responsibility to assist those in other countries who are now working to make the transition to pluralist democracies. As you know, we have actively been providing such assistance through a variety of programs authorized and funded by the Congress in the Soviet Union, Eastern Europe and elsewhere.

United States ratification of the Covenant on Civil and Political Rights at this moment in history would underscore our natural commitment to fostering democratic values through international law. The Covenant codifies the essential freedoms people must enjoy in a democratic society, such as the right to vote, freedom of peaceful assembly, equal protection of the law, the right to liberty and security, and freedom of opinion and expression. Subject to a few essential reservations and understandings, it is entirely consonant with the fundamental principles incorporated in our own Bill of Rights. U.S. ratification would also strengthen our ability to influence the development of appropriate human rights principles in the international community and provide an additional and effective tool in our efforts to improve respect for fundamental

freedoms in many problem countries around the world.

I am aware that several other human rights treaties enjoy substantial support in the Senate and the public. The Department of State is pursuing its ongoing interagency review of these other treaties.

I have asked the Secretary of State to assist the Foreign Relations Committee in acting on the Covenant without delay. I hope you will support this effort.

Sincerely,

The Honorable Claiborne Pell
Chairman
Senate Foreign Relations Committee
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

Dear Senator Helms:

I am writing to urge the Senate to renew its consideration of the International Covenant on Civil and Political Rights with a view to providing advice and consent to ratification.

The end of the Cold war offers great opportunities for the forces of democracy and the rule of law throughout the world. I believe the United States has a special responsibility to assist those in other countries who are now working to make the transition to pluralist democracies. As you know, we have actively been providing such assistance through a variety of programs authorized and funded by the Congress in the Soviet Union, Eastern Europe and elsewhere.

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freedoms in many problem countries around the world.

I am aware that several other human rights treaties enjoy substantial support in the Senate and the public. The Department of State is pursuing its ongoing interagency review of these other treaties.

I have asked the Secretary of State to assist the Foreign Relations Committee in acting on the Covenant without delay. I hope you will support this effort.

Sincerely,

The Honorable Jesse Helms
United States Senate
Washington, D.C. 20510

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
SUMMARY OF PROVISIONS

The rights guaranteed by the Covenant are essentially those civil and political rights reflected in the western liberal democratic tradition, and in the Universal Declaration of Human Rights, which limit the power of the State to impose its will on the people under its jurisdiction. The principal undertaking assumed by States Parties is to provide those rights to all individuals within their territories and subject to their jurisdiction without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The equal right of men and women to the enjoyment of those rights is specifically protected. States Parties must adopt legislation or other measures to give effect to these rights and provide effective legal remedies for their violation.

Among the specific rights enumerated in the Covenant are: freedom of thought, conscience and religion; freedom of opinion and expression; freedom of association; the right of peaceful assembly; the right to vote; equal protection of the law; the right to liberty and security of the person, including protection against arbitrary arrest or detention; the right to a fair trial, including the presumption of innocence; the right of privacy; freedom of movement, residence and emigration; freedom from slavery and forced labor; protection from torture or cruel, inhuman or degrading treatment or punishment; and the general right to protection of life, including protection against arbitrary deprivation of life. Other provisions concern freedom from imprisonment for debt; the right of all persons deprived of their liberty to be treated with humanity and respect for the dignity of the human person; the right to compensation for unlawful arrest or detention; the right of every child to acquire a nationality; the right to marry and general protection of the family; and the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, profess and practice their religion and use their own language.

The Covenant contains provisions regarding the general right of peoples to self-determination and to dispose of natural wealth and resources, subject to the principles of mutual benefit and international law.

The Covenant permits States Parties to condition or restrict the exercise of these rights to varying degrees and contains a derogation clause which allows the temporary and

limited suspension of some but not all of the rights "in time of public emergency which threatens the life of the nation", provided those rights are not abridged on a discriminatory basis.

The Covenant established a Human Rights Committee, consisting of 18 individuals elected by States Parties to serve in their individual capacities, to examine reports from States Parties and otherwise oversee compliance with the provisions of the Covenant. The Committee has no enforcement authority, but a State Party may accept the competence of the Committee to receive and consider communications by another State Party alleging non-fulfillment of its obligations under the Covenant, provided that the other State has made a similar declaration. (Under the First Optional Protocol to the Covenant, which the United States has not signed, States Parties may recognize the Committee's competence to consider complaints from individuals as well.)

ISSUES TO BE ADDRESSED

The specific language of certain provisions of the International Covenant on Civil and Political Rights raises questions concerning consistency with U.S. law, including the U.S. Constitution, as well as related legal issues, which will have to be addressed either in formal reservations, declarations and understandings included in the instrument of ratification of otherwise in appropriate language for the record, as was done in the original submission. The most important issues include the following, all of which the relevant agencies believe can be appropriately addressed to make ratification acceptable:

-- Free speech, in particular the prohibition against propaganda for war and advocacy of national, racial or religious hatred (Art. 20).

-- Capital punishment, in particular the prohibition against execution for crimes committed by persons less than 18 years of age (Art. 6) and in connection with the prohibition against torture and other cruel, inhuman or degrading treatment or punishment (Art. 7).

-- Federalism, in particular the application of the Convention to all parts of federal States (Art. 50).

-- Non-discrimination, in particular the requirement of equal protection of citizens and non-citizens and of different categories of citizens (Art. 2(1), 4(1) and 26).

-- Criminal justice procedures, in particular detention of illegal aliens (Art. 9(1)) and various technical issues under Arts. 14 and 15, including their applicability to the military justice systems.

Generally, to avoid unintended amendment of U.S. law and to clarify that the Covenant itself will not modify existing U.S. legislation or constitute a cause of action in U.S. court except as authorized through subsequently adopted legislation, the substantive provisions of the Covenant will be declared non-self-executing.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the United Nations Charter.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(*a*) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(*c*) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall inform immediately the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser exent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregant women. Requires Reservation

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7 Requires reservation

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) The preceding sub-paragraph shall not be held to preclude in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(*i*) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(*ii*) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(*iii*) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(*iv*) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order ("*ordre public*"), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order ("*ordre public*") or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(*a*) To be informed promptly and in detail in a language which he understands of the nature and cause of the charges against him;

(*b*) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(*c*) To be tried without undue delay;

(*d*) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(*e*) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*f*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(*g*) Not to be compelled to testify against himself, or to confess guilt.

4. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequently to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order ("*ordre public*"), or of public health or morals.

Article 20 Requires reservation

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order

("*ordre public*"), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order ("*ordre public*"), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in the Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as required by his status as a minor, on the part of his family, the society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(*a*) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(*b*) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by

secret ballot, guaranteeing the free expression of the will of the electors;

(*c*) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established in a Human Rights Committee (hereafter referred to in the present Covenant as "the Committee"). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election of the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall ad-

dress a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization as well as of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in paragraph 4 of article 30.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present

Covenant which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(*a*) Twelve members shall constitute a quorum;

(*b*) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the

rights recognized herein and on the progress made in the enjoyment of those rights; (a) within one year of the entry into force of the present Covenant for the States Parties concerned and (b) thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may after consultation with the Committee transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports and such general comments as it may consider appropriate to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been

invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in this Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(*i*) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(*ii*) If a solution is not reached, within the terms of sub-paragraph (e), the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General of the United Nations unless the State Party concerned had made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as "the Commission"). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement was reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the Commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter.

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, as well as its views on the possibilities of amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, inform the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if

necessary, before reimbursement by the States Parties concerned in accordance with paragraph 9 of this article.

Article 43

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 41. shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or members of any of is specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50 Requires Reservation

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference the Secretary-General of the United Nations shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties being still bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States

referred to in paragraph 1 of the same article of the following particulars:

(*a*) Signatures, ratifications and accessions under article 48;

(*b*) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

4 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted by the General Assembly of the United Nations on 16 December 1966

ENTRY INTO FORCE 23 March 1976, in accordance with article 49, for all provisions except those of article 41, 28 March 1979 for the provisions of article 41 (Human Rights Committee), in accordance with paragraph 2 of the said article 41
REGISTRATION 23 March 1976, No 14668
TEXT United Nations, Treaty Series, vol 999, p 171 and vol 1057, p 407 (procès-verbal of rectification of Spanish authentic text)

Note The Covenant was opened for signature at New York on 19 December 1966

Participant	Signature	Ratification, accession (a)
Afghanistan		24 Jan 1983 a
Algeria	10 Dec 1968	12 Sep 1989
Argentina	19 Feb 1968	8 Aug 1986
Australia	18 Dec 1972	13 Aug 1980
Austria	10 Dec 1973	10 Sep 1978
Barbados		5 Jan 1973 a
Belgium	10 Dec 1968	21 Apr 1983
Bolivia		12 Aug 1982 a
Bulgaria	8 Oct 1968	21 Sep 1970
Byelorussian SSR	19 Mar 1968	12 Nov 1973
Cameroon		27 Jun 1984 a
Canada		19 May 1976 a
Central African Republic		8 May 1981 a
Chile	16 Sep 1969	10 Feb 1972
China[1]		
Colombia	21 Dec 1966	29 Oct 1969
Congo		5 Oct 1983 a
Costa Rica	19 Dec 1966	29 Nov 1968
Cyprus	19 Dec 1966	2 Apr 1969
Czechoslovakia	7 Oct 1968	23 Dec 1975
Democratic Kampuchea[2]	17 Oct 1980	
Democratic People's Republic of Korea		14 Sep 1981 a
Democratic Yemen		9 Feb 1987 a
Denmark	20 Mar 1968	6 Jan 1972
Dominican Republic		4 Jan 1978 a
Ecuador	4 Apr 1968	6 Mar 1969
Egypt	4 Aug 1967	14 Jan 1982
El Salvador	21 Sep 1967	30 Nov 1979
Equatorial Guinea		25 Sep 1987 a
Finland	11 Oct 1967	19 Aug 1975
France		4 Nov 1980 a
Gabon		21 Jan 1983 a
Gambia		22 Mar 1979 a
German Democratic Republic	27 Mar 1973	8 Nov 1973
Germany, Federal Republic of[3]	9 Oct 1968	17 Dec 1973
Guinea	28 Feb 1967	24 Jan 1978
Guyana	22 Aug 1968	15 Feb 1977
Honduras	19 Dec 1966	
Hungary	25 Mar 1969	17 Jan 1974
Iceland	30 Dec 1968	22 Aug 1979
India		10 Apr 1979 a
Iran (Islamic Republic of)	4 Apr 1968	24 Jun 1975
Iraq	18 Feb 1969	25 Jan 1971
Ireland	1 Oct 1973	8 Dec 1989
Israel	19 Dec 1966	
Italy	18 Jan 1967	15 Sep 1978
Jamaica	19 Dec 1966	3 Oct 1975
Japan	30 May 1978	21 Jun 1979
Jordan	30 Jun 1972	28 May 1975
Kenya		1 May 1972 a
Lebanon		3 Nov 1972 a
Liberia	18 Apr 1967	
Libyan Arab Jamahiriya		15 May 1970 a
Luxembourg	26 Nov 1974	18 Aug 1983
Madagascar	17 Sep 1969	21 Jun 1971
Mali		16 Jul 1974 a
Mauritius		12 Dec 1973 a
Mexico		23 Mar 1981 a
Mongolia	5 Jun 1968	18 Nov 1974
Morocco	19 Jan 1977	3 May 1979
Netherlands	25 Jun 1969	11 Dec 1978
New Zealand	12 Nov 1968	28 Dec 1978
Nicaragua		12 Mar 1980 a
Niger		7 Mar 1986 a
Norway	20 Mar 1968	13 Sep 1972
Panama	27 Jul 1976	8 Mar 1977
Peru	11 Aug 1977	28 Apr 1978
Philippines	19 Dec 1966	23 Oct 1986
Poland	2 Mar 1967	18 Mar 1977
Portugal	7 Oct 1976	15 Jun 1978
Romania	27 Jun 1968	9 Dec 1974
Rwanda		16 Apr 1975 a
Saint Vincent and the Grenadines		9 Nov 1981 a
San Marino		18 Oct 1985 a
Senegal	6 Jul 1970	13 Feb 1978
Spain	28 Sep 1976	27 Apr 1977
Sri Lanka		11 Jun 1980 a
Sudan		18 Mar 1986 a
Suriname		28 Dec 1976 a
Sweden	29 Sep 1967	6 Dec 1971
Syrian Arab Republic		21 Apr 1969 a
Togo		24 May 1984 a
Trinidad and Tobago		21 Dec 1978 a
Tunisia	30 Apr 1968	18 Mar 1969
Ukrainian SSR	20 Mar 1968	12 Nov 1973
Union of Soviet Socialist Republics	18 Mar 1968	16 Oct 1973
United Kingdom	16 Sep 1968	20 May 1976
United Republic of Tanzania		11 Jun 1976 a
United States of America	5 Oct 1977	
Uruguay	21 Feb 1967	1 Apr 1970
Venezuela	24 Jun 1969	10 May 1978
Viet Nam		24 Sep 1982 a
Yugoslavia	8 Aug 1967	2 Jun 1971
Zaire		1 Nov 1976 a
Zambia		10 Apr 1984 a

Additional Accessions: Burundi May 9, 1990
Rep. of Korea April 10, 1990
Somalia January 24, 1990
Haiti February 6, 1991

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01c. Memo	Case Number 260407CU From Lawrence Eagleburger to POTUS RE: Covenant on Civil and Political Rights (2 pp.)	06/21/91	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Records Management, White House Office of (WHORM)
Series: Subject File - General
Subseries: Scanned
WHORM Cat.: HU010
File Location: 258280CU to 261189CU

Open on Expiration of PRA
(Document Follows)
By JL (NLGB) on 2·14·05

Date Closed:	1/10/1999	**OA/ID Number:**	00002-001
FOIA/SYS Case #:	1999-0285-F	**Appeal Case #:**	
Re-review Case #:		**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

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

9110224 4683

DEPARTMENT OF STATE
WASHINGTON

June 21, 1991

LIMITED OFFICIAL USE

MEMORANDUM FOR: THE PRESIDENT

FROM: Lawrence S. Eagleburger, Acting

SUBJECT: Covenant on Civil and Political Rights

As part of your emphasis on support for democratization and the rule of law in the new world order, I believe it would be appropriate and useful to seek renewed Senate consideration of the International Covenant on Civil and Political Rights. If you approve, we will work with the Senate on getting its advice and consent to ratification at this time.

The Covenant was one of the first and most comprehensive human rights treaties drafted by the United Nations after World War II. It codifies the essential freedoms people must enjoy in a democratic society. A summary of its provisions is attached. With a few exceptions (which can be accommodated by appropriate reservations, declarations and understandings), the Covenant is consistent with our own legal and political concepts. U.S. ratification would be widely viewed as a welcome reaffirmation of our human rights commitments; it would strengthen our ability to influence the development of appropriate human rights principles in the international community; and it would provide an additional and effective tool in our efforts to improve the observance of human rights and fundamental freedoms in many problem countries. Over 90 countries, including most of our democratic allies, have ratified the Covenant to date. Developments in the Soviet Union and Eastern Europe make this the right time for the United States to do likewise.

Domestically, the Covenant was controversial at the time of its drafting 40 years ago because of a generalized hostility in the U.S. legal community to human rights treaties. The Covenant was signed and submitted to the Senate during the Carter Administration but not subsequently pursued. Recently, the Senate has shown increased interest in such treaties, giving advice and consent to the Genocide Convention in 1986 and to the Torture Convention last fall. Currently, there is strong support among non-governmental organizations (including the American Bar Association) for renewed consideration of the treaties, including the Covenant.

Based on our experience with the Torture Convention, the Senate will likely be receptive to a ratification initiative, especially with your endorsement.

Attachment:
As stated

ID # 261109 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

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

Name of Correspondent: POTUS

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

Subject: Civil Rights letter to Danforth before departing for Maine

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/08/06		C	91/08/06

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: _____

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

August 6, 1991

Dear Jack,

Thanks for your most recent letter. I am now heading off for Maine. Before leaving I wanted to say a couple of things.

I honestly feel, Jack, that when you came in to see me you told me there was only "one" issue between us, dealing with menial, dead-end jobs. I recall you used the "janitor" example, saying that it would be unfair to require a high school diploma for such a job.

I then asked our lawyers to address this issue and I thought that's what we did in the reply to you made just before leaving for Moscow.

Needless to say, we don't feel we are "turning back" the clock on civil rights or that my position is in "direct contradiction" to Griggs. Discussing a recent article by Professor Paul Gewirtz of your, my and Judge Thomas' alma mater, Anthony Lewis wrote just yesterday that the Supreme Court overruled Griggs in that it "reversed the burden of proof, making employees prove that a challenged job qualification was not really related to business needs." My bill completely eliminates this issue, placing the burden of proof squarely on the employer and requiring him to make the proof of business need.

I'm still willing to make this change and sign a good civil rights bill addressing all the issues that have been worked out. Rather than haggle over the remaining difficulties, why not take a gigantic step forward now with a bill that takes care of the 80-90% of the issues on which we've agreed? The other changes that some want to make in the laws can be addressed later if need be.

Again, I regret that you feel that our answer to the one problem you discussed with me was not satisfactory. I will have the lawyers look at your suggestions, but it would help if you could let the Attorney General know why and how our proposal falls short of correcting the janitor problem you raised with me. Let's keep plugging away and not let the extremes on either side of the debate carry the day.

I'm told you're getting a little much deserved rest. I, too, will be doing just that in 4 hours, 17 minutes, 32 seconds.

Love to Janet.

P.S. Thanks for the super job you are doing side by side with Judge Thomas -- he's such a good man and you have made that so very clear.

CS

ID # 261189 CU

HU010

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Beverly Ward

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

Subject: Civil Rights Robo

ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	9/10/12		C	9/10/12 CS
	Referral Note:				
CUATIO	A	9/10/12	NLO	C	9/10/12 CS
	Referral Note: JUN 29	Memo to Bev Ward.			
	_	/ /		_	/ /
	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
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FOR OUTGOING CORRESPONDENCE:
- Type of Response = Initials of Signer
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Comments: _____

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

THE WHITE HOUSE

WASHINGTON

June 12, 1991

MEMORANDUM FOR BEVERLY WARD
PRESIDENTIAL CORRESPONDENCE

FROM: NELSON LUND
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Civil Rights Robo

At your request, I have reviewed the captioned matter. Changes are marked on the attached hard copy.

Thank you for the opportunity to review this matter.

Attachment

The President is disappointed that his civil rights legislation was not approved by the House of Representatives, and he has indicated that the Democratic leadership's ~~civil rights~~ bill that was passed by the House is a quota bill that he intends to veto it if it is presented to him. He hopes that his proposed legislation will receive more comprehensive consideration as this issue moves to the Senate. President Bush remains hopeful that anti-discrimination legislation, which does not produce quotas or unfair preferences, ~~is~~ will be enacted by Congress this year.

THE WHITE HOUSE
WASHINGTON

Date: 6/10

To: Nelson

Please see Phil Brady's note - is this ok w/ you?

Thanks
BW

BEVERLY WARD
Presidential Correspondence
Office
Room 94, x7610

BW

THE WHITE HOUSE

WASHINGTON 91 JUN -6 PM 5:13

June 6, 1991

MEMORANDUM FOR PHIL BRADY

FROM: SHIRLEY M. GREEN

SUBJECT: Civil Rights reply

In line with our conversation about this legislation, I want to update our robo to reflect the House vote and the President's continuing hope that his bill will be passed. Attached is our rewrite of the WH Press Release on the House vote. I suggest replacing the next to the last paragraph of our current robo (copy attached) with this new paragraph.

APPROVE_____ DISAPPROVE_____

COMMENTS:

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 5, 1991

STATEMENT BY THE PRESS SECRETARY

Although the President has indicated that the Democratic leadership's civil rights bill passed by the House of Representatives today is a quota bill that he intends to veto, we are gratified by the number of votes in opposition to the legislation. The 273-158 vote indicates strong support for sustaining a Presidential veto.

We are disappointed that the President's civil rights legislation was not approved Tuesday evening. It is a comprehensive bill that fights discrimination and offers the Nation the best chance to ensure equal opportunity in the workplace. The President remains hopeful that anti-discrimination legislation which does not produce quotas is enacted by Congress this year. We hope that the President's proposed legislation will receive more comprehensive consideration as this issue moves to the Senate.

# # #

SMG-159 (REISSUED)

(LABEL)

RE: Civil Rights Act of 1991

THE WHITE HOUSE

WASHINGTON

LEGIS-2
(P/C/N)

March 14, 1991

Dear Mrs. Bell:

On behalf of President Bush, thank you for your message about civil rights legislation. The President believes that every individual should have an equal opportunity to participate fully in our society and that no one's race, color, national origin, religion, sex, or disability should be a barrier to advancement. To that end, the Administration is committed to strengthening the power of and opportunities for individuals and families to break down barriers to independence and self-reliance, wherever they exist, and to providing hope to distressed individuals and communities.

Based on his belief that the strength of democracy is not in bureaucracy -- it is in the people and their communities -- President Bush has announced his domestic agenda for expanding opportunity and for promoting choice for individuals. Specifically, the President has called for Congressional action on eight major initiatives: educational choice; educational flexibility; homeownership for low-income persons; enterprise zones; anti-discrimination laws; community opportunity areas; the Social Security earnings test; and anti-crime efforts.

The sum of these initiatives is opportunity, and the door to opportunity must not be barred by discrimination. To guarantee that every American enjoys equality of opportunity and access, the Administration has worked vigorously to enforce existing laws against discrimination. Further, where anti-discrimination laws need improvement, the President has said, "I am committed to refining them."

Consistent with that pledge, President Bush has asked Congress to strengthen employment discrimination laws in order to remove consideration of factors such as sex, race, religion, or national origin from employment decisions. A major objective of his proposal is to ensure that employers are both encouraged and required to provide equal opportunity for all workers without resorting to quotas or unfair preferences. In addition, the proposal provides strong new remedies as a deterrent against sexual harassment in the workplace, and it expands prohibitions against racial discrimination in the performance of contracts.

(3/14/91)

Drop?

President Bush believes that we can eliminate job discrimination without departing from the principles of fairness that apply throughout our legal system and without creating a litigation bonanza that brings more benefits to lawyers than to victims. He also believes that it is time for Congress to bring itself under the same anti-discrimination requirements that it prescribes for others.

The President appreciates your sharing your views with him; and in light of your interest, I am enclosing material that I hope you will find informative. With the President's best wishes,

Sincerely,

Shirley M. Green

Shirley M. Green
Special Assistant to the President
for Presidential Messages
and Correspondence

(3/14/91)

Mrs. Lillie Bell
Director,
Correspondence Analysis Section
Room 54A
Old Executive Office Building
Washington, DC 20500

Enclosures: Attorney General's 3/1/91 Letter
2/27/91 Fact Sheet

SMG/BW/NL/PH/SMG