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Name of Correspondent: Curtis D.W. Horn

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Subject: Civil Rights - "Dear Colleague" letters from Senators Gorton & Hatch; side-by side

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

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOJC	ORIGINATOR	91/06/17		C	91/10/23 CS
CUAT10	A	91/06/17		S	91/06/24 CS
CUAT14	I	91/06/17		C	91/06/17 CS
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Referral Note: see comments					

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Comments: new draft bills - NFA 10/23/91 LSL CS

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June 13, 1991

VIA FACSIMILE (456-2397)
CONFIRMATION (456-6797)

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

Re: Civil Rights

Dear Governor Sununu:

Per Senator Gorton's request, I am sending with this letter the following items:

1. Draft Dear Republican Colleague letter prepared by Senator Gorton;

2. Dear Colleague letter dated June 13, distributed by Senator Hatch; and

3. A side-by-side comparison that summarizes the key provisions of the principal civil rights bills introduced into this Congress, i.e., the Brooks/Kennedy bill, H.R. 1 (as introduced and as passed by the House), the Danforth three-part proposal, S. 1207, S. 1208 and S. 1209, and the Administration/Dole bill, S. 611. A copy of this document previously was sent to Boyden Gray.

Hard copies of these materials will be delivered to your office tomorrow morning.

Sincerely,

Curtis D.W. Hom
Legislative Assistant to
Senator Slade Gorton

CDH:v

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DRAFT - June 13, 1991

[Date]

Dear Republican Colleague:

1. The 1964 Civil Rights Act, proposed changes to which are now the focus of a major national and Congressional debate, was advanced, vigorously and eloquently, by Senator Hubert Humphrey, and others, as designed to bring about a color-blind society. It now has been enforced and interpreted over a period of almost three decades by courts and administrative agencies.

The 1964 Civil Rights Act does not deal expressly with "unintentional discrimination" or with "disparate impact", concepts which are very much at the focus of the current debate. Those are concepts which have been developed by the courts as they have decided specific litigation based on specific fact situations.

2. In the case of Griggs v. Duke Power Company, 401 U.S. 424, 91 S.Ct. 849 (1971), the Supreme Court first dealt with those concepts in an organized fashion. In Griggs, the Duke Power Company required job applicants and employees to have completed high school or to have passed a general aptitude test to be eligible to be hired by or transferred to more desirable departments within the company. Prior to passage of the Civil Rights Act of 1964, the Duke Power Company had a history of overt employment discrimination. The Court said:

> "If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the job for which it was used. . . . But Congress directed the thrust of the [Civil Rights Act] of the consequences of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question."

401 U.S. at 432, 91 S.Ct. at 853 (emphasis added).

Notably, Griggs dealt with one specific employment practice as it affected one specific employer, although the holding was couched in general language.

3. The Griggs test evolved over the years in a long series of lawsuits involving varying factual situations, but the Supreme Court became increasingly sensitive to the fact that "unintentional discrimination", while perhaps a useful concept, had the potential to create great abuse. In Watson v. Fort Worth Bank and Trust, 108 S.Ct. 2777 (1988), which extended the "disparate impact" analysis to subjective employment and evaluation practices such as interviews and evaluations for the first time, Justice O'Connor cautioned:

> "We agree that the inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. It is completely unrealistic to assume that unlawful discrimination is the sole cause of people failing to gravitate to jobs and employers in accord with the laws of chance. * * * It would be equally unrealistic to suppose that employers can eliminate, or discover and explain, the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces. * * * If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met. Allowing the evolution of disparate impact analysis to lead to this result would be contrary to Congress' clearly expressed intent, and it should not be the effect of our decision today."

108 S.Ct. at 2787-88.

4. A year later, in Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989), a majority of the Supreme Court came down with the next step on disparate impact, or unintentional discrimination. That decision triggered the current civil rights bill controversy. The Supreme Court said:

> "[In a] disparate impact case, the dispositive issue is whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer. * * * The touchstone of this inquiry is a reasoned review of the employer's justification for his use of the challenged practice. A mere insubstantial justification in this regard will not suffice, because such a low standard of review would permit discrimination to be practiced through the use of spurious, seemingly neutral employment practices. At the

> same time though, there is no requirement that the challenged practice be 'essential' or 'indispensable' to the employer's business for it to pass muster; this degree of scrutiny would be almost impossible for most employers to meet, and would result in a hose of evils we have identified above. [e.g., quotas]."

109 S.Ct. at 2125-26.

I believe this decision to be totally consistent with Griggs, while critics assert that it overrules Griggs. The fundamental question, however, is whether or not Wards Cove articulates an appropriate balance in disparate impact cases. I submit that it clearly does so.

5. Immediately after that decision, however, Senator Kennedy, at the behest of the civil rights community, introduced a bill to overturn the Supreme Court's decision in Wards Cove. That bill would have allowed a "business necessity" defense only when the employer could establish that the challenge practice was:

> "essential to effective job performance (emphasis added)."

If you will look back at the language used by the Supreme Court in the previous section, you will see that it was the obvious intent of Senator Kennedy's bill to force employers to impose quotas upon themselves, as it used precisely the language that the Supreme Court said would inevitably result in such quotas. That bill was a quota bill beyond a shadow of a doubt. The civil rights community has never wavered from that goal, and the more elaborate the statutory language they propose the more litigation their language will engender and the more likely the response of self imposed quotas by employers will be.

6. After extended debate ending late in the last Congress, the Congress passed and sent to the President a bill in which the Kennedy language had been somewhat modified, but which still overturned the Supreme Court's Wards Cove decision and which still, in the view of the President and most Republicans, would have forced employers to hire by quota. The President's veto was sustained by a margin of one vote in the Senate.

7. The President's characterization of that bill as a quota bill is accepted by a vast majority of Americans. As Senator Gramm pointed out at lunch on Tuesday, the issue is the single most driving issue he has found in years affecting potential voter behavior in 1992. Your constituents are vehemently and overwhelmingly opposed to such legislation. For its actual

impact on your business communities, note the Washington Post article of Thursday, a copy of which is attached.

8. H.R. 1 as introduced into the House in January, was substantially identical to the vetoed 1990 bill. While H.R. 1, as modified and passed by the House last week, is somewhat milder than its original version in some provisions outside of the ambit of the dispute over quotas, its Wards Cove language is quota language as clearly as was that of the 1990 bill, and is so regarded by the President and by a majority of the American people.

9. It is my firm opinion, regrettably, that the Danforth bill on the Wards Cove decision (the two other separate Danforth bills cover other subject matter areas) is not significantly different from, or less onerous than, H.R. 1 as passed the House. The White House agrees. The Danforth bill expressly overrules Wards Cove and is complicated enough to provide years if employment for legions of lawyers. It attempts, vainly I believe, to codify a rapidly evolving field of court-developed law and to freeze it into a statutory straight jacket. The Danforth bill is just as likely as is H.R. 1 to cause intelligent employers to impose quotas on themselves in order to avoid protracted litigation.

10. Having said all this, the fundamental question still is whether or not the Wards Cove decision was properly decided by the Supreme Court majority. I submit that it was.

As I have already pointed out, the basic 1964 Civil Rights Act says nothing about unintentional discrimination, disparate impact, or business necessity. They are all court constructs, each case dealing with a different fact situation, and they cannot effectively and fairly be codified. The Supreme Court should be left with the task of developing the law in this field.

Moreover, if you understand the essence of Wards Cove, I think that you will agree that it states a perfectly fair and appropriate test. Perhaps the clinching argument for this proposition is the fact that, since the date of that decision, plaintiffs have not been losing significantly greater numbers of disparate impact cases than they were before the decision was rendered. The long series of bills seeking to overturn Wards Cove are a solution in search of a problem.

Dear Colleague - **DRAFT June 12, 1991**
[Date]
Page 5

The Civil Rights Act of 1964 ain't broke; it doesn't need fixing. And it certainly doesn't need fixing in a fashion which adds unfairly to the burdens imposed on business people, adds a layer of court and administrative supervision to every hiring decision, and contradicts the desires of the vast majority of our constituents.

Sincerely,

SLADE GORTON
United States Senator

Enclosures
Washington Post Article

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 13, 1991

Dear Colleague:

I sincerely commend Senator Danforth on his recent efforts to try and develop legislation that satisfies the concerns of all parties involved in the civil rights debate. Clearly, the bill that passed the House of Representatives last week satisfied none of the concerns that have been raised with regard to this legislation.

I have concerns and questions, however, about the details of the legislation with which Senator Danforth has decided to move forward. These concerns have been conveyed by a separate letter to Senator Danforth. Moreover, I do not feel that many persons have given the President's bill sufficient attention.

The President's bill is a strong bill. It represents a compromise between the status quo under Wards Cove, by shifting the burden of persuasion to the employer, and the Democrat's bill. The President's bill, in my view, ought to form the basis for resolving this matter in a way which adequately responds to recent Supreme Court decisions, but will not lead employers to hire by the numbers to avoid litigation.

I admit, therefore, to reservations over efforts that are aimed at achieving a "middle ground" between the Democratic bill, which I believe will inevitably result in unfair preferences, and the President's bill. This is a road some of us have been down before. With the second anniversary of the Wards Cove decision upon us, I have yet to hear how cases that ought to have been won have been lost in court because of that decision. I urge interested senators to discuss with the Attorney General how cases have played out under Wards Cove.

The debate over civil rights does not resonate in this country because persons do not believe in equal opportunity. It resonates because people out there, many based on firsthand experience, believe that unfair preferences and reverse discrimination are already too much a part of the workplace. The divisiveness of this matter is not a result of Washington political rhetoric. It is a reaction to what has been happening in the workplace. Indeed, according to a Washington Post story (attached hereto), even a survey taken by the Leadership Conference on Civil Rights reflects this.

This letter might be a useful starting point to briefly outline some of the questions and concerns I have with Senator Danforth's proposal. I address here only one of his bills i.e. on Wards Cove (S.1208), but also have some concerns about the other bills.

Let me mention at the outset that the disparate impact standard itself is a very powerful tool for plaintiffs. Relying as it does on workforce statistics as its underlying premise, and requiring no intention to discriminate, the theory itself, in any form, creates significant pressure for employers quietly to make sure their numbers are right to avoid these kinds of lawsuits.

That is why carefully keeping this theory within reasonable bounds is important. What we are trying to avoid is even more pressure on employers to hire and promote by the numbers. This is the concern that led Justice O'Connor, in her 1988 plurality opinion in Watson v. Ft. Worth Bank & Trust Co., 108 S.Ct. 2777 (1988) (plurality opinion), to say that the plaintiff must identify the practice causing the disparity in a job, the burden of persuasion remains at all times with the plaintiff to show that discrimination occurred, and the definition of "business necessity" must reflect Griggs v. Duke Power Co.. She feared that in the absence of these safeguards, employers will quietly resort to hiring and promoting by numbers, whatever the euphemism used to mask it. These safeguards were especially important, she said, because in Watson the Court for the first time extended the disparate impact theory to subjective practices, like supervisor evaluations and interviews. As you know, after Justice Kennedy was confirmed, these same principles were adopted by a majority of the Court in Wards Cove.

With respect to the particulars of the bill, I have these comments. First, one of the most visible aspects of this controversy is the definition of "business necessity." Proponents of reversing Wards Cove have always said that all they want to do is to "restore" Griggs. They have never produced a definition, however, which does so. Neither, unfortunately, does the Danforth bill.

In Griggs, the Court defined business necessity as "manifest relationship to the employment in question." The Court's subsequent disparate impact cases clearly reflect this definition.[1]

---

[1]Incidently, I have always believed that the Wards Cove formulation--"whether the challenged practice serves, in a significant way, the legitimate employment goals of the employer"--is consistent with Griggs. Indeed, the Court pretty much said so in 1979. New York Transit Authority v. Beazer. 440 U.S. 568, 587 n.31. (1979).

The Court has used this phrase in 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); Connecticut v. Teal, 457 U.S. at 446 (1982) (a Justice Brennan opinion); and Watson v. Ft. Worth Bank & Trust, 108 S.Ct. 2777, 2790 (1988) (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in Wards Cove, joined by Justices Brennan, Marshall, and Blackmun, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

The most obvious problem with the Danforth bill's deviation from Griggs is its new standard requiring that employment practices "bear a manifest relationship to the requirements for effective job performance." The phrase "effective job performance" or like phrases have consistently caused the concern that employers will only be able to hire marginally qualified applicants. At a minimum, since this is a new and different standard that has not appeared in any Supreme Court disparate impact case including Griggs, it will engender years of costly litigation to thrash out its meaning.

As many industrial psychologists have advised me, terms like "effective job performance" suggests job performance is dichotomous rather than continuous. Job performance simply cannot be separated into "effective" (or "successful") versus "ineffective" (or "unsuccessful"). Job performance is better viewed along a continuum, such as ineffective, minimally effective, fully effective, excellent, and outstanding. So long as requirements yield a minimally effective employee under S.1208, those standards cannot be raised if to do so results in a disparate impact on a group.

I do not believe that the bill's language--"nothing in Title VII or this Act shall be construed to prevent an employer from hiring the most effective individual for a job"--resolves this concern in any way. The problem with this language and all other versions of the bill to date, other than the President's and Al Simpson's, is not that employers will literally be "prevented" from doing anything. The problem is that the potential for litigation and liability costs for not satisfying the bill's disparate impact rules will make quiet hiring and promoting by the numbers the only safe recourse to avoid a lawsuit. These rules create the problem.

Moreover, Senator Danforth's definition of "requirements for effective job performance," compounds the problem. By saying one need only perform the job "competently," it reinforces the notion that once minimally satisfactory job performance is obtained, raising standards is illegal if doing so causes a disparate impact. Defining "effective" in this way, renders the concept of relative qualifications a practical nullity. A plaintiff will

easily be able to tell a hapless employer trying to hire or promote the best qualified person that under the bill's definition of effective job performance, there is no way to say one of two applicants is more "effective" than the other if both are competent. This language, inadvertently, denies the employer that flexibility.

Plus, why put into a statute, as Senator Danforth's bill does, that the person must be judged on the "actual work activities lawfully required by the employer?" Who determines what are part of the actual work activities of a job--a bureaucrat at EEOC? A federal judge? I thought employers get to determine what the job is--it is the practices they use to hire and promote for a job that are properly subject to a disparate impact analysis, not the content of the job. Moreover, the content of many jobs is fluid, reflecting the day-to-day realities of the workplace. The same questions apply to the term "competent," which will now be construed by bureaucrats and judges as well. I just don't think the workplace is so mechanical and rigid a place as to be susceptible to legislative categorizations such as these. The bill's further use of the phrase "important to the performance of the job" is subject to the same concerns.

Indeed, this is an entirely new legislative superstructure imposed on employers. All of these new terms and phrases are fraught with importance and will affect employers in the conduct of their business. The unavoidable consequence will be years of litigation to thrash all of this out. Employers have spent 20 years adjusting to Griggs. Instead of employers being able to focus on removing barriers to upper level jobs--the "glass ceiling"--this bill will force them to divert their attention back to entry and mid-level hiring and promotion issues many of them thought they had worked out in the last two decades.

Another concern, of course, is that this bill applies the "effective job performance" requirement to all selection practices. Many selection practices, however, such as layoffs and transfers due to a plant relocation or closure cannot possibly meet an "effective job performance" test. These selection decisions may be made for very legitimate non-performance related reasons. As we all recognize, if these decisions are made for discriminatory reasons, they will be pursued as cases of intentional discrimination.

It is becoming almost bizarre that, if we all say we want to restore Griggs, we just don't do that and avoid these problems.

Second, on the "particularity" issue, I think I understand what Senator Danforth is are trying to achieve. The bill's language, however, does not achieve the appropriate result.

The provisions of the Danforth bill bear little resemblance, to my knowledge, to what any court, before or after Wards Cove, has required. Why do we need language in this regard? Where are the post-Wards Cove cases that have reached a result in this regard with which we disagree? Codifying detailed, technical and confusing requirements will only lead to costly litigation with no real equal opportunity interests being served.

The Danforth language also still allows a blanket complaint against an employer's entire set of practices. It does not require that an individual practice cause a disparity. Indeed, by merely requiring identification of practices that are "responsible in whole or in significant part for the disparate impact," it allows a plaintiff to challenge all of an employer's practices. This type of challenge will occur since all such practices are, as a group, responsible for the disparity.

Even assuming that a complaint might be narrowed down after a case is well underway, which I doubt will occur under the bill's language, the key point remains: no employer wants to run the risk that it will have to defend all of its practices, let alone defend each of them under a new business necessity definition. How will they avoid the problem? By quietly hiring and promoting by the numbers, to avoid disparate impact in the first place and the lawsuit that will follow.

This language also opens the door to the resurrection of the discredited comparable worth theory of pay discrimination, i.e., that employees in primarily female (or minority) jobs are paid less than employees in different but allegedly comparable male (or non-minority) jobs. As you know, employers rely on a range of factors in setting pay, including marketplace factors and the like. There is no way anyone can narrow down the particular practices resulting in the setting of pay. Justice Kennedy, while still on the Court of Appeals for the Ninth Circuit, wrote an excellent opinion explaining why the disparate impact theory is inappropriate for challenges to paysetting practices precisely because of the need to identify the particular practice causing the disparity. AFSCME v. State of Washington, 770 F.2d 1481 (9th Cir. 1985).

I also tried to resolve this problem last year in an effort to reach a compromise. The language then, similar to the Danforth bill now, did not reflect my preferred approach. Simply stating that particular cases are not overruled will not preclude the use of the comparable worth theory, under this bill, in the future.

Third, under this bill, even if an employer can justify its practices under the very difficult test of "business necessity," he or she is still liable if a plaintiff can demonstrate that there is an alternative practice that would serve the employer as

well but have less disparate impact. I understand that this provision may have been included under the view that it reflects what the law has always been. It does not. Rather, the Supreme Court has held only that such a showing would be evidence that the practice was being used as a pretext for discrimination, not dispositive of the question whether the employer committed discrimination. Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975).

I think this has serious implications. An employer, to be protected from liability, would have to search the universe before implementing each and every one of its employment practices, even if such practices readily satisfy the business necessity standard, to try to find those that meet his needs with the least disparate impact. But even that is not enough, because there is no way that an employer can predict beforehand whether one particular practice versus another will have a disparate impact on any particular group. This provision, by itself, therefore, might lead an employer to hire or promote only by the numbers. That may be the only one way to avoid potential liability with any certainty.

Three other quick points. This bill has language saying the bill does not "require or encourage an employer to adopt hiring or promotion quotas." I have never argued that any bill requires such a result, only that the rewriting of the Supreme Court's disparate impact rules will induce employers quietly to hire by the numbers, whatever the euphemism used to mask it, to avoid these lawsuits. And saying the bill does not "encourage" this result is of no practical effect in light of its new disparate impact rules. Hortatory language does not help when the operative language of this bill leads in the direction of hiring and promoting by the numbers.

The language that "the mere existence of a statistical imbalance in the workforce of an employer on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation," solves none of our concerns. First, the issue is not the composition of the employer's workforce as a whole, but of a particular job. Second, which statistical imbalance is being referred to--the general population, the relevant labor market for the occupation in question, or the applicant pool? If it is the first comparison, it does not address the concerns we have raised about misuse of statistical comparisons. But, third, in any event, no plaintiff will allege that the disparate impact alone, whatever comparison is used, is illegal. The plaintiff will assert the disparity is caused by some or all of the employer's practices and that is what is illegal. This language gives no succor.

Finally, I applaud Senator Danforth's response to the pernicious practice of race-norming. But, if an employer is guilty of discrimination, why should an innocent job applicant have his or her test scores jimmied because of his or her race or ethnicity? Under this bill, if an employer unintentionally discriminates, innocent employees can have their test scores altered on these grounds. That is no more "fair" because it is embodied in a court order than if undertaken voluntarily by employers. If an employer has discriminated, then give the discriminatees back pay, the next available job that they have been wrongly denied, retroactive seniority, and, of course, end the use of the discriminatory practices--but don't juggle an innocent, future applicant's test scores because of race. What did he or she do to deserve such unfair treatment? If a particular test causes a disparate impact and cannot be defended under the Griggs business necessity standard, then the test itself fails. No readjustment of the scores would be needed in this circumstance.

I sincerely regret that I firmly believe that Senator Danforth's Wards Cove bill will have the same inevitable consequences as H.R. 1, albeit by using some different language. Perhaps the best solution, suggested by his splitting these issues into three bills, is to get behind the overturn of Lorance on seniority systems and Patterson on Section 1981 and challenge the Democrats to pass that bill. There is where we have had unanimity since day one.

Sincerely,

Orrin G. Hatch
United States Senator

Attachment

THE WHITE HOUSE

WASHINGTON

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THE WASHINGTON POST

Rights Drive Said to Lose Underpinnings

Focus Groups Indicate Middle Class Sees Movement as Too Narrow

3/9/91

By Thomas B. Edsall
Washington Post Staff Writer

Key civil rights leaders are struggling to develop strategies to counter findings of a private voter study they commissioned that shows the civil rights movement has lost the moral high ground with key segments of the white electorate.

The study, according to one of its authors, Celinda Lake, found that "the civil rights organizations and proponents of civil rights were no longer seen as . . . addressing generalized discrimination, valuing work and being for opportunity. The proponents weren't seen as speaking from those values."

The study, commissioned by the Leadership Conference on Civil Rights, a coalition of labor, civil rights, women's and liberal organizations, found strong support for such basic principles as equal opportunity, promotion for merit and hard work, and for fairness in the workplace. But the study also found that many white voters believe civil rights advocates are pressing for special, preferential benefits instead of such goals as equal opportunity.

The conference, which declined to release the written reports or the poll data, is seeking to develop a strategy to win approval of the Civil Rights Act of 1991. The organization is particularly concerned because racial issues contributed to President Bush's victory in 1988, and the issue of "quotas" helped produce Republican victories in the 1990 California gubernatorial contest and the North Carolina Senate race.

Bush vetoed last year's civil rights bill because he said it would result in quotas, and congressional Democrats were unable to overturn it. The administration is ready to make a similar argument this year, and Democrats are looking for a way to defuse what has become a politically persuasive issue.

Ralph Neas, executive director of the conference, said, "We want to particularly stress that the bill is an inclusive bill, that it is a bill for racial minorities, it is a bill for women, it is a bill for persons with disabilities, it is a bill for all working Americans."

This strategy, according to the study, faces some hurdles. There is a strong receptivity to Bush's ar-

"Voters believe that business will implement this bill as quotas," Lake said. "Whenever legislation or policy distinguishes among groups [blacks, white, Hispanics, men, women], business, just to get it done, will implement quotas." These findings are especially damaging to efforts to counter the Bush administration's portrayal of pending civil rights legislation as promoting quotas. "There is no resistance to the Bush notion about quotas," one source said.

Another damaging finding of the study was that advocates of civil rights "have lost the advantage," Lake said. "It's a tremendous loss in terms of moving an agenda forward." She based her comments on the study for the leadership conference and on work her firm, Greenberg-Lake, has done in the past decade.

Lake said the problem facing civil rights proponents is that such advocacy is now seen as pressing the "narrow" concerns of "particularized" groups, rather than promoting a broad, inclusive policy of opposing all forms of discrimination.

The study found that many white voters believe there is pervasive reverse discrimination in the workplace and that civil rights leaders are more interested in special preferences than in equal opportunity, according to persons involved in the research.

The study, which included a national poll and focus groups held in white working-class and southern communities, did not find intensified racism or opposition to fundamental principles of equality. Instead, it showed strong support for basic egalitarian principles, including equality of opportunity and the obligation of employers to give everyone a fair chance.

In addition, the study found strong opposition to discriminatory practices based on race, gender, age or disability, according to Lake and Geoff Garin of Garin-Hart Strategic Research, another Democratic polling firm.

Garin would not make as strong a judgment of the difficulties facing the civil rights movement, but, he said, "at some point the civil rights community needs to restate its claim to the idea of a level playing field, and that means in part being more forthcoming in saying that

Neas contended that the most troublesome conclusions voiced by Lake were not based on the poll data, but on the focus groups, for which voters averse to civil rights had been purposefully selected, and on the basis of other work by the Greenberg-Lake firm, which has specialized in studying working and lower-middle-class white voters the past decade.

Lake said the critical views of the civil rights movement are held most strongly by key swing votes in the electorate—"blue-collar voters, economically marginal younger voters, ticket-splitting, swing white Southern voters"—who in any election are critical to the strategies of both parties to "add up enough voters to get to 51 percent."

"It is a broad-based problem," she added, with similar, if less intense, views held by many other white voters.

Among some of the other findings from the voter study, according to on-the-record interviews and background information provided by those familiar with it:

- Many white voters see the work force as a hierarchy, in which many hiring and promotion decisions are based as much, if not more, on race and gender as on merit and performance.
- Civil rights laws are seen by a substantial number of voters as creating unfair advantages, setting up "rank orders of privilege in the labor market," one source said.
- Public support of egalitarian principle is closely tied to a strong belief that a primary responsibility of elected officials is to support the mainstream goals and values of the middle class.

Voters want politicians who represent them to "address the middle class, those who work hard and pay all the taxes," Lake said.

Civil Rights Proposals
Provision Summaries

Senator Slade Gorton
Updated: June 10, 1991

Civil Rights Proposal
Provision Summaries

I(A) DISPARATE IMPACT PROVISIONS (Wards Cove Packing Co. v. Atonio, 109 S.Ct. 2115 (1989)) -- Causation and Specificity.

"[W]e note that the plaintiff's burden in establishing a prima facie case goes beyond the need to show that there are statistical disparities in the employers's work force. The plaintiff must begin by identifying the specific employment practice that is challenged. . . . Especially in cases where an employer combines subjective criteria with the use of more rigid standardized rules or tests, the plaintiff is in our view responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities."

H.R. 1, as introduced.	H.R. 1; as passed the House.	Danforth, S. 1208.	Administration/Dole, S. 611
Plaintiff required to identify which practices contributed to disparate impact, but only if court finds plaintiff is able to do so.	Plaintiff required to identify which practices contributed to disparate impact unless court determines plaintiff, after discovery, is unable to do so.	Plaintiff required to identify particular employment practices that result in a significant disparate impact. Note: The 1990 Committee Report defined "significant" disparate impact as "anything more than trivial." In short, a mere laundry list of all employment practices, without proving the causal link, arguably would satisfy the specificity requirement.	Plaintiff required to identify employment practices, and prove the causal link to disparate impact.

I(B) DISPARATE IMPACT PROVISIONS (Wards Cove Packing Co. v. Atonio, 109 S.Ct. 2115 (1989)) -- Burden of Proof (Production and Persuasion)

Once the plaintiff establishes a prima facie case, then "the employer carries the burden of producing evidence of a business justification for his employment practice. The burden of persuasion, however, remains with the disparate impact plaintiff. . . . This rule conforms with the usual method for allocating persuasion and production burdens in the federal courts, see Fed. Rule Evid. 301, and more specifically, it conforms to the rule in disparate-treatment cases that the plaintiff bears the burden of disproving an employer's assertion that the adverse employment action or practice was based solely on a legitimate neutral consideration."

H.R. 1, As Introduced.	H.R. 1, as passed by the House.	Danforth, S. 1208.	Administration/Dole, S. 611:
After plaintiff establishes prima facie case, then employer must prove business necessity.	After plaintiff establishes prima facie case, then employer must prove business necessity.	After plaintiff establishes prima facie case, then employer must prove business necessity.	After plaintiff establishes prima facie case, if the employer produces evidence of a legitimate business justification, then plaintiff must persuade the court that there was disparate impact, and which particular practices caused the disparate impact.

I(C) DISPARATE IMPACT PROVISIONS (Wards Cove Packing Co. v. Atonio, 109 S.Ct. 2115 (1989)) -- Business Justification

In Wards Cove, the Court noted that "[In a] disparate impact case, the dispositive issue is whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer. [citations]. The touchstone of this inquiry is a reasoned review of the employer's justification for his use of the challenged practice. A mere insubstantial justification in this regard will not suffice, because such a low standard of review would permit discrimination to be practiced through the use of spurious, seemingly neutral employment practices. At the same time though, there is no requirement that the challenged practice be 'essential' or 'indispensable' to the employer's business for it to pass muster; this degree of scrutiny would be almost impossible for most employers to meet, and would result in a host of evils we have identified above. [e.g., quotas]."

In Griggs v. Duke Power, the Supreme Court noted that "If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the job for which it was used." 401 U.S. 424, 432, 91 S.Ct. 849, 853. [. . .] "But Congress directed the thrust of the Act of the consequences of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question."

In New York Transit v. Beazer, the Court noted in a footnote that "Finally, the District Court noted that those goals are significantly served by -- even if they do not require -- [the Transit Authority's] rule as it applied to all methadone users including those who are seeking employment in non-safety-sensitive positions. . . . The record thus demonstrated that TA's rule bears a "manifest relationship to the employment in question."

(Note: the first quote in Griggs was cited in the White dissent in New York Transit v. Beazer, 440 U.S. 568, 602.).

Note that the first quote in Griggs seems far too precise to articulate a general rule; it seems more like an application of a principle to a given fact pattern (hiring tests), than the formulation of a general rule. The second quote seems more broadly written, more like a governing principle.

H.R. 1, as introduced.	H.R. 1, as passed in the House.	Danforth, S. 1208.	Administration/Dole, S. 611.
The term 'required by business necessity' means (A) in the case of employment practices involving selection, . . . the practice or group of practices must bear a significant relationship to successful performance of the job; or (B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.	The term 'required by business necessity' means the practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance. . . . The term 'requirements for effective job performance' may include, in addition to effective performance of the actual work activities, factors which bear on such performance, such as attendance, punctuality, and no engaging in misconduct or insubordination, i.e., all negative factors.	The term 'required by business necessity' means (1) in the case of employment practices involving selection, . . . the practice or group of practices bears a manifest relationship to requirements for effective job performance; or (2) (if not involving selection), the practice . . . bears a manifest relationship to a legitimate business objective of the employer. The definition for 'requirements for effective job performance' also focuses on actual work activities.	The term 'justified by business necessity' means that the challenged practice has a manifest relationship to the employment in question or that the respondent's legitimate employment goals are significantly served by, even if they do not require the challenged practice.
Parallels, but is not identical to, the first definition of business necessity in Griggs.	**Merges parts of both definitions of business necessity in Griggs, and comes up with a new test.**	**Merges parts of both definitions of business necessity in Griggs, and comes up with a new test.**	**Parallels the second definition of business necessity in Griggs, as interpreted by fn. 31 in Beazer.**
Note: no definition of what constitutes "selection."		**Note: no definition of what constitutes "selection").**	

I(D) DISPARATE IMPACT PROVISIONS (Wards Cove Packing Co. v. Atonio, 109 S.Ct. 2115 (1989)) -- Alternative Practices

In Wards Cove, the Court clarified that: "[Even if plaintiffs] cannot persuade the trier of fact on the question of [employers'] business necessity defense, [plaintiffs] may still be able to prevail. To do so, [plaintiffs] will have to persuade the factfinder that 'other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate (hiring) interest(s);' by so demonstrating, [plaintiffs] would prove that '(employers were) using (their) tests merely as a "pretext" for discrimination.' [citation]. . . . If [plaintiffs], having established a prima facie case, come forward with alternatives to [employers'] hiring practices that reduce the racially-disparate impact of practices currently being used, and [employers] refuse to adopt these alternatives, such a refusal would belie a claim by [employers] that their incumbent practices are being employed for non-discriminatory reasons."

This appears intended to set out an evidentiary standard that the existence of less burdensome alternatives (and refusal by the employer to adopt them) would undercut the "good faith" requirement implicitly a part of the business necessity defense.

H.R. 1, as introduced.	H.R. 1, as passed the House.	Danforth, S. 1208.	Administration S. 611.
Makes the existence of less burdensome alternatives sufficient for the plaintiff to win a disparate impact case, despite business necessity.	Makes the existence of less burdensome alternatives sufficient for the plaintiff to win a disparate impact case, despite business necessity.	Makes the existence of less burdensome alternatives sufficient for the plaintiff to win a disparate impact case, despite business necessity.	Makes the existence of less burdensome alternatives sufficient for the plaintiff to win a disparate impact case, despite business necessity, but only if employer refuses to adopt them.

II. MIXED MOTIVE PROVISIONS (Price Waterhouse v. Hopkins, 109 S.Ct. 1775 (1989) (Brennen, Marshall, Blackmun, Stevens)).

Price Waterhouse clarified that if plaintiff establishes (both burden of persuasion and proof) that impermissible consideration was a motivating factor in an employment decision, then employer must prove that the same decision would have been made absent that consideration.

Focussing on the interpretation of whether an employment decision was made "because of" the individual's sex, 42 U.S.C. 2000e-2(a)(1), (2), the Court added that: "The critical inquiry . . . is whether gender was a factor in the employment decision at the moment it was made. Moreover, since we know that the words 'because of' do not mean 'solely because of,' we also know that Title VII meant to condemn even those decisions based on a mixture of legitimate and illegitimate considerations. . . ." 109 S.Ct. at 1785 (emphasis in original).

"It is difficult for us to imagine that, in the simple words, 'because of,' Congress meant to obligate a plaintiff to identify the precise causal role played by legitimate and illegitimate motivations in the employment decision she challenges. We conclude, instead, that Congress meant to obligate her to prove that the employer relied upon sex-based consideration in coming to its decisions."

H.R. 1, as introduced.	H.R. 1, as passed the House.	Danforth, S. 1208.	Administration/Dole, S. 611.
The plaintiff must prove that an impermissible consideration was a <u>"contributing"</u> factor in the employment practice. Cause of action fails if employer would have taken the same action in the absence of discriminatory employment practice.	The plaintiff must prove that an impermissible consideration was a <u>"motivating"</u> factor in the employment practice. Cause of action fails if employer would have taken the same action in the absence of discriminatory employment practice	The plaintiff must prove that an impermissible consideration was a "motivating" factor in the employment practice. Cause of action <u>does not</u> fail if employer would have taken the same action in the absence of discriminatory employment practice. Declaratory and injunctive relief, as well as costs and attorney's fees, may be awarded, but damages or reinstatement may not.	Does not address.

III. FINALITY OF JUDGMENTS OR ORDERS (Martin v. Wilks, 109 S.Ct. 2180 (1989), Hansberry v. Lee, 311 U.S. 32 (1940)).

In Martin v. Wilks, white fire fighters claimed that the City of Birmingham had discriminated against them by refusing to promote them because of their race. The City argued that their claim was barred because the City's promotion process had been sanctioned in a consent decree between the City and black firefighters, of which consent decree the white firefighters had been aware but were parties. The Court held that the consent decree did not bind the white firefighters because they were not made party to the decree, and they were not within a certified class of defendants whose interests were adequately represented by a named defendant.

Binds only parties and non-parties of a certified class whose interest were adequately represented by a named party.

H.R. 1, as introduced.	H.R. 1, as passed the House.	Danforth, S. 1209.	Administration/Dole. S. 611.
Binds parties and non-parties alike, limited only by due process requirements.	Binds parties and non-parties alike, limited only by due process requirements.	Binds parties, as well as certain non-parties, depending on whether the order or decree was rendered before or after the effective date of the amendments, e.g., persons whose interests were adequately represented by a party to the case/degree (even though there was no certified class).	Reaffirms Martin v. Wilks. Binds parties and non-parties of a certified class whose interests are adequately represented by a named party to the case/decree.

IV. MAKING AND PERFORMANCE OF CONTRACTS (Patterson v. McLean Credit Union, 109 S.Ct. 2363 (1989)).

In Patterson, the Court held that Section 1981 only applied to making or enforcing contracts, not their performance. Section 1981 does not provide a remedy for individuals who are subjected to discriminatory performance of their employment contracts (through racial harassment, for example). Thus, the only available recourse is through use of Title VII.

(Note: Section 1981 was a post-Civil War statute to ensure that the slaves had the right to "make and enforce" contracts to the same extent as did white citizens. It first was used as an anti-discrimination tool in the mid-1900's.)

Section 1981 applies only to making or enforcing contracts, not their performance. Only Blacks are within the scope of Section 1981.

H.R. 1, as introduced.	H.R. 1, as passed the House.	Danforth, S. 1209.	Administration/Dole, S. 611.
Section 1981 modified to apply to the making, performance, modification and termination of contracts. Only Blacks are within the scope of Section 1981.	Section 1981 modified to apply to the making, performance, modification and termination of contracts. Only Blacks are within the scope of Section 1981.	Section 1981 modified to apply to the making, performance, modification and termination of contracts. Only Blacks are within the scope of Section 1981.	Section 1981 modified to apply to the making, performance, modification and termination of contracts. Only Blacks are within the scope of Section 1981.

V. SENIORITY SYSTEMS AS DISCRIMINATORY EMPLOYMENT PRACTICES (Lorance v. AT&T Technologies, Inc., 109 S.Ct. 2261 (1989))

In Lorance, female employees challenged a seniority system pursuant to Title VII, claiming that, although facially nondiscriminatory, it was adopted with an intent to discriminate against women. The Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

Claims to challenge seniority systems as discriminatory must be filed within 180 days (300 days if the matter can be referred to a state agency) after an alleged discriminatory practice.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth, S. 1209.	Administration/Dole, S. 611.
Establishes multiple points in time when an alleged unlawful employment practice occurs. Also provides that a seniority system can be challenged up to 2 years after the plaintiff has affected adversely by its provisions.	Establishes multiple points in time when an alleged unlawful employment practice occurs. Also provides that a seniority system can be challenged up to 540 days (1-1/2 years) after the plaintiff has affected adversely by its provisions.	Establishes multiple points in time when an alleged unlawful employment practice occurs. Does not extend time limits for filing claims.	Establishes multiple points in time when an alleged unlawful employment practice occurs. Does not extend time limits for filing claims.

VI. LIMITATIONS ON DAMAGES FOR INTENTIONAL DISCRIMINATION.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth, S. 1207.	Administration/Dole, S. 611.
Allows for full compensatory and punitive damages, to be determined by a jury.	Allows for compensatory damages to be determined by a jury, and punitive damages capped for all employers at the greater of $150,000 or the sum of compensatory damages plus equitable monetary relief.	Authorizes compensatory damages (not including back pay) to be determined by a jury, and an "equitable penalty" if necessary to deter future discriminatory practices. There are similar caps for both types of award: $150,000 for companies of 100 or more employees; $50,000 for others. Costs are awarded if an equitable penalty is assessed. Also creates an "equal employment opportunity trust fund," funded by assessment of equitable penalties, and proceeds to be for civil rights enforcement programs and family violence protection programs.	Allows $150,000 of damages in excess of equitable monetary relief if the equities so require, damages (and liability if Constitutional) to be determined by the court.

VII. ADDITIONAL REMEDIES FOR HARASSMENT IN THE WORKPLACE -- Declaratory and Injunctive Relief.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth (S. 1207, S. 1208, S. 1209).	Administration/Dole, S. 611.
Not addressed.	Not addressed.	Not addressed.	Creates new Title VII cause of action for sexual harassment, including (i) sexual advances relating to hiring or promotion, and (ii) sexual advances that create an intimidating, hostile or offensive working environment. Requires the plaintiff to utilize within 90 days complaint procedures established by the employers before a cause of action will lie. Also provides for immediate injunctive relief and expedited hearing of the case.

VIII. OTHER PROVISIONS

1. Expert Fees. Not authorized under Title VII.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth, S. 1209.	Administration/Dole, S. 611.
Authorizes expert witness fees and other litigation expenses without limitation. Prohibits the waiver of attorney's fees as a condition to a consent or settlement.	Authorizes expert witness fees and other litigation expenses without limitation, including Section 1981 claims. Prohibits the waiver of attorney's fees as a condition to a consent or settlement.	Authorizes expert witness fees and other litigation expenses without limitation.	Limits expert witness fees to $300 per day.

2. Alternative Means of Dispute Resolution.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth, S. 1208.	Administration/Dole, S. 611.
Clarifies that amendments do not affect court-ordered remedies, affirmative action programs or conciliation agreements that are otherwise in accordance with the law. Also adds language that amendments do not require <u>or encourage</u> hiring or promotion quotas.	Clarifies that amendments do not limit employers from establishing job requirements, or require, permit or encourage quotas. "Quota" is very narrowly defined as a fixed number or percentage of persons which must be attained, or which cannot be exceeded, regardless of their qualifications. Also quietly codifies an unnamed string of Supreme Court cases regarding affirmative action by providing that the amendments shall be construed to approve the lawfulness of voluntary or court ordered affirmative action that is consistent with current Supreme Court cases.	Clarifies that amendments should not be construed to limit employers from establishing lawful job requirements, and also neither (i) requires or encourages hiring or promotion quotas, or (ii) prevents an employer from hiring the most effective individual for a job. Note: the bill <u>does not</u> state that employers should be discouraged from quotas!	Encourages alternative means of dispute resolution.

3. Employment Ability Tests (Race Norming).

Current statutory law (42 USC Sec. 2000e-2(h)) permits employers to use ability tests "provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth, S. 1208.	Administration/Dole, S. 611.
Does not address.	Permits ability tests that predict on a nondiscriminatory basis "the ability of such test takers to perform the job with respect to which such test is used." Also prohibits employers from adjusting scores of ability tests. Taken together, these provisions would outlaw all but job specific tests for which race norming would not be necessary. In short, the only tests that would be valid are the ones that already have race norming built in.	Prohibits race norming, unless used to comply with court order.	Does not address.

4. Extraterritorial Application.

H.R. 1, as introduced.	H.R. 1, as passed the House.	Danforth (S. 1207, S. 1208, S. 1209).	Administration/Dole, S. 611.
Does not address.	Covers U.S. workers employed abroad to the extent not inconsistent with local law.	Does not address.	Does not address.

5. Construction.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth (S. 1207, S. 1208, S. 1209).	Administration/Dole, S. 611.
Encourages broad construction.	Encourages broad construction.	See Alternative Means of Dispute Resolution, above.	Does not address.

6. Effective Dates.

H.R. 1, as introduced.	H.R. 1, as passed by the House.	Danforth (S. 1207, S. 1208, S. 1209).	Administration/Dole, S. 611.
Retroactive application.	Retroactive application.	Not addressed in S. 1207 and S. 1208. Generally date of enactment in S. 1209, except for provisions relating to finality of judgments or orders.	Prospective application.
		Generally silent or prospective, except for provisions relating to finality of judgments or orders.	

ID# 247855

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

H4010

INCOMING

DATE RECEIVED: JUNE 19, 1991

NAME OF CORRESPONDENT: MS. JUNE A. WILLENZ

SUBJECT: URGES THE PRESIDENT TO SIGN THE COMPROMISE
CIVIL RIGHTS BILL OF 91

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	91/06/19		C	92/05/04
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

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COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 4900 1161 ____

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

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*                       *                       *CORRESPONDENCE:      *
*A-APPROPRIATE ACTION   *A-ANSWERED             *TYPE RESP=INITIALS   *
*C-COMMENT/RECOM        *B-NON-SPEC-REFERRAL    *          OF SIGNER  *
*D-DRAFT RESPONSE       *C-COMPLETED            *     CODE = A        *
*F-FURNISH FACT SHEET   *S-SUSPENDED            *COMPLETED = DATE OF  *
*I-INFO COPY/NO ACT NEC*                        *             OUTGOING*
*R-DIRECT REPLY W/COPY  *                       *                     *
*S-FOR-SIGNATURE        *                       *                     *
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Tel: 301-3206490 FAX: 301 654-5508

June 17, 1991

The Honorable George Bush
President of the United States
The White House
Washington,D.C. 20500

Dear Mr. President:

As you seek to come to grips with domestic issues in our society today, one of the most important needs is to wipe out the scourge of racial and gender discrimination which is damaging to more than half of the population and a stain on our national honor.

We therefore urge you to sign the compromise civil rights bill of 1991 that makes it easier for women and members of minorities to sue and collect damages over job discrimination. Under present law, it is extremely difficult for these groups to get fair and just treatment in the workplace. This Civil Rights bill will eliminate one of the most egregious faults in our laws.

Recognizing that you and others are opposed to the use of quotas, we point out that the question of "quotas" is answered in this bill which specifically makes quotas illegal.

We call your attention to the magnificent performance of women and minorities in the armed services during the recent Gulf War. If they can be called upon to put their lives on the line for their country, isn't it time that their country is willing to give them the equitable treatment and recourse they deserve when they are in the civilian workface?

The members of the American Veterans Committee have served in four wars and for over forty years have been totally committed to equal rights and social justice. We urge you to sign this important civil rights legislation.

Sincerely,

June A. Willenz
Executive Director

To achieve a more democratic and prosperous America and a more stable World

ID # [illegible] CU

R: 6/20 3:30p

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: Lisa S. VanAmburg

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

Subject: An attorney in favor of the Civil Rights Bill - dismayed by the President's statement that it would be a boon to "greedy" attorneys.

ROUTE TO: Office/Agency (Staff Name)	ACTION: Action Code	Tracking Date YY/MM/DD	DISPOSITION: Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR D	91/06/18		C	91/06/24 CS
CUAT10	Referral Note: A DJ	91/06/18		DJ	91/06/24 CS
CUAT01	Referral Note: I D	91/06/18		C	91/06/18 CS
Cugray	Referral Note: I D	91/06/18		C	91/06/18 CS
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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"
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Comments: No Further Action Required Per N. Lund CS

6-24-91

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TO: Hon. C. Boyden Gray

OF: Counsel to the President
(Firm/Company Name)

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SWITCHBOARD #: 202-456-2632

CLIENT NAME: Firm

DATE/TIME: 6/18/91

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ARTHUR H. NISSENBAUM
Of Counsel

June 12, 1991

The Hon. George Bush, President
United States of America
The White House
Washington DC 20005-0001

RE: Civil Acts Right of 1991

Dear President Bush:

I graduated from law school in 1975 and entered the practice of labor law on the side of employees. I remain one of a handful of lawyers in St. Louis who represent employees in employment discrimination cases. Most plaintiff's attorneys view these cases as high-risk and certainly not lucrative because of the burden of proof an employee must meet to prevail. I am now Union Co-Chair of the American Bar Association Committee on Equal Employment Opportunity, of the Section of Labor and Employment Law. I would not characterize any of the attorneys on that committee as "greedy." Indeed, many of them are dedicated lawyers who fight an uphill battle against discrimination in the workplace.

I was therefore dismayed to read that you said that the pending civil rights bill would be a boon to "greedy" attorneys. I feel insulted when you, the President of the United States, impugn the integrity of plaintiff-side employment lawyers in this fashion. I must say that I am also saddened by your divisive rhetoric of late. Tragically, such rhetoric serves only to further divide the nation.

Very truly yours,

Lisa S. Van Amburg

Lisa S. Van Amburg

cc: The Hon. John Danforth, U.S. Senate
The Hon. Christopher Bond, U.S. Senate
The Hon. Joan Kelly Horn, U.S. House of Representatives
The Honorable William Clay, U.S. House of Representatives
Plaintiffs' Employment Lawyers Association
Lawrence Ashe, Co-Chair, EEO Committee, ABA Section on Labor and Employment Law
Richard Seymour, Co-Chair, EEO Committee, ABA Section on Labor and Employment Law

LSV:rmm

ID# 248196

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

H.R. 21

INCOMING

DATE RECEIVED: JUNE 20, 1991

NAME OF CORRESPONDENT: MR. THOMAS WHITEHEAD

SUBJECT: OPPOSES THE CIVIL RIGHTS BILL

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
JOHN SUNUNU	ORG	91/06/20		C	91/06/21
REFERRAL NOTE:					
CBGray	I	910624		C	/ /
REFERRAL NOTE:					
		/ /			/ /
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COMMENTS: _____

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

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

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

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

MERRILL & WHITEHEAD

663 South Ave. • New Canaan, CT 06840
203-966-9343

Thomas Whitehead
Chairman

June 13, 1991

Mr. John Sanunu
Chief of Staff
White House
Washington, DC 20500

Dear John:

Who do you think you're kidding with this "Civil Rights" Bill you've been floating? The fact is it is another quota bill. Another opportunity for lawyers. And another breach of fate by George Bush.

The country doesn't need another "civil rights bill". Enough laws have been written to take care of the problems we had. Everything else that is being added has to be at the expense of other constituencies. A lot of us were thinking of staying home in '92 after that stunt you pulled with taxes. Now a lot of us are wondering who the Democrats are going to put up.

Very truly yours,

Thomas Whitehead

TW/djw

cc: George Bush
George Mitchell

P.S. We sent a copy to you Mitchell. You've got a chance here if you stop dancing on the head of a pin.

GEN613ACC2

CS

ID# 248362

R:6/26
3:30p

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

EX010

INCOMING

COUNSEL'S OFFICE
RECEIVED
JUN 21 1991

DATE RECEIVED: JUNE 20, 1991

NAME OF CORRESPONDENT: MR. TERDEMA L. USSERY II

SUBJECT: EXPRESSES CONCERN THAT POLARIZATION ALONG RACIAL LINES IS AGAIN BECOMING AN ISSUE IN THE COUNTRY AND IS BEING FUELED BY RHETORIC SURROUNDING THE CIVIL RIGHTS LEGISLATION

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C	DISPOSITION COMPLETED YY/MM/DD
C. BOYDEN GRAY	ORG	91/06/20		C	91/07/08
REFERRAL NOTE: CUAT10	A	91/06/24	CS	C	91/07/08 CS
REFERRAL NOTE: letter to mr ussery					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

COMMENTS: WRITER JOINED THE REPUBLICAN PARTY AFTER MEETING AND SPEAKING WITH LEE ATWATER ENCLOSED IS AN ARTICLE FROM THE LOS ANGELES TIMES ABOUT WRITER

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 4900 4200 ____

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

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

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

THE WHITE HOUSE

WASHINGTON

July 8, 1991

Dear Mr. Ussery:

On behalf of the President, thank you for your recent letter about your decision to join the Republican party and about the current debate over the pending employment discrimination bill.

No one has been more distressed than the President by the controversies that have arisen over civil rights during the past two years. Like you, he has been greatly concerned about the effects that may ensue from some of the political rhetoric that has been used in the debate. Despite the best efforts of the President and those of us who work for him, it has been very difficult to obtain a calm and reasoned discussion of the merits of the proposed legislation.

As you may know, the issues raised by the Democrat bill are highly technical and arcane, although their effects in the real world would be enormous. The President has proposed an alternative bill that we believe addresses all of the genuine issues without creating new problems. The President has also proposed a separate series of initiatives that he believes will do far more to help disadvantaged Americans help themselves. For your information, I am enclosing two of the President's speeches on these subjects.

Thank you again for writing.

Yours truly,

Nelson Lund
Associate Counsel to the President

Mr. Terdema L. Ussery II
Continental Basketball Association
425 South Cherry Street, Suite 230
Denver, CO 80222

continental basketball association
425 South Cherry Street, Suite 230
Denver, Colorado 80222
(303) 331-0404

Terdema L. Ussery, II
Commissioner

June 18, 1991

President George Bush
The White House
1600 Pennsylvania NW
Washington, D.C. 20500

Dear Mr. President:

It was an honor to attend the annual President's Dinner last Thursday in Washington, D.C. I attended as a guest of a member of your Cabinet, Secretary Jack Kemp. If you have a moment, I would like to bring to your attention an issue of grave concern.

Two years ago I had the pleasure of talking to Lee Atwater at the St. James Club in Hollywood, California. The event was sponsored by the Republican Senatorial Inner Circle. Mr. Atwater spoke of the desire of the Republican Party to become inclusive and representative of all of America. After he spoke and the lunch was completed, he approached me. We took a picture together, and he spent another 20 minutes convincing me that I had a place in the Party. Based on his persuasiveness, the Party's platform on the family and other moral issues and my upbringing, I decided to switch affiliations.

I have to tell you that two years later I am disappointed by the fact that polarization along racial lines is once again becoming an issue in this country. I believe it is being fueled by much of the political rhetoric surrounding the proposed Civil Rights legislation. As the enclosed article clearly states, I have had some modicum of success, but it has not been easy. Indeed, because of some of the inequities in the "playing field" I have pushed twice as hard as my peers.

You are a great leader. You have the full attention of the country. On this particular issue you have such a unique opportunity to elevate yourself and the nation to a position of moral greatness. But, this would mean making yet another tough decision and once again asking the American public to trust your judgment and follow your leadership on this very divisive issue.

Lee Atwater was a great man of vision and frankly, political shrewdness. I hope that his vision of the Republican Party did not die along with his untimely death. I am one citizen of 250 million and I am expressing my opinion for the first time on this or any issue. I would only ask that you consider the concerns I have expressed herein.

Most respectfully,

Terdema L. Ussery II
Commissioner

THE WHITE HOUSE

WASHINGTON

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ID# 248362

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____ Proclamation not scanned.

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____ Proposal not scanned.

____ Statement not scanned.

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Comments:

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Office of the Press Secretary

For Immediate Release May 17, 1990

REMARKS BY THE PRESIDENT
DURING MEETING WITH
COMMISSION ON CIVIL RIGHTS

The Rose Garden

10:02 A.M. EDT

THE PRESIDENT: Welcome to the Rose Garden and to the White House. Thank you all very much for coming. To the Attorney General and Secretary Cavazos and Secretary Sullivan, thank you for joining us. Director Newman, the same. And to Senators Dole, Hatch, and Garn, Congressman Ham Fish, thank you very much for being with us today. To Chairman Fletcher, an old friend and a man I'm very proud of, welcome, sir. To Commissioners Buckley, Ramirez, Redenbaugh, Wilfredo Gonzalez and the State Advisory Committee Chairpersons, and to the distinguished leaders. I see Ben Hooks here and others of the civil rights community across this great country. It is -- and I mean it -- an honor to have you here today.

I think we've made it a moment that's very hopeful worldwide. In a minute from now, I'll be meeting in this marvelous Oval Office with Chancellor Kohl, talking about the dramatic changes that have taken place in the world. There is a time when the thundering cry for freedom is being heard and answered from Panama, hopefully in Johannesburg, to Warsaw.

And around the world, peoples are warring against tyranny, citizens struggling against state control, economies weary of bureaucratic central planners, all are looking to America as reason for hope -- the bright star by which to chart their course to freedom.

And so it's all the more crucial now that we look carefully to the kind of country we are -- to the state of democracy here in the Land of Liberty. And we're called upon to ensure that this democracy means opportunity for all who call it home.

Few have worked harder to deliver the promise of democracy, to make an enduring dream a living reality, than the men and women assembled here today in this Rose Garden. And particularly, I want to give credit again to these men and women standing behind me.

From its earliest origins, the Commission on Civil Rights has been an independent, bipartisan voice for justice. And the Commissioners, the Directors, the Advisory Committees all share a cultural diversity and an intellectual and moral conviction that are truly America's best. And these men and women have earned our admiration. And today, they deserve our thanks.

Joining a new Chairman -- and as I said, my friend of many years, Art Fletcher -- are two outstanding additions: Carl Anderson and Russell Redenbaugh. I know Bob Dole shares my admiration for Russell, a man of impressive credentials, who knows, as all Americans should know, that physical disability will not be a barrier to service in this administration. That's why I remain firmly committed to the landmark Americans for Disabilities Act to help ensure equal rights and opportunities for these Americans.

And today, I'd like to announce a new member of the Civil Rights Commission, Mr. Charles Pei Wang, President of the China Institute in America, an outstanding new addition.

Over the last few days, I've met to discuss pending civil

MORE

rights legislation with leaders representing America's rich tapestry of cultural, religious, and ethnic diversity. And I got, as I knew I would, a lot of sound advice. Much of which I can accept. (Laughter.) But these leaders, this Commission -- (applause) -- the Congress and this administration, believe me, all share a common conviction for equal opportunity. It's a responsibility that I've tried to take very seriously -- especially now, when our most vital export to the world is democracy.

And we must make sure that we as a nation continue to lead by example. We must see that true affirmative action is not reduced to some empty slogan, and that this principle of striking down all barriers to advancement has real, living meaning to all Americans. We will leave nothing to chance and no stone unturned as we work to advance America's civil rights agenda. (Applause.)

This nation's progress against prejudice, from the '64 Act to the Voting Rights Act, to the Fair Housing and Age Discrimination in Employment Acts, it's all hinged on the principle that no one in this country should be excluded from opportunity. And so, we're committed to enacting new measures like the Hate Crimes Statistics Act, the HOPE initiative of housing, a revitalized enforcement of restrictions against employment bias. This administration seeks equal opportunity and equal protection under the law for all Americans -- goals that I know are shared by Senators Kennedy and Representative Hawkins, and certainly by the four distinguished members of Congress with us here today.

And so we've supported efforts to ensure an individual's ability to challenge discriminatory seniority systems. We've also moved to stiffen the penalties from racial discrimination in setting or applying the terms and conditions of employment. And today, as we work to ensure that America represents democracy's highest expression, I want to begin by offering three principles that must guide any amendments to our civil rights laws. These principles are firmly rooted in the spirit of our current laws. After the extensive discussions that we've had this week, I think they're principles on which all of us, including the leadership on the Hill, can agree. And so I will enthusiastically support legislation that meets these principles.

First, civil rights legislation must operate to obliterate consideration of factors such as race, color, religion, sex, or national origin from employment decisions. (Applause.) So in essence, we seek civil rights legislation that is more effective, not less. The focus of employers in this country must be on providing equal opportunity for all workers, not on developing strategies to avoid litigation. (Applause.)

No one here today would want me to sign a bill whose unintended consequences are quotas. Because quotas are wrong, and they violate the most basic principles of our civil rights tradition and the most basic principles of the promise of democracy. America's minority communities deserve more than symptomatic relief, and we want to eradicate the disease. And that will require systematic solutions, strategies that transcend statistics.

We should empower and ennoble our minority communities. We should seek systematic change that allows every American to excel. During these meetings this week, I invited the civil rights leadership to work with me to craft a bill that moves us towards this goal. After these consultations, I am confident that this can be done. I want to sign a civil rights bill, but I will not sign a quota bill. (Applause.) I think we can work it out. (Applause.)

The second civil rights legislation must reflect fundamental principles of fairness that apply throughout our legal system. Individuals who believe their rights have been violated are entitled to their day in court, and an accused is innocent until proved guilty. In every case involving a civil rights dispute, constitutional protections of due process must be preserved.

And third, federal law should provide an adequate deterrent against harassment in the workplace based on race, sex, religion, or disability, and should ensure a speedy end to such discriminatory practices. Our civil rights laws, however, should not be turned into some lawyer's bonanza, encouraging litigation at the expense of conciliation, mediation, or settlement.

Let me add that Congress, with respect, should live by the same requirements it prescribes for others. (Applause.) In '72, the Civil Rights Act of '64 was justly applied to executive agencies in state, local governments and Congress, however, has not covered. And this -- this is not an assault on Congress, I'm just trying to -- I've got about -- (laughter) -- but seriously, this inconsistency should be remedied to give congressional employees and applicants the full protection of the law to send a strong signal that it's both the Executive Branch and Congress that are in this together. And the Congress should join the Executive Branch in setting an example for these private employers.

Now, we seek strategies that work, putting power where it belongs -- in the hands of the people. That means new ideas, like giving poor parents the power of an alternative choice in where to send the kids to school so that all can have access to the best. It means more tenant control and ownership of public housing. Tax credits for child care to give parents more flexibility and choice. Policies that underwrite prosperity by encouraging capital flow to build more businesses in poor neighborhoods. The door is open wider now than it ever has been. Together, I believe we can open it still wider.

Today, an expanding economy is working in the service of civil rights. And so, let's not set the clock back. Let's look past the differences that divide us, to the shared principles and the better natures that we have within us. To the civil rights leadership assembled here today -- Dorothy, excuse me, I didn't see you earlier -- and so many -- I'm in real trouble if I single them out here. Look, I have offered you my hand and my word that, together, we can and will make America open and equal to all. Now, this administration is committed to action that is truly affirmative, positive action in every sense, to strike down all barriers to advancement of every kind for all people. We will tolerate no barriers, no bias, no inside tracks, no two-tiered system, and no rungless ladders. And I'm willing to take the time to make sure that this is done right, simply because it's worth doing right. Now is the time, really, to extend a hand to all that are struggling, and to devote our energies to a broader agenda of empowerment, that all might join in this new age of freedom.

I am delighted that you all came here. Thank you for bringing honor to this prestigious Rose Garden, and to paying tribute to our Commission here in which I have great confidence, and in which I take great pride.

Thank you all very, very much. (Applause.) Thank you.

END 10:16 A.M. EDT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release February 27, 1991

REMARKS BY THE PRESIDENT
IN ANNOUNCEMENT OF OPPORTUNITY ACTION PLAN
TO CIVIC AND CHARITABLE ORGANIZATIONS

The J.W. Marriott Hotel
Washington, D.C.

11:08 A.M. EST

THE PRESIDENT: Thank you very, very much. And what a wonderful reception. And I interpret that, I think properly, the same way I interpreted the applause at the State of the Union message -- as strong support for those men and women that are serving our country overseas. And now the war is almost over, and I think we owe them a vote of thanks, and I think I heard it right now. So thank you, Bill, and I'm just delighted to be here.

I want to shift and talk about domestic matters. And Bill, I couldn't help but glance at this marvelous quilt coming in here, and I do think that we owe you and all the others in the association a vote of thanks for following through and, indeed, being points of light.

I want to salute our Attorney General who is with us today; our two able Secretaries so concerned also about what we're talking about today, Secretaries Kemp and Sullivan; Ted Sanders, who is doing a superb job as our Acting Secretary at Education; and, of course, my old friend, a man so well-known to all of you, Bob Woodson of the Center for Neighborhood Enterprise. You know, it's hard to believe that a year has passed since the challenge Bill mentioned, since I challenged the members of ASAE to channel the tremendous energy of this organization and transform a nation through community service. And what a terrific job you've done.

Looking around the room today, peeking, before I came in here, I see so many familiar faces, so many people that are making a difference in the lives of others. Every man and woman here believes in the power of the individual, and is bolstered by the conviction that America is indeed a land of opportunity. For more than 200 years, America has been the home of free markets and free people. And there is no question: opportunity in America is the envy of the entire world.

The story of America has been the story of opportunity. Throughout our history, we've pioneered the frontiers of liberty for all humanity. Our Founding Fathers created perhaps the most simple yet profound document in modern history -- our Constitution and Bill of Rights. Abraham Lincoln broke forever the chains of human slavery. The suffrage movement made the promise of democracy a reality for women. The founders of our public schools unleashed our national potential through universal education. And by their struggle for equal rights, the leaders of the civil rights movement helped bring dignity to the oppressed and disenfranchised. The story of opportunity in America is the story of Thomas Paine and Frederick Douglass, Clara Barton, the Wright brothers, Rosa Parks.

But it doesn't end there, with these heroes from our past. There are the new American heroes of today, many of them in this room. And they, too, are inspired by pride, integrity, faith in the dignity of man, and courage -- yes, courage to overcome the odds. It's called leadership by example -- and it's made America the world's great beacon of freedom.

MORE

These modern visionaries are the ones that are making history -- propelling us into the next American century.

Theirs is a movement -- it's more than 200 years old -- as old as the Declaration of Independence -- a movement defined by what Jefferson called "the American mind" and what I've been calling "the American idea." It continues to sweep our country today with a vigor as strong as ever. It's a vision driven by the strength and power of the American Dream.

And I share that vision -- for what is the American Dream if it isn't wanting to be part of something larger than ourselves? If it isn't creating a better life for our children than we might have had? If it isn't the freedom to take command of our future?

For most people, these aspirations mean enjoying the blessings of good health or having a home to call one's own, or raising a family, holding a stake in the community, feeling secure -- secure at home or in our neighborhood.

But for others, sadly, America has not yet fulfiled the promise of equality of opportunity. We know who they are: They're the hopeless and the homeless, the friendless and the fearful, the unemployed and the underemployed, the ones who can't read, the ones who can't write. They are the ones who don't believe that they will ever share in the American Dream.

I'm here to tell any American for whom hope lies dormant: We will not forget you. We will not forget those who have not yet shared in the American Dream. We must offer them hope. But we must guarantee them opportunity.

It's been said, "Hope is a waking dream." That awakening begins with learning, understanding the power and potential of individual effort, developing a skill, and with it, independence, earning a living, with dignity and personal growth. More skills mean more freedom -- more options for even greater opportunity.

Today, our administration is proposing an agenda to expand opportunity and choice for all. It involves more than six major initiatives across the scope of our entire government: restoring quality education, ensuring crime-free neighborhoods, strengthening civil and legal rights for all, creating jobs and new businesses, expanding access to homeownership, and allowing localities a greater share of responsibility. In its entirety, I believe it represents one of the most far-reaching efforts in decades to unleash the talents of every citizen in America.

In several weeks, I will have legislation to enact this agenda on the desk of every congressman. The administration's Educational Excellence proposals, by way of example, will put choice in the hands of students and parents -- so that they can choose the best school to attend. Our higher education system is clearly, unquestionably, the finest in the world -- creative, innovative and highly competitive. From the G.I. Bill to Pell Grants, college students already have the power to choose. And now it's time that our education system, all of it, became the finest in the world.

We're also proposing education reforms to build flexibility and accountability into our school systems. We've seen what education reform can do, from East L.A. to East Harlem. We're encouraging governors to bring together teachers, parents and administrators to work together to meet the needs of all students. We must cut the dropout rate and ensure that every student in America arrives at school ready to learn, and graduates ready to work.

For some time now, the administration has called for the restructuring of American education. We've got to raise our expectations for our students and our schools. But if we're going to ask more of them, it wouldn't be fair to tie the hands of the teachers and principals -- particularly those who make a difference.

MORE

We need responsive schools -- customer-driven ones, if you will. Schools that are more market-oriented, and performance-based, because it's time we recognize that competition can spur excellence in our schools. Choice is the catalyst for change, the fundamental reform that drives forward all others. These ideas will stir us and guide us toward meeting the national education goals the governors and I set up after that famous Education Summit -- because we can't expect to remain a first-class economy if we settle for second-class schools.

Millions of jobs await America's graduates in the coming years. But to fill those jobs, entrepreneurs will look increasingly to America's minorities: blacks, Hispanics and Asians, and to people just entering the economic mainstream, workers with disabilities, and mothers who have chosen to work outside the home. The majority of those jobs are safer, are cleaner, higher skilled, better paying jobs. And they will go to the ones who have what it takes -- a quality education.

Everyone knows the best education takes place in a safe, drug-free environment. It is difficult for children to learn if there's violence in the classroom. Or crime out in the schoolyard. Or drug pushers along the way home. And older students and workers find it hard to attend night school or put in late hours at the office because of the danger that darkness brings, especially in crime-ridden neighborhoods.

Low-income Americans are the ones more likely to be intimidated by crime, less likely to be able to take advantage of opportunities that may be across town or even just around the corner. They're the ones defending themselves and their families from the drug dealers and muggers down the hall or down the street. And they're the ones who need opportunity the most.

It is in their name that this battle for the streets of our cities must be waged. The thugs and the gangs and the drug kingpins should be the casualties of this war. Our tactics: mandatory sentences for using a firearm in a violent crime, strengthened protection against sex crimes and child abuse, tough prosecutors, courts that mete out equal justice, swiftly and surely, a prison system that is up to the job. And finally, our strategy must include an unequivocal commitment to our young people. There are meaningful and adventurous alternatives to a life of crime. And it starts with education, a neighborhood that's safe and secure.

Opportunity is built on these foundations, but the door is opened by one thing -- a job. Every American who wants a job should be able to get one. Of course, vestiges of the past remain. Bigotry and discrimination, regrettably, still do exist. But we have powerful legal tools for eliminating discrimination. And remember, the legal guarantees of equality of opportunity are largely in place: Brown vs. the Board of Education, the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Acts of both 1968 and 1988, the Americans with Disabilities Act of 1990.

To assure that every American enjoys the equality of opportunity and access, I am determined to continue the vigorous enforcement of these and of all our civil rights laws.

And where our laws need improvement, I am committed to refining them. We will soon introduce legislation with strong new remedies to protect women from sexual harassment and minorities from racial prejudice in the workplace. And I call on the Congress to act promptly on this important initiative.

But legislation that only creates a lawyer's bonanza helps no one. We all know where opportunity really begins. It begins, as I said above, it begins with a job.

In our hardest hit urban and rural areas our enterprise zone proposal will create new small businesses. We're providing new incentives for employers to hire more workers, by eliminating the

capital gains tax on businesses in these areas, and attracting more seed capital. Our proposals mean economic growth, more minority entrepreneurs and most importantly, again, jobs.

The American dream also means choosing where to live and, for many working people, owning a home someday. We're offering public housing residents not only control and management of their own community, but for the first time, access to home ownership and private property to gain a stake in their communities. We've asked the Congress to provide much-needed funding for the HOPE program in 1991, to make this opportunity a reality in our inner cities this year. And we're proposing that Americans be allowed to use the money from their IRAs to buy their first home. These initiatives will bring us closer to our goal of one million new homeowners by 1992.

You know, there's something reassuring about becoming a part of a neighborhood, a community that pulls together in times of crisis, that looks out for one another. Each community in America is different, and its residents know best how to take care of each other, what the best options are for programs and services for those who need a hand. And so we're proposing to allow communities to restructure programs at the local level.

Our strength as a nation lies in the strength of our communities, the sum of our neighborhoods and families, our hopes and dreams for the future. This is our administration's agenda for opportunity. It begins in the heart of every person who believes in freedom and lives on in the American Dream. Every man and woman in this room shares its vision. The great poet, Carl Sandburg, put it this way: "nothing happens unless first a dream." Our mandate is to make the dream a reality.

We face a new century, a new American century. Half a world away, our allied troops face a defining moment in the new world order. And they are succeeding in their battle because each and every one of them possesses a pride in their country, integrity in their cause and courage in their heart.

Our troops will be home soon -- coming home to a grateful nation. And I want to ensure that their return is to a land of equal opportunity. And just as they have stood to safeguard our freedom -- the world's freedom -- let us stand with pride, integrity and courage in our hearts and expand the freedoms of all Americans. It's up to each of us to secure the triumph of "the American idea." And that idea is opportunity.

With God's help and yours, we will succeed. Thank you all very much. And may God bless our troops, and may God bless the United States of America. (Applause.)

END 11:30 A.M. EST

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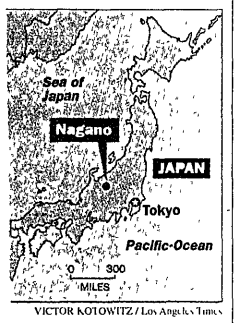
16, 1991 CC††

SPORTS

Los Angeles Times

IGHLIGHTS



VICTOR KOTOWITZ / Los Angeles Times

NTER OLYMPICS: Na-, Japan, was awarded the Winter Games in a close vote over Salt Lake City, h It didn't help the Ameri- city that Atlanta was al- ly set to play host to the Summer Games **C2**

OPEN: Payne Stewart and Simpson emerged from the swept third round tied for the at Hazeltine National Golf They lead Scott Hoch and rice by four strokes **C1**

URRAY: No matter what is the rest of the way, the U S Open is going to be bered for a real tragedy, the ng that struck at No 11, a spectator **C1**

ERS LOSE: The Dodgers for three runs in the eighth, Brett Butler led off the ninth single and stole second but randed there in a 5-4 loss to ns **C1**

HIS FORM: Chuck Finley, to become the American e's first 11-game winner,

U.S. OPEN

JIM MURRAY

The Memories Won't Be Good

CHASKA, Minn.—A U.S. Open is remembered for many things—Tom Watson chipping in out of knee-high rough at Pebble in 1982, Hogan grimly stalking his field to an Open scoring record at Riviera in '48, Palmer scattering his field with a wild 65 at Cherry Hills in '60, Venturi staggering his way through the heat at Congressional in '64 to drop his club at 18 and whisper "My God! I've won the Open!" while doctors rushed to his side.

A "disaster" is a double bogey at 18, a ball in the water at 12, a four-putt at 16. A "tragedy" is Sam Snead's blowup at Spring Mill in '39, Palmer throwing away seven shots in the last nine holes at Olympic in '66, Hogan snap-hooking his fifth Open championship in the rough at Olympic in '55.

Well, this Open will be remembered not for hyperbolic locker-room-definition tragedy but for a real tragedy—an electrocution on No. 11, a collapsing grandstand behind the ninth green, five people felled by lightning and possible future infirmities the doctors can only guess at.

This has been a star-crossed tournament from the

Please see MURRAY, C11

Reuters

Co-leader Scott Simpson shot 72 Saturday.

Leaders

Player	Score
Scott Simpson	70-68 72—210
Payne Stewart	67 70-73—210
Nick Price	74 69 71—214
Scott Hoch	69 71-74—214
Brian Kamm	69-73-73—215
Fred Couples	70 70 75—215
Nolan Henke	67-71-77—215
Hale Irwin	71-75 70—216
Rick Fehr	74 69-73—216
Craig Parry	70-73-73—216
Sandy Lyle	72-70-74—216

Bye-Bye Birdies as an Ill Wind Hits Hazeltine

■ **Golf:** Stewart, Simpson are four shots ahead of the field. Only two break par and Irwin's 70 is low score of the day.

By MAL FLORENCE
TIMES STAFF WRITER

CHASKA, Minn.—Payne Stewart said that the Hazeltine National Golf Club showed all of its teeth Saturday in the third round of the U.S. Open.

Stewart was referring to the wind, which was gusting from 15 to 25 m.p.h. and testing all of the field.

Stewart, who led by one shot after 36 holes, emerged from the wind tunnel tied for the lead with Scott Simpson, the former USC standout.

It is four strokes back to Nick Price and Scott Hoch as Corey Pavin and Nolan Henke, who were only one shot behind Stewart after Friday's round, were blown away.

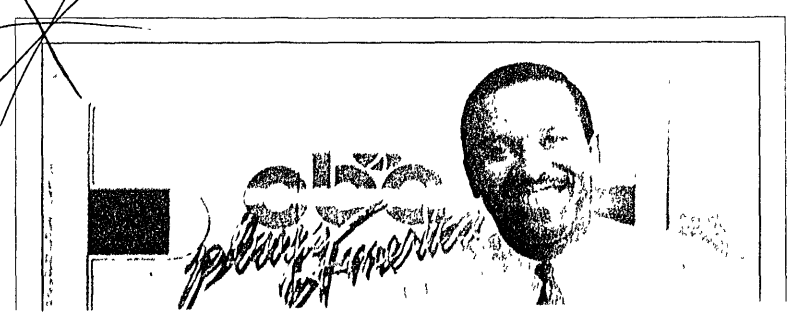
Stewart shot a one-over-par 73, and Simpson had a round of par-72 for a 54-hole total of 210, six under.

Only two players in the field of 65 had sub-par rounds.

Please see OPEN, C10

Laugher No Joke to Finley

■ **Angels:** He gives up six hits and seven runs in two-thirds of an inning as



Martinez Runs Out of Runs

■ **Dodgers:** Pitcher doesn't get his usual support and tally comes

...ıne National Golf
...ıd Scott Hoch and
...our strokes **C1**

...: No matter what
...st of the way, the
...n is going to be
...r a real tragedy, the
... struck at No 11,
...or. **C1**

...OSE: The Dodgers
...e runs in the eighth,
...ler led off the ninth
...nd stole second but
...here in a 5-4 loss to

...RM: Chuck Finley,
...ome the American
... 11-game winner,
...s and seven runs in
... an inning as the
...Boston, 13-3. **C1**

...DIES: A.B. (Happy)
...o as commissioner
...ıte baseball in 1947,
C1

The U.S. doubles
...Leach and Jim Pugh
...n's Emilio Sanchez
...al to give the Ameri-
...mountable 3-0 lead
...ı into the semifinals
...ny, **C1**

...TORY: Terdema L.
...education to escape
...f Watts and later
...aw-office experience
...ent position as the
... of the Continental
...n. **C1**

...TACT: Carl Lewis'
...jump winning streak
... to an end, but he
...t 4¼ inches on his
... to beat Mike Powell
...ch. **C2**

...: Kid Akeem Anifo-
...collapsed in the ring
... 12-round decision to
...ıtamweight champion
...ga, was hospitalized in
...ion with a blood clot
...s

...ue

...Dodgers 4 **C1**
... Chicago 2
...co 4, Pittsburgh 0
..., Philadelphia 1
..., Houston 0
...Atlanta 0

...gue

...ıngels 3 **C1**
... Toronto 4
...3, Oakland 4 (1st)
...Milwaukee 3 (2nd)
...1, Cleveland 7
... 5, Chicago 3
...w York 3
...Detroit 2

Laugher No Joke to Finley

■ **Angels:** He gives up six hits and seven runs in two-thirds of an inning as the Red Sox coast to a 13-3 victory at Fenway.

By HELENE ELLIOTT
TIMES STAFF WRITER

BOSTON—He repeated the phrase, almost like a chant

"Baseball is a funny game," Chuck Finley said, over and over, but at no time was he smiling

Finley's attempt to become the first 11-game winner in the major leagues ended quickly Saturday as the Red Sox battered him for six hits and seven runs in two-thirds of an inning en route to a 13-3 victory Saturday at Fenway Park.

"I know I'm going to have one or two of these days a year, but I didn't think mine would be *this* bad," Finley (10-3) said after the briefest start he ever has had without an injury He left after two-thirds of an inning at Kansas City on Aug 21, 1989, because of a toe injury he had suffered while warming up

"I'm healthy and everything I just made bad pitches," Finley said. "What I feel bad about is putting our team in a hole like that. It's tough enough to win on the road as it is "

Winning anywhere has become tough for the Angels, who have lost three consecutive games and six of eight to fall 3½ games behind the Oakland Athletics

The Red Sox, whose seven-run seventh inning Friday was the most productive by an opponent, duplicated that in the first inning Saturday Their 16 hits equaled the most given up by the Angels

Please see ANGELS, C6

Associated Press

Terdema Ussery, new commissioner of the Continental Basketball Assn , in his Denver office.

A Quick Study in Success

After a Brilliant Academic Career, Watts' Terdema Ussery Becomes Head of CBA

By MIKE DOWNEY
TIMES STAFF WRITER

Terdema L Ussery II—they call him "T"—went hunting for the man who shot his father He had no idea what he would do if he found him His law degree from California couldn't help him now Nor his undergraduate degree from Princeton Nor his master's degree from Harvard No, this was strictly street stuff This was one part of his Watts background that T couldn't shake Somebody gets you, you get them

The cops had closed the case Said there was nothing more they could do Said bad things happened in bad neighborhoods Suggested T pry his father out of there, move him someplace else

But nothing doing Neighbors and friends had depended on the little Country Farms grocery for so long The store meant the world to T's father That's why he saved up every penny he could until he could buy the place, go into business for

Please see USSERY, C16

Martin Runs C of Run

■ **Dodgers:** Pitcher doesn't get his usual support and rally c up short against the Cardinals, 5-4.

By ALAN DROOZ
TIMES STAFF WRITER

Ramon Martinez, wh to a surplus of runs pitches, didn't get quit Saturday night as the lost to the St. Louis C 5-4

The Dodgers average in Martinez's starts, were below average fo the game Saturday who was bidding to be National League's first winner and had never l Cardinals, opened the striking out the first t ters

But he left after seve on the short end of a and took the loss to fall victim of rare lack of the Dodgers left nine me and left the bases loade and some timely Cardina

"I feel good, I had g today," Martinez said. keep 'em close, we ha opportunities to get so and didn't score."

In fact, Martinez the only Dodger b fifth-inning grou used the Dodgers fin 01 wit home crowd o eighth-inning the Do

Trailing St Louis re jumped on with, sending ers in the late and pull men to But Lee Smi within his 15th save, le the w

lease see DODGE

Chandler, 92, Dies; Aided Integration

■ **Baseball:** As commissioner in 1947, he stood up to owners and allowed Robinson to become major league's first black player.

From Times Wire Services

VERSAILLES, Ky —A B (Happy) Chandler, former governor of Kentucky, U S senator and the baseball commissioner who helped end segregation in the sport, died Saturday at 92

"Happy was somebody I loved like my own father," said another former commissioner, Bowie Kuhn "He was as fine and memorable a person as the game ever produced

Leach, ugh Mal It a wrap for U.

■ **Davi up:** Doubles victory gives Ame ans an insurmountable 3-0 lead Sp , setting up semifinal with Germa

TIM KAWAKAMI
TIMES STAFF WRITER

NEWPORT, R I —Pete Sampras, Andre Ag Courier and Michael Chang were right, even if th exactly endear themselves to the cause of Americ in the process The United States didn't need the Spain in the Davis Cup quarterfinals

While the new American hit-makers declin tions to play Davis Cup and instead spent the

The Day in Sports

ORTSTATS

What's in a Name

ormer nicknames of the
oston Red Sox

Boston Americans
Boston Puritans
Boston Pilgrims
Boston Plymouth Rocks
Boston Speed Boys

e Red Sox became their nickname in 1907

ource. The Dickson Baseball Dictionary

Los Angeles Times

SEBALL

MATEUR DRAFT

nd and Other Selected West Coast Choices Listed Alphabetically

NTA -Jason Cash (Newbury Park HS) ayne Fowler (CS Long Beach) rhp Hendricks (Taft HS) of Mike Kelly St) of Javier Rivas (LACC) of TIMORE Glenn Coleman (College of ert) of Shawn Curran (Corona HS) c uson (La Serna HS) inf, Steve Finsch ont College), rhp Joel Franklin (Corona hp Mark Smith (USC) of Troy Tallman l) c

TON -Joe Caruso (Loyola Marymount) Ciccarella (Loyola Marymount) 1b atteberg (Washington St) c Donny oway HS) of Cesar Martinez (Chula) lhp Aaron Sele (Washington St)

AGO CUBS -Jonathan Cornelius Oak HS) of, Sean Drinkwater (Cypress inf Rudy Gomez (Cal Baptist) inf oneyham (Mammoth HS) inf Michael Arizona St) of Mitchell Root (Chats) inf David Skeels (Thousand Oaks e Szczepanski (Cal Baptist) lhp Steve CS Long Beach) rhp, Hector Trinidad S) rhp Scott Weiss (Stanford) rhp AGO WHITE SOX Brian Boehringer Las Vegas) rhp Mike Call (Washing Matt Haltabaugh (CS Fullerton) c ertson (USC) of

INNATI Isaac Burton (Washington Scott Dodd (Arizona St) lhp Mike (California) c Damon Montgomery HS) of Darrell Reed (Katella HS) rhp tle (Santa Clara) rhp

ELAND -Scott Sharts (CS Nor 1b rhp Robert Sherwood (Burbank HS) c Gary Tatterson (Arizona St) y Vigo (CS Northridge) inf

OIT -Tarik Brock (Hawthorne HS) of lonson (Norte Vista HS) rhp Thomas Mission College) of Robert Hughes llege) c Wardell Marine (Moorpark c Enrique Martinez (College of the f Toby McFarland (Riverside CC) lhp ul (Rolling Hills HS) inf Clarke Rea t) c John Reid (Stanford) rhp Mark yola Marymount) of

TON Jamine Adams (Riverside CC) opher Briones (Brea HS) c Craig s (Victor Valley HS) lhp James Davis CC) inf Marlon Gardinera (Mission f Brian Holliday (San Diego St) rhp son (Mater Dei HS) rhp Michael ancock College) rhp Matthew Maffei ills HS) c 1b, Alfonso Montoya (San of James Mouton (St Mary s) of rphy (USIU) c Donald Olsen (Fuller Tony Pruett (El Camino College) Reed (El Capitan HS) lhp Joe Irvine) rhp Donald Smith (Orange ge) rhp David Verara (Westminster Kevin Webb (California) inf Bryant Irvine) 1b

S CITY Troy Babbitt (Cypress Col Michael Bovee (San Diego Mira Mesa had Bumgarner (Palm Desert HS) anillo (Southwestern College) lhp idler (Burbank HS) lhp Mike Fyhrie Trenton Hauswirth (College of the Angel Macias (East LA College) rhp tchell (Rio Mesa HS) 1b Edgar Orta HS) lhp James Reinecker (North lp Paul Sanders (Oregon St) c Jeff gon St) rhp Brian Teeters (Bakers e) of Rodney Williams (Palmdale

UKEE -Paul Arredondo (Colton HS), illo (USC), inf, Anthony Garciaparra asco HS), inf Robert Gorrell (Arizona yrone Hill (Yucaipa HS) lhp Bobby gton HS) of Scott Morgan (Lompoc arles Olaughlin (Southwestern Col

Ferguson (San Diego) rhp Marlin Hamilton (LB Jordan HS) 1b Brett Jenkins (USC) inf Jason Myers (Fontana HS) lhp Douglas O Neill (Cal Poly SLO) of Eduardo Payan (Fairfax HS) inf Jeff Sommer (Moorpark College) 1b Brian Sosa (Yucaipa HS) inf Jon Valenti (Bakersfield Highland HS) inf Jason Vanheerde (Eisenhower HS) c Eric White (Mt San Antonio College) inf Shawn Wills (UCLA) of Scott Wolfing (Riverside Poly HS) inf

NEW YORK METS Randall Curtis (Riverside CC) of Armando Fernandez (Hawthorne HS) of Jeffery Henderson (Golden West College) rhp Erik Hiljus (Canyon Country Canyon HS) rhp Mark Wiof (San Marcos HS) of

NEW YORK YANKEES Steve Anderson (San Jose St) inf Dennis Burbank (Oklahoma St) rhp Andy Croghan (CS Long Beach) rhp Marco Contreras (Citrus College) rhp Michael Cutler (Orange Coast College) rhp Adalberto Martinez (Chula Vista Mar on HS) 1b c Michael Muncy (Camarillo HS) inf Rex Pritchard (Whittier Christian HS) inf John Quintell (Cal State) c David Renteria (Riverside CC) inf Martin Winchester (Long Beach CC) 1b

OAKLAND Jim Bonds (UCLA) rhp Frank Campbell (Pasadena CC) 1b of Brent Cookson (CS Long Beach) of Timothy Doyle (CS Los Angeles) lhp Todd Ingram (Arizona) rhp Jeff Light (Stanford) c Damon Mashore (Arizona) of Leland McMeen (San Diego Mira Mesa HS) of Thomas Myers (California) lhp Michael Rossiter (Burbank Burroughs HS) rhp Dane Walker (Portland St) c Joel Wolfe (UCLA) of Jason Wood (Fresno St) inf

PHILADELPHIA Steven Afenir (Palomar College) c Brent Bell (St John Bosco HS) inf Aaron Edwards (Ontario HS) of Alex Laguena (Hawthorne HS) c Phillip Geisler (Portland) 1b James Gwaltney (Rancho Santiago College) lhp Alan Heobert (Alta Loma HS) rhp Don Hill (Westlake HS) rhp Wayne Johnson (Compton College) of Nathan LaDuke (Arizona St) of John Lockett (LB Jordan HS) of Andrew Martin (The Masters) inf Marlon McKinney (LA Poly HS) inf Andrew Sallee (Claremont Mudd) 1b Kevin Stocker (Washington) inf Ed and Thompkins (Eisenhower HS) of David Tokheim (UCLA) of John Whisonant (USIU) lhp Jerry Whittaker (LB Poly HS) of

PITTSBURGH Obrien Cunningham (Lancaster HS) of Colin Hinds (Hamilton HS) of Jacob Payne (Don Lugo HS) c

ST LOUIS Mike Busby (Banning HS) rhp Curt Callicot (Riverside CC) inf Steve Cenn (Nevada Las Vegas) c Dan Cholowsky (California) inf Darrel Deak (Loyola Marymount) inf Tim DeGrasse (UC Santa Barbara) rhp Antoine Henry (Claremont HS) of Jason Hisey (Arizona) rhp Scott Lonebaker (UC Santa Barbara) rhp Thomas McKinnon (LB Jordan HS) rhp Eric Medovilla (Loyola Marymount) of Jeffrey Twist (Bakersfield Highland HS) c

SAN DIEGO Jiles Garcia (San Bernardino College) of Jarold Rountree (UC Santa Barbara) of Derek Valenzuela (St John Bosco HS) c Derek Vanant (Santa Monica College) of Anthony Williamson (Torrance HS) inf

SAN FRANCISCO Kenneth Frost (Portland St) of Gee Craig (Fontana HS) rhp Kenneth Henderson (San Jose St) of Nee Nagera (Cypress College) lhp Charles Poyer (Atascadero HS) rhp David Rosato (South Torrance HS) inf Darvin Traylor (Riverside CC) of Douglas VanderWeele (Nevada Las Vegas) rhp Thurman Williams (Chatsworth HS) of Darren Wittcke (Portland St) rhp

SEATTLE Tommy Adams (Arizona St) of Todd Cady (Grossmont HS) c Craig Clayton (CS Northridge) of Damian Cox (Victor Valley HS) of Toby Foreman (St Mary s) lhp Charles Gipson (Loara HS) of Erik O Donnell (Portland) rhp Sean Rees (Arizona St) lhp Raul Rodarte (Rancho Santiago College) inf Federico Warner (Oceanside HS) of

AUTO RACING

CART INDY CARS
Detroit Grand Prix
At Detroit
Today s Starting Lineup

1 Michael Andretti (Nazareth Pa) Lola Chevy 88 721 m p h 2 Emerson Fittipaldi (Brazil) Penske Chevy 87 874 3 Rick Mears (Bakersfield) Penske Chevy 87 451 4 Arie Luyendyk (Netherlands) Lola Chevy 87 381 5 Mario Andretti (Nazareth Pa) Lola Chevy 87 134 6 Scott Pruett (Dublin Ohio) Truesports Judd 86 712 7 Bobby Rahal (Dublin Ohio) Lola Chevy 86 658 8 John Andretti (Indianapolis) Lola Chevy 86 568 9 Eddie Cheever (Aspen Colo) Lola Chevy 86 499 10 Al Unser Jr (Albuquerque N M) Lola Chevy 86 347 11 Scott Brayton (Coldwater Mich) Lola Chevy 85 877 12 Scott Goodyear (Canada) Lola Judd 85 767 13 Danny Sullivan (Aspen Colo) Lola Alfa Romeo 85 279

14 Roberto Guerrero (San Juan Capistrano) Lola Buick 81 954 15 Mike Groff (Northridge) Lola Cosworth 81 625 16 Jeff Andretti (Nazareth Pa) Lola Cosworth 81 521 17 Tony Bettenhausen (Indianapolis) Lola Chevy 84 374 18 Hiro Matsushita (Japan) Lola Cosworth 83 964 19 A J Foyt (Houston) Lola Chevy 83 611 20 Buddy Lazier (Vail Colo) Lola Cosworth 83 133 21 Willy T Ribbs (San Jose) Lola Cosworth 83 410 22 Dennis Vitolo (Ft Lauderdale Fla) Lola Cosworth 83 349 23 Guido Dacco (Italy) Lola Cosworth 82 118 24 Didier Theys (Belgium) Lola Cosworth 82 037 25 Jeff Wood (Wichita Kan) Lola Buick 80 744 26 Ted Prappas (Los Angeles) Lola Judd 80 714

SPORTS CARS
Trans Am Series
At Detroit

1 Scott Sharp (East Norwalk Conn) Camaro 40 laps 2 Greg Pickett (Alamo Calif) Camaro 40 3 Paul Gentilozzi (Lansing Mich) Olds 40 4 George Robinson (Houston) Camaro 40 5 Ron Fellows (Canada) Mustang 40 Others included -17 Tom Gloy (Carmel Calif) Camaro 37 19 Steve Saleen (Anaheim) Ford 33 21 Dan Brassfield (Los Gates Calif) Olds 24 26 Les Lindley (Anaheim) Camaro 11 31 Bob Patch (La Verne) Corvette 2

Winner s speed 67 241 m p h Time 1 2 1 13 83 Margin of victory 5 051 seconds

IMSA GTO GTU Series
At New Orleans

1 Price Cobb (Evergreen Colo) Mazda RX7 37 laps 2 Steve Millen (Irvine) Nissan 300ZX turbo 37 3 Pete Halsmer (Anaheim) Mazda RX 7 37 4 Jeremy Dale (Canada) Nissan 300ZX turbo 37 5 David Loring (State College Pa) Nissan 240SX 36 (GTU winner) Others included 11 Robby Gordon (Orange) Ford 36 13 Don Reynolds (San Marcos Calif) Nissan 240SX 35

Winner s speed 55 317 m p h

FORMULA ONE
Grand Prix Of Mexico
At Mexico City
Final Qualifying Leaders

1 Riccardo Patrese (Italy) Williams 123 911 m p h 2 Nigel Mansell (Britain) Williams 123 172 3 Ayrton Senna (Brazil) McLaren 127 936 4 Jean Alesi (France) Ferrari 126 579 5 Gerhard Berger (Austria) McLaren 126 535 6 Nelson Piquet (Brazil) Benetton 126 516 7 Alain Prost (France) Ferrari 126 492 8 Stefano Modena (Italy) Tyrrell 123 376 9 Roberto Moreno (Brazil) Benetton 122 336 10 Olivier Grouillard (France) Fondmetal 121 246

STOCK CARS
At Ventura Raceway

STREET MAIN (20 laps) 1 Paul Moore (Oxnard) 2 Dave Home (Ventura) 3 Jim Fraser (Port Hueneme) 4 Harley Barrett (Camarillo)

MIDGETS (20 laps) 1 Steve Ross (Fillmore) 2 Gary Swenson (Ventura) 3 Richard Webster (Camarillo) 4 Jeff Drake (Santa Paula)

Attendance 1 673

At Orange Show Speedway

STREET MAIN (35 laps) 1 Mike Miller (Barstow) 2 Ron Sims Jr (San Bernardino) 3 Wade Hosler (Hesperia) 4 Mike Meyer (Highland) 5 Torrence Brown (Etiwanda)

MODIFIED PONY MAIN (35 laps) 1 Mark Wright (Joshua Tree) 2 Chuck Becker II (San Bernardino) 3 Bill Cottrell (Highland)

PONY MAIN (35 laps) 1 Rob Hornsby (Rialto) 2 Ron Miranda (Moreno Valley) 3 Michael Clough (Rialto)

Attendance 3 319

USSERY

Continued from C1

himself, be the boss

This was the store where young T got the news that he had been accepted by Princeton, hopped atop the liquor counter and screamed This was the store where he would return from an exclusive Ojai boarding school with his lacrosse stick over his shoulder, bringing him a razzing from everybody on the block This was the store caught amid the summer of '65 Watts riots, when all a 6-year-old understood was that having fire and gunfire and National Guardsmen around sure did seem like a lot of fun, like something out of a Hollywood movie

There were nothing but fond memories inside that corner market until the day some crumb strolled in and put one in T's dad

So he set out to find the guy, got people to point him out, although they couldn't be positive he was the one T searched everywhere Couldn't find him anywhere Put aside the starched white dress shirt and power necktie and briefcase that had become standard equipment in the 39th-story office where he practiced L A law

"What would I have done if I had found the guy?" he asks, four years later, formal executive attire back in place, lunching in Sherman Oaks, now one of the ranking black executives in professional sports "I don't know I truly don't know

"Nothing good "

□

A tornado was brewing in Texas, and hundreds of local basketball lovers were huddled outside the locked doors of D L Ligon Coliseum, looking off in the distance at darkening skies It was the last week of April and they were waiting to be let inside for a game between their hometown Wichita Falls Texans and the visiting Quad City Thunder from faraway Rock Island, Ill, for the championship of the Continental Basketball Assn, the NBA's minor league

Terdema L Ussery II took one look at the situation upon arriving and sought out a security guard

"Unlock the doors," he said "There's a tornado coming "

"Who are you?" the guard asked

"He's the commissioner," one of T's aides said

At 32, Ussery is a take-charge kind of guy who has taken charge His future seems unlimited Educated, eloquent, law-degreed, distinguished no telling how far he might go Yet the last thing he expected was to have a future in sports

His specialty in the Los Angeles office of the San Francisco-based firm of Morrison & Foerster was corporate and entertainment law The only reason he connected with the basketball league was that the CBA commissioner who preceded him was a fellow member of a constitutional rights foundation

Sports? What did T Ussery know of sports? Oh, sure, guys he knew from the neighborhood—David Greenwood, Darrin Nelson, Roy Hamilton—had been great jocks And his dad occasionally took him to

Los Angeles Times

Ussery's father poses in front of his grocery store, where he was shot four years ago

'I'm not daunted by the prospect of hard work. Nothing I do from now on could be any harder than telling my father I was giving up my law practice to run a basketball league.'

TERDEMA USSERY
CBA Commissioner

that the family that owned the corner store where T's father worked had decided to sell out, and T's father and a partner had put together a bid to become the owners It was from it Yet by the time the commissioner' job itself came his way, even T couldn't hel thinking how few of these opportunitie were afforded minorities, how "it was alway that they couldn't find qualified people, o that those people didn't have any experi ence " The last thing Ussery had in mind wa to become some kind of pioneer

On April Fools' Day of this year, howeve Kaze stepped down as commissioner, and th league's board of directors had an immediat need for a new one Ussery was asked t serve as acting commissioner, and agree Ten days later, he presided over a speciall convened owners' meeting in Chicago Th subject of a commissioner was broached, an the owners wanted to discuss it privatel They asked Ussery to leave the room

DODGERS SCHEDULE

JUNE

SUN	MON	TUE	WED	THUR	FRI	SAT
16 STL 1 05	17 CHI 7 35	18 C CHI 7 35	19 C CHI 7 35	20 PITT 7 35	21 C PITT 7 35	22 PITT 12 15
23 PITT 1 05	24	25 C SF 7 35	26 C SF 7 35	27	28 T ATL 4 10	29 T ATL 4 10
30 ATL 5 05						

JULY

SUN	MON	TUE	WED	THUR	FRI	SAT
	1	2 T SD 7 05	3 SD 7 05	4 T SD 7 05	5 ATL 7 35	6 ATL 7 05
7 ATL 1 05	8	9 All Star Game/Tor	10	11 MTL 4 35	12 MTL 4 35	13 MTL 4 35
14 MTL 10 35	15 PHIL 4 35	16 PHIL 4 35	17 PHIL 9 35	18 T NY 4 40	19 T NY 4 40	20 NY 10 15
21 T NY 10 10	22	23 C PHIL 7 35	24 PHIL 7 35	25 C PHIL 7 35	26 C MTL 7 35	27 MTL 7 05
28 MTL 1 05	29 C NY 7 35	30 C NY 7 35	31 NY 7 35			

T Televised game, TV—KTTV Channel 11
C Cable Televised game, SportsChannel

ANGELS SCHEDULE

JUNE

SUN	MON	TUE	WED	THUR	FRI	SAT
16 T BOS 10 05	17 T BOS 4 35	18 T MIL 5 05	19 MIL 11 35	20 T DET 4 35	21 T DET 1 35	22 T DET 4 35
23 DET 5 05	24 T KC 5 35	25 T KC 5 35	26 KC 5 35	27	28 C TEX 7 35	29 TEX 7 05
30 TEX 1 05						

JULY

SUN	MON	TUE	WED	THUR	FRI	SAT
	1 TEX 7 35	2 C KC 7 35	3 C KC 7 35	4 KC 6 00	5 T TEX 5 35	6 T TEX 5 35
7 TEX 5 05	8	9 All Star Game/Tor	10	11 C NY 7 35	12 T NY 7 35	13 NY 7 05
14 NY 1 05	15 BAL 7:35	16 C BAL 7 35	17	18 C CLE 7 35	19 C CLE 7 35	20 CLE 7 05
21 CLE 1 05	22	23 T BAL 4 35	24 BAL 4 35	25 T BAL 4 35	26 T NY 4 30	27 T NY 11 00
28 T NY 10 30	29 T CLE 4 35	30 T CLE 4 35	31 DET 4 35			

T Televised game, TV—KTLA Channel 5
C Cable Televised game, SportsChannel

PONY MAIN (25 Laps) 1 Rob Hornsby (Bridal) 2 Ron Mendell (Moreno Valley) 3 Marriott Gaugh (Rialto)
Attendance 3,319

1991 CART SCHEDULE

JUNE 16 Detroit 23 Portland Ore
JULY 7 Cleveland 14 East Rutherford N J 21 Toronto
AUGUST 4 Michigan Mich 25 Denver
SEPTEMBER 1 Vancouver Canada 15 Loudon (Nhi) 22 Elkhart Lake Wis
OCTOBER 6 Nazareth Pa 20 Atlanta Ga

1991 NASCAR SCHEDULE

Winston Cup Series

JUNE 16 Pocono 500 Pocono Intern a tional Raceway Long Pond Pa 23 Mello Yello 500 Michigan International Speedway Brooklyn Mich

JULY 7 Pepsi 400 Daytona International Speedway Daytona Beach Fla 21 Miller 500 Pocono International Speedway Long Pond Pa 28 Diet Pepsi 400 Daytona International Speedway Daytona Beach Fla

AUG 11 Budweiser at the Glen Watkins Glen International Watkins Glen N Y Aug 18 Champion Spark Plug 400 Michigan International Speedway Brooklyn Mich 31 Budweiser 400 Bristol International Raceway Bristol Tenn

SEPT 1 Heinz Southern 500 Darlington International Raceway Darlington S C 8 Miller Genuine Draft 400 Richmond International Raceway Richmond Va 15 Peak Antifreeze 500 Dover Downs International Speedway Dover Del 22 Goody's 500 Martinsville Speedway Martinsville Va 29 Tyson Holly Farms 400 North Wilkesboro Speedway North Wilkesboro N C

OCT 6 Mello Yello 500 Charlotte Motor Speedway Concord N C 20 AC Delco 500 North Carolina Motor Speedway Rockingham N C

NOV 3 Checker 500 Phoenix International Raceway Phoenix Ariz 17 Atlanta Journal 500 Atlanta Motor Speedway Hampton Ga

Busch Grand National Series

JUNE 22 Budweiser 200 Myrtle Beach S C 29 Watkins Glen 150 Watkins Glen N Y

JULY 7 Oxford 250 Oxford Me 11 Budweiser 400 Loudon N H 20 Coors 200 South Boston Va 27 Pepsi 200 Dublin Va

AUG 3 Kroger NASCAR 200 Indianapolis 10 Ferris Pete's Sauces 300 Rougemont N C 23 Budweiser 250 Bristol Tenn 31 Grandville 200 Darlington S C

SEPT 7 Autolite Platinum 200 Richmond Va 14 Splitfire Spark Plugs 200 Dover Del

OCT 5 All Pro Auto Parts 300 Charlotte N C 13 Chevy Dealers of New England 250 Loudon N H 19 AC Delco 200 Rockingham N C 27 Winston Classic Martinsville Va

NASCAR LEADERS

Through June 9

POINTS

1	Dale Earnhardt	1 862
2	Ricky Rudd	1 809
3	Ken Schrader	1 663
4	Darrell Waltrip	1 662
5	Ernie Irvan	1 651
6	Davey Allison	1 637
7	Harry Gant	1,607
8	Richard Waltrip	1 517
9	Mark Martin	1 515
10	Rusty Wallace	1 492

MONEY

1	Davey Allison	$767 890
2	Dale Earnhardt	621 335
3	Ernie Irvan	476 930
4	Ken Schrader	470 110
5	Ricky Rudd	388 105
6	Harry Gant	316 980
7	Mark Martin	306 605
8	Darrell Waltrip	289 615
9	Kyle Petty	287 840
10	Stephen Martin	271 635

CART LEADERS

Through June 9

POINTS

1	Bobby Rahal	60
2	Rick Mears	58
3	Michael Andretti	52
4	Arie Luyendyk	49
5	John Andretti	48
6	Al Unser Jr	42
7	Danny Sullivan	33
8	Robby Gordon	25
8	Mario Andretti	24
10	Emerson Fittipaldi	21
10	Scott Brayton	21

MONEY

1	Rick Mears	$1 433 971
1	Michael Andretti	772 871
3	Arie Luyendyk	497 721
4	Bobby Rahal	447 886
5	Al Unser Jr	431 211
6	John Andretti	390 028
7	Danny Sullivan	359 303
8	Scott Brayton	320 961
9	Mario Andretti	316 736
10	Emerson Fittipaldi	300 186

neighborhood—David Greenwood, Darrin Nelson, Roy Hamilton—had been great jocks And his dad occasionally took him to UCLA to see Henry Bibby play basketball, or to USC to see the Juice run with the football, and even once to Anaheim because Reggie Smith was in town When T was a kid, everybody on his block partied into the night on the day Reggie Smith was called up by the Boston Red Sox, and he can still recall Reggie bringing him an autographed bat

But sports? As a career?

"I hate to admit this," T says, laughing, "but if my brothers knew my time in the 40-meter dash, some of them wouldn't speak to me"

Ussery is being somewhat modest, which is another of his many assets He did compete in athletics at the Thacher boarding school in Ojai—including, yes, lacrosse At Princeton later, he was a walk-on on the football squad But he was always more comfortable with a law book than a playbook

At Berkeley, he became executive editor of the California Law Review, and also extended under state Supreme Court Justice Allen E Broussard At Princeton, he earned an undergraduate degree from the Woodrow Wilson School of Public and International Affairs in 1981, graduating with departmental honors At Harvard, he received his master's from the John F Kennedy School of Government in 1984 He was no jock

One day, T was a precocious kid from a poor side of town, attending the Willowbrook school, fooling around with a trumpet and drums, hanging around after school at the corner store where his father clerked, attending the First Church of God in Inglewood and wondering what high school would be like

Next day, he heard about this private school in Ojai that sounded like paradise He knew he had the brains to get in and get by He just didn't know if he had what else it would take

"We checked it out, and tuition was $4,000," Ussery recalls "My father said, 'Well, that's that I'm sorry, but that is no option'"

T was not discouraged He applied anyway

Not long thereafter, he found his father, as always, at the store T had heard back from the boarding school

"Full scholarship," he said

It was like Reggie being called up to the majors That autumn, T packed his bag and took the two-hour ride to Ojai

It would be six weeks before he would return home for a visit, at which time he told his mother, Jean, and his father all about the place How there were 223 students—six of them black How there were 223 students—none of them female How the majority of students were wealthy How some of them looked at him as though he had just dropped in from Mars How part of every student's day involved taking care of his *horse*

"Sometimes, I had this fantasy I would ride my horse into Watts with my lacrosse stick over my shoulder Ask everybody over for a cup of tea Say 'How do you do? I am Terdema L Ussery, Esquire.' Quite the country squire"

Back home, meantime, the big news was where T's father worked had decided to sell out, and T's father and a partner had put together a bid to become the owners It was hardly a supermarket, hardly big business But it was *the* business, the operation his dad knew like the back of his hand the place where, when nearly anybody stopped up to the cash register, his father could call him or her by name

Nearly anybody

CI

"Yakima?"

Bob Wilson had bought the Topeka Sizzlers and wanted to move them to Yakima

"Yakima?" Terdema Ussery remembers thinking at the time "I know Topeka isn't exactly New York City, but why would anybody want to move anything to Yakima?"

He soon found out Bob Wilson knew what he was doing Wilson, too, wasn't figuring on a career in minor league professional basketball back when he was practicing law in California, getting his degree in social sciences from Cal Poly San Luis Obispo, teaching the educationally handicapped or being elected to the California State Assembly and State Senate But Yakima Wash., was a super place, he convinced the new deputy commissioner, for a CBA team to play ball

"One of the most pleasant surprises since I became commissioner of this league has been discovering Yakima," Ussery says "They've got about 89,000 people up there, and about 79,000 of them support the Yakima Sun Kings"

No, it is not the NBA, not by a long shot Nobody has to remind Ussery of that What the CBA is, or at least how the commissioner now thinks of it, is "the second-best basketball league in the world," superior, in many minds, to the best of the European leagues, where some American collegiate stars choose to go

Ussery wishes to remind them that it was the CBA that ushered Terry Teagle, Kevin Gamble, Tony Campbell, Michael Adams, Michael Williams, Craig Ehlo, Mario Elie, Rod Higgins and so many others into the NBA, that Phil Jackson went from five years of coaching the Albany Patroons to coaching the NBA champion Chicago Bulls

OK, so no movie stars make advertisements saying "CBA action! It's fantastic!" There is still some excellent basketball being played there And, there is definite opportunity for advancement

After Irv Kaze, the commissioner, had encountered Terdema Ussery II at one of their meetings of the constitutional rights foundation, he asked him to explore the possibility of becoming the CBA's deputy commissioner and general legal counsel

Curiosity overwhelmed Ussery T's law partners were understanding about his decision, but he doubted they understood, since he barely did himself The pay was less The league's headquarters were in Denver His wife, Debra, and infant son, Terdema III, would have to move to Colorado, where they knew nobody And for what? For a minor basketball league?

Every cell of Ussery's brain and fiber of his body rejected the notion as frivolous, and fought to keep a racial element far removed

the owners wanted to discuss it p
They asked Ussery to leave the room

Ben Fernandez, one of the owner
Albany franchise, brought him back

"T, if you'll take it, I'd be p
introduce you as the new commiss
the CBA," Fernandez said

Whereupon everyone in the room
gave Ussery an ovation

Accolades came his way immedia
Magazine proclaimed Ussery "the
ranking Black in professional spor
quaintances came by to tease T that
just the first step, that someday h
succeed David Stern as *NBA* comm
that the sky was the limit He simply
that off and wondered if within a ye
he would be back where he felt
home, making multimillion-dollar re
deals

The workload wouldn't be easy
were squabbles with European leag
contractual arrangements to sett
CBA's agreement with the NBA wo
to be updated soon San Jose's franc
moving to Bakersfield, and the te
Pensacola, Fla., was packing up for I
ham, Ala The league needed continu
TV networks had to be convinc
basketball teams representing Ceda
or Omaha or Oklahoma City or Gran
could provide entertainment

"I'm not daunted by the prospect
work," Ussery says "Nothing I do f
on could be any harder than tel
father I was giving up my law practi
a basketball league"

At 60, his father was having a t
enough time dealing with the men
holdup man brandishing a weapon a
even though he had offered no re
There were months afterward in the
when his father's whole personality
when T saw his enthusiasm wane,
became so withdrawn that he scar
attention when his son pleaded wit
sell the store

He wouldn't Customers counted
store for their daily bread

"He decided to be John Wayne ab
said "That store was his fort and no
going to force him out of there"

Some people strive to get out of
hood, some cling to familiar gro
never know who is going to move up
There was this tall, skinny kid wh
sit in front of the Usserys at First C
God After leaving for school, T d
him for a while Later—much later—
at church, the kid was sitting in fro
only T could no longer see over
head

"Who is that?" he asked

"You don't know him?" his fat
"Elden Campbell He plays for the L

Now that basketball players of all
sizes are coming up to him to con
him on his recent promotion, Ter
Ussery II, a name to remembe
remember to remember their names

"After all, I'm in basketball now,"
laughing again "Which is probably
disappointment to my dad, who
expecting me to become Presider
United States."

CS

ID # 248540 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Gail Ratliff

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

Subject: Civil Rights Act of 1991 - REVISED DRAFT S.A.P.

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

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CMOFC	ORIGINATOR	91 05 31		C	91 06 03 CS
	Referral Note:				CS
CMATIO	A	91 05 31	[redacted]	C	91 06 03
	Referral Note:	Jun 3 91 NL Fax to Ratliff			
	_	1 1		_	1 1
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				

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- C - Comment/Recommendation
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- F - Furnish Fact Sheet to be used as Enclosure
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- R - Direct Reply w/Copy
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- A - Answered
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Comments: Recommendation in document CS

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5/81

Clearance

LRM #I-705

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

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

6-3-91 (Date)

FROM: NELSON LUND (Name)
WHITE HOUSE COUNSEL (Agency)
456-2896 (Telephone)

SUBJECT: Revised Draft Statement of Administration Policy 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 _____

__X__ Other: CHANGES ARE MARKED ON THE ATTACHED HARD COPY -

05/31/91 13:16 OMB LRD/ESGG 002

LRM #I-705

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

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

FROM:
6-3-91 (Date)
Nelson Lund (Name)
White House Counsel (Agency)
456-2696 (Telephone)

SUBJECT: Revised Draft Statement of Administration Policy 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 _____
__X__ Other: Changes are marked on the attached hard copy —

TRANSMISSION REPORT

THIS DOCUMENT (REDUCED SAMPLE ABOVE)
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		TOTAL	0:02'58"	4	

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FACSIMILE TRANSMITTAL SHEET

TO: White House Counsel

FROM: G.RATLIFF

DELIVERY TIME: 31-MAY-1991 17:31:58

DELIVERY NODE: 1, 3M FaxXchange

SESSION: 1 - 9035

PAGES: 6 (including this page)

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

MAY 31 1991

LEGISLATIVE REFERRAL MEMORANDUM

PG 1 of 5

LRM #I-705

TO: Legislative Liaison Officer -

JUSTICE - Paul McNulty - 514-2061 - 217
LABOR - Robert A. Shapiro - 523-8201 - 330
EEOC - James C. Lafferty - 663-4900 - 213
SBA - Michael P. Forbes - 205-6702 - 315

SUBJECT: Revised Draft Statement of Administration Policy RE: HR 1, Civil Rights Act of 1991

NOTE: Floor action is expected on H.R. 1 on Tuesday, June 4 under a modified closed rule with "king-of-the-hill" consideration of three substitute bills.

DEADLINE: COB MAY 31 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.

Gerri J. Ratliff for

JAMES J. JUKES for
Assistant Director for
Legislative Reference

CC:
Nelson Lund
Bob Damus
Marianne McGettigan
Holly Williamson
Cora Beebe

May 31, 1991
(House)

H.R. 1 - Civil Rights and Women's Equity in Employment 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 Education and Labor Committee, the Towns-Schroeder substitute, or the Brooks-Fish substitute, 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.

By making it virtually impossible for an employer to prevail, ~~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

this paragraph should probably be deleted

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.

time-tested

Indeed, H.R. 1 is even worse than the bill vetoed last year. For instance, ~~H.R. 1~~ it 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.)

as reported

partial

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 Towns-Schroeder Substitute

The Towns-Schroeder substitute is similar in many respects to the Brooks-Fish substitute, but is even more objectionable. It would promote expensive and prolonged litigation by allowing unlimited awards of both compensatory and punitive damages in ~~cases of~~ intentional discrimination.

STET

The Administration's Proposal

STET

The Administration's proposal (the Michel substitute) 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.

The Brooks-Fish Substitute (by the President)

The Brooks-Fish substitute fails to address ~~the President's~~ concerns he expressed in vetoing similar legislation in the last Congress. The language in the amendment purporting to prohibit quotas would endorse racial preferences, not eliminate them. In addition, the proposed definition of business necessity would impose a significantly more onerous burden on employers than the standard contained in the Administration's bill. Moreover, the substitute does not cap compensatory damages in cases of intentional discrimination. Other amendments amount to only cosmetic changes which fall far short of rendering the substitute acceptable.

Griggs or

creates unlimited

and creates only a partial cap on punitive damages

this should come right after the discussion of H.R.1, I think

CS

R 6/21 5:40 p

ID # 249243 CU

H1010

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Evan Kemp

☐ **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	Completion Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/06/21		C CS	91/06/27
	Referral Note:				
CUATD	A	91/06/24		C CS	91/06/27
	Referral Note:				
CUGRAY	I	91/06/24		C CS	91/06/24
	Referral Note:				
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	Referral Note:				
	_	1 1		_	1 1
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Type of Response = Initials of Signer
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Comments: OPTIONS NOTED BY N. LUND 6/27/91 CS

Close out.

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06/21/1991 16:11 FROM OFFICE of the CHAIRMAN TO 94566279 P.01

OFFICE OF THE CHAIRMAN
WASHINGTON, D.C. 20507

TELECOPIER TRANSMITTAL SHEET

DATE: 6/21/91 TIME: 5:15 pm

NUMBER OF PAGES + COVER SHEET 4

TO : C. Boyden Gray
OFFICE : Counsel to the President
ROOM :
REMARKS : Your comments ASAP, please. I will be here until 6:30 pm.

FROM : Evan J. Kemp, Jr., Chairman
OFFICE : OFFICE OF THE CHAIRMAN
PHONE NUMBER : 663-4001 / 4006
FAX NUMBER : 663-4116

CONFIRMATION REQUESTED? YES ✓ NO ___

IMMEDIATE DELIVERY REQUESTED? YES ✓ NO ___

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL Debra AT 663-4001.

The Honorable John H. Sununu
Chief of the Staff to the President
First Floor, West Wing
The White House
Washington, D.C. 20500

Dear Governor:

This purpose of this letter is to urge that you not accept the compromise "business necessity" language offered by Senator Danforth in his letters to you of June 19 & 20. Boyden Grey forwarded copies of those letters to me because of the Senator's reference to the EEOC testing guidelines and I am taking the liberty of advising you on this critical national issue of mutual concern.

In proposing a compromise definition of "business necessity," Senator Danforth quoted the following language from the 1971 Supreme Court Griggs v. Duke Power Co. decision:

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

My concern is that the Commission has so broadly construed the meaning of Griggs in our 1978 testing guidelines that all selection procedures, not just employment tests, must be shown to be a "business necessity" if they adversely affect members of a class covered by Title VII. Senator Danforth's focus on job performance in his bill's "business necessity" definition, while seemingly reasonable, will make it extremely difficult, if not impossible, for employers to show that educational credentials and measures of academic achievement are related to job performance.

However, what is more likely is that employers will be able to defend use of educational credentials and measures of academic achievement as evidencing the "manifest relationship to the employment in question" which is the "business necessity" burden in the Administration's bill. Furthermore, the Danforth bill's focus on job performance will have the unintended consequence of undermining the President's America 2000: An Education Strategy. My reasoning is as follows.

The fact situation in Griggs revealed that Duke Power waived their high school diploma requirement for initial assignment to manual labor positions but required the diploma for those wishing to transfer to better paying indoor jobs. Duke Power also added a further requirement that in addition to having a high school diploma, in order to qualify for positions requiring more than a

CS

ID # 249252 CU

R. 6/21
5:40,0

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET HU010

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

Name of Correspondent: Edward Koch

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

Subject: Civil Rights - letter to Les Aspin.

ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUDFC	ORIGINATOR	91/06/20		C	91/06/24 CS
	Referral Note:				
CUAT10	A	91/06/21	[redacted]	C	91/06/24 CS
	Referral Note: Jun 24 91 NL Note to Koch				
CUGRAV	I	91/06/21		C	91/06/21 CS
	Referral Note:				
CUAT07	I	91/06/21		C	91/06/21 CS
	Referral Note:				
	_	/ /		_	/ /
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THE WHITE HOUSE
WASHINGTON

Date: 6/24/91

TO: Ed Koch

FROM: NELSON LUND
Associate Counsel
to the President

Your letter to Cong. Aspin is terrific. Enclosed are some materials on the latest proposal by Sen. Danforth, which I thought you would find interesting.

Thanks again for everything

R 6/24

ROBINSON SILVERMAN PEARCE ARONSOHN & BERMAN

1290 AVENUE OF THE AMERICAS

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WRITER'S DIRECT NUMBER

June 21, 1991

Nelson Lund
Associate Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Nelson:

Thanks for your nice note of June 14. You will be interested in the correspondence that I have had with Congressman Les Aspin and my recent column on the same subject.

All the best.

Sincerely,

Edward I. Koch

EIK/mgl

enclosures

[redacted]

From: EDWARD I. KOCH

I thought you would be interested in the enclosed.

All the best.

[redacted]

[redacted]

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

June 21, 1991

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

Dear Senator Danforth:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Dick Thornburgh
Attorney General

UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C. DANFORTH
MISSOURI

June 20, 1991

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

Dear John:

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

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

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

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

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

The Court then analyzes Title VII as follows:

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

On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.

The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used. (401 U.S. at 431-432, emphasis supplied)

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

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

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

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

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

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

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

Let me know what you think.

Sincerely,

cc: Senator Robert Dole

UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C. DANFORTH
MISSOURI

June 19, 1991

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

Dear John:

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

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

The practices must:

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

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

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

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

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

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

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

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

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

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

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

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

Please let me know what you think.

Sincerely,

ROBINSON SILVERMAN PEARCE ARONSOHN & BERMAN

1290 AVENUE OF THE AMERICAS

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June 19, 1991

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

Dear Boyden:

Yesterday I sent you a copy of the correspondence that I have had with Congressman Les Aspin regarding H.R. 1.

On page three of that letter, you will find a reference to Hubert Humphrey. I placed him in the wrong state. He loved Wisconsin but lived in Minnesota. Everything else still stands. You know, everyone looks like they come from Wisconsin when you're from New York.

All the best.

Sincerely,

Edward I. Koch

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WRITER'S DIRECT NUMBER

June 19, 1991

The Hon. Les Aspin
U.S. House of Representatives
2336 Rayburn House Office Building
Washington, DC 20515-4901

Dear Les:

On page three of the June 18 letter that I sent to you, a reference is made to Hubert Humphrey. I placed him in the wrong state. He loved Wisconsin but lived in Minnesota. Everything else still stands.

You know, everyone looks like they come from Wisconsin when you're from New York.

All the best.

Sincerely,

Edward I. Koch

P.S. Let's have lunch — in N.Y.

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WRITER'S DIRECT NUMBER

June 18, 1991

The Hon. Les Aspin
U. S. House of Representatives
2336 Rayburn House Office Building
Washington, DC 20515-4901

Dear Les:

I have your letter of June 11. I have more than an "interest" in civil rights. I am a firm believer in securing the civil rights of all of our citizens, but not through the use of reverse discrimination. I believe H.R.1 is a bill which encourages racial, ethnic, religious and gender quotas and, therefore, should be defeated.

There are legislative changes that are necessary as a result of recent Supreme Court decisions, but H.R.1 does not solve most of those problems. What it does do is pressure employers to fill jobs on the basis of racial, ethnic and religious proportionality in order to avoid massive backpay and attorneys' fees awards. The proponents never admit that they support quotas and always refer to affirmative action in a way that would place them on record as opposing quotas, even when they acknowledge support of "goals, timetables and sanctions." Those words are simply euphemisms for quotas.

What H.R.1 does, and regrettably the President's bill in the spirit of compromise does the same, is to presume an employer guilty of racial, ethnic, religious or gender discrimination when his workforce statistically does not mirror the applicant workpool or the regional population in the particular job

category when plaintiffs allege discrimination based not on intentional discrimination but on the "disparate outcome" of testing or of the hiring practice. The burden of proof is then shifted to the employer who must defend his hiring practices. H.R.1 also effectively eliminates the plaintiff's requirement to identify the practice(s) causing the disparity and has a brand new onerous definition of business necessity which exceeds the definition in Griggs v. Duke Power (1971) and subsequent Supreme Court cases. Faced with costly lawsuits, monetary damages and negative publicity, employers will simply throw in the towel and make certain their workforce reflects the "correct" racial, ethnic, religious and gender profile, rather than hiring the best person for the job.

I don't believe that President Bush, in introducing his bill through Robert Michel (R-Il.), should have compromised on this issue by including as he did the same presumption of guilt as H.R.1, but at least his bill retains the two other safeguards against quotas requiring the plaintiff(s) to identify the practice(s) causing the discrimination and the Supreme Court's 20-year-old concept of business necessity.

Some suggest there should be compromise on both sides. I suggest that fundamental positions of morality which we all have, sometimes on different sides of the same issue, whether it be with respect to abortion, the death penalty, gay rights, civil liberties and civil rights, should not be compromised. Are there many supporters of Roe v. Wade, who would agree to a compromise, which opponents sometimes offer, to eliminate the right of abortion on demand up to the second trimester except to save the life of the mother, and in cases of rape, incest or gross fetal defects? I doubt that you would vote for such a bill. And certainly supporters of N.O.W. and many others would not. Would you suggest that those who are opposed to the death penalty, as for example New York Governor Mario Cuomo, give up their deeply held position against it by agreeing to it but only in the case of someone convicted of killing a police officer in the line of duty? I doubt it.

There are those in the Congress and on the editorial pages who have used the fact that both the Anti-Defamation League and the American Jewish Congress supported H.R.1 as a shield to criticism. However, subsequent to the bill's passage, both groups have stated that H.R.1 does indeed have quota implications, placing their ultimate support of H.R.1 in question. One reason they take this position is that in an effort by its sponsors to put themselves on record as opposed to quotas, H.R.1 now contains language defining "quota" in such a way as to inferentially protect quotas. How? By defining a quota as requiring employers to take those who are not qualified for the job, and making that action illegal. That means that the

minimally qualified applicant of the "correct" race, ethnicity, religion or gender needed to avoid lawsuits based on the presumption of guilt and H.R.1's rewriting of the other elements of disparate impact lawsuits would be hired rather than the best applicant and that would be legal and a quota.

I believe H.R.1 is supported by some because they feel nothing else has worked to end racial discrimination. In fact, much has been accomplished in breaking down discrimination against minorities and women, but much more can and should be done to reduce and eliminate remaining discrimination. We can point with pride to the fact that of the top ten cities in our country half have been or currently are governed by a black mayor. But I do not believe in engaging in reverse discrimination to cure past or present discrimination except when a specific individual can show that he or she was the subject of discrimination in which case that individual should be given preferential treatment to correct the prior discrimination.

"Race norming" which has been used by the federal government for nearly 15 years allows testing applicants for jobs solely within their own race or ethnicity and eliminates scoring the entire applicant group with the same criteria. This practice elevates minority applicants over white and Asian applicants taking the same test and scoring higher. There is a bitterness amongst many whites, who are 80% of the country's population, which results from a feeling that their sons and daughters will suffer reverse discrimination to atone for the earlier and current discrimination practiced against blacks and Hispanics. Many believe as I do that David Duke received 60% of the white vote in Louisiana for U.S. Senate not because those voting for him support the Ku Klux Klan, but rather because of their anger against the Democratic party and its support of preferential treatment and racial and ethnic quotas.

There are many who applaud Senator Kennedy for his leadership in the fight for H.R.1. These same people attack President Bush for his continued opposition to the legislation which he believes encourages quotas and is antithetical to our historical opposition to the use of such quotas. You know that better than anyone else, coming from Wisconsin, the state Hubert Humphrey once represented and where his opposition to quotas is well-known.

The children of those who are wealthy, in political office or have access to "networking" will always get jobs and will not suffer the consequences of the reverse discrimination created by the passage of H.R.1. The children of our working poor and middle classes of every ethnic extraction including, but not limited to, Irish, Italian and Jewish will see their sons and daughters restricted in their opportunities. Ultimately, they

will have to accept that they will not rise in an occupation or profession of their choosing based on their ability but will be judged by the demographics of race, ethnicity, religion and gender in employment in the private sector, in government and at our universities. That is not the America that most of us, including blacks, Hispanics and women who are the intended beneficiaries of preferential treatment under H.R.1, have dreamed of or been made cognizant of during our school careers.

Enclosed is some additional material on the subject including a statement I made before the American Jewish Committee and various op-ed articles.

I have gone on at great length knowing that I will not convince you, but I do believe that I have reasonably, responsibly and accurately described what H.R.1 will do and have staked out my position in opposition as a matter of conscience which I will not compromise.

All the best.

Sincerely,

Ed

Edward I. Koch

EIK/mgl

LES ASPIN
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June 11, 1991

The Honorable Ed Koch
Robinson Silverman Pearce
1290 Ave. Of The Americas, 30th Fl.
New York, New York 10104

Dear Ed:

Knowing of your interest in civil rights, I wanted to let you know of my support for H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. Three versions, called substitutes, of this bill were considered by the House of Representatives on June 4 and 5, 1991.

The first substitute to H.R. 1 was offered by the Congressional Black Caucus of which I am an associate member. It was introduced by Representative Edolphus Towns (D-NY) and Representative Pat Schroeder (D-CO). This measure most closely mirrored the Civil Rights Bill as reported by the House Judiciary Committee and House Education and Labor Committee. It fully overturned all five 1989 Supreme Court decisions which drastically limited anti-bias court cases. Since the 1989 Supreme Court decisions, employees have experienced great difficulty in gathering the evidence necessary to prove discrimination. The substitute would have returned to the pre-1989 law which required the employer to prove that it did not discriminate. Furthermore, this measure would have placed no cap on compensatory or punitive damages which victims of discrimination could receive. I voted for the Towns-Schroeder Substitute because it was the most fair and intellectually honest version of the civil rights bill that the House considered. Unfortunately, it failed to pass the House by a vote of 152 to 277.

The next version of this bill that came before the House was the weakest of the three. It was introduced by Representative Robert Michel (R-IL) and supported by President Bush. While claiming to be a civil rights bill, it only overturned one and partially overturned two of the five 1989 Supreme Court decisions. Under this substitute, intentional discrimination on the basis of gender, race, color, religion and national origin could still be permissible if there were other contributing factors leading to an employer's decision. I believe that discrimination on the basis of race, sex, religious affiliation or ethnic background should never be permitted. Furthermore, this measure would safeguard employers from compensatory and punitive damages in certain cases of intentional discrimination. I voted against the Michel Substitute because I felt it would significantly water-down the Civil Rights Bill. This substitute was defeated 162 to 266.

Finally, the House considered the bipartisan compromise as introduced by Representative Jack Brooks (D-TX) and Representative Hamilton Fish (R-NY). Unlike the Michel Substitute, this legislation fully overturns all five 1989 Supreme Court rulings that severely undermined a plaintiff's ability to win a discrimination case. Specifically, it would return the burden of proving discrimination to the employer from the alleged victim. Furthermore, it would allow most victims of discrimination to receive punitive damages of up to $150,000 or the amount of compensatory damages, which ever is greater. Victims of racial discrimination would not be subjected to this cap, since they are already allowed uncapped punitive damages under an 1886 federal statute. Although the Towns-Schroeder Substitute was a better bill, I am pleased that the House passed this measure with my support by a vote of 264 to 166. Likewise I voted for final passage of H.R. 1, when it passed the House by a vote of 273 to 158.

The chances of enactment of the Civil Rights Bill remains uncertain. The Senate is expected to pass a bill similar to the House's Civil Rights Bill in the near future. However, President Bush has threatened to veto this historic legislation. Despite this obstacle, I will continue to support this bill and do all that I can to ensure that it ultimately becomes law.

Sincerely,

Les Aspin
Member of Congress

LA/meb

STATEMENT BY EDWARD I. KOCH

TO THE AMERICAN JEWISH COMMITTEE

TUESDAY, MAY 28, 1991

So much has been written on the subject of H.R.1. I thought I would simply provide you with what I think covers the subject most adequately and supports my view that H.R.1 encourages quotas and should be opposed.

First, let me describe the annexed documents: The first document is a letter of May 15, 1991, authored by me and sent to members of Congress urging their vote against H.R.1. Attached to that letter is an analysis of H.R.1 and an explanation of "race norming" and how H.R.1 relates to "race norming." The second, third and fourth documents are Wall Street Journal op-ed articles -- the first, authored by me, dated February 5, 1991, which discusses why H.R.1 would adversely impact on white, Jewish males; the second, dated February 20, 1991, by Gordon Crovitz discusses the relevant cases, in particular Griggs and Wards Cove; the third, dated May 22, 1991, refers to the actions I have taken in lobbying Congress and others against the civil rights

bill and why. The fifth document is a memorandum by Agudath Israel of America, dated May 3, 1991, which was sent to members of the U.S. House of Representatives which provides its views on "several of the most controversial provisions of H.R.1." And the final document is a memo from C. Boyden Gray, Counsel to the President, in which he discusses "race norming" and provides a detailed analysis of H.R.1 with the administration's reasons for opposing it.

The question to ask yourself is the following: Would you support legislation that would encourage reverse discrimination in order to eliminate current racial discrimination? If you would, then your support for H.R.1 is understandable, because H.R.1 attempts to do exactly that. However, if you believe that it is unfair, discriminatory and reverse racism to punish approximately 80% of the American population which is white by providing preferential treatment to the 20% who are minorities, and preferential treatment to women who are a majority then you

would agree with me and oppose H.R.1.

Simply put, H.R.1, in affect, by presuming a employer guilty of having practiced racial, ethnic, religious and gender discrimination by showing that his workforce in particular jobs does not statistically reflect either the racial, ethnic, religious or gender make-up in the regional workforce for those particular jobs or the applicant work pool for the jobs, places the burden upon the employer to rebut this presumption of guilt. The huge backpay and attorney fee awards that could result will encourage employers to quietly make sure their workforce mirrors the profile needed in order to avoid problems, even if that means hiring by quota.

There is a debate raging as to whether or not Griggs v. Duke Power which created the cause of action alleging that hiring practices that appear fair can still be unlawful if they disproportionately harm one group was, in fact, overturned by Wards Cove. Scholars differ on that issue. Some believe that

Wards Cove simply clarified the law and is consistent with Griggs, to wit, explaining: "(1) Plaintiffs must identify a specific hiring practice that has an adverse impact on a minority group; (2) once such a practice is identified, the employer has the burden of showing that the practice 'serves in a significant way the legitimate employment goals of the employer'; and (3) if the employer can show a legitimate justification for the hiring practice, plaintiffs can still win if they show that the employer could use other factors that don't disproportionately disqualify minorities."

Among other things, H.R.1 imposes a new burden on the employer to prove that the "business necessity" requiring that an employer's hiring criteria where the workforce doesn't reflect the required profile "must bear a significant relationship to the successful performance of the job." This is more stringent than the standard the Supreme Court used in Griggs and its subsequent disparate impact decisions. Griggs used language allowing the

employer to engage in rational choices with respect to hiring criteria by requiring that there be a "manifest relationship to the employment in question." The definition of business necessity in Wards Cove is that the employment practice "serves, in a significant way, the legitimate employment goals of the employer." This is consistent with Griggs as the Supreme Court made clear in 1979 in its New York Transit Authority v. Beazer decision. In contrast, H.R.1 defines "business necessity" as having a "significant relationship to (the) successful performance of the job." This proposed standard is clearly more onerous than the Griggs test. Moreover, because H.R.1 refers to "successful performance," it would prohibit an employer from raising standards beyond minimal ones to provide better services if to do so would result in a disparate impact.

Now let me turn to the more parochial issue of the impact on Jews and others of different religious persuasions. Jews tend to shy away from any concern that might be referred to as parochial.

The fact is that because Jews are only 2% of the population of the United States and also tend to be in appointed government positions and university faculty positions in greater numbers than their percentages of the population and because governments and universities are subject to H.R.1, anyone minimally qualified could bring an action against the university or the government alleging there were more Jews than the profile presumptively allowed and too few of the religious affiliation of the litigant represented in the workforce. Few employers would be likely to want to run the risk of the costly lawsuits that would be brought. There are very few positions in government that have a legal professional requirement e.g. doctor, engineer, architect, and I have rarely met a voter who did not believe that he or she couldn't do better than any commissioner appointed by any mayor. At universities it would be hard to justify that it was significantly related to successful job performance that there be the advanced degrees and published articles by applicants now

required for faculty positions to carry out ones duties. And the "presumed statistical profile" will become the subtle norm rather than hirings based on merit and scholarship.

There is now a willingness on the part of some large corporations to give up their opposition to the legislation in exchange for a limit to their liability by a cap on monetary damages. Under existing law only those who establish discrimination based on race may sue for compensatory and punitive damages other than two years back pay. Unlike the version of last year, this year's version of H.R.1 eliminates the cap of $150,000 imposed on all but those who suffered discrimination based on race. And there is an ongoing effort to put back the cap. I believe this approach is wrong. I believe that where intentional discrimination is established, the victim, whether white or female or black or Hispanic or Asian, and of whatever religious persuasion, should be entitled to compensatory and punitive damages and treated equally before the law. I do

believe, however, that when you create a new cause of action particularly where passions can become inflamed, you can provide that these cases shall by heard and decided solely by a judge, and I would support such an outcome. This expansion of liability is, in fact, a change on my part; equality before the law demands it.

There are two 1989 Supreme Court decisions Congress ought to overturn. First, in Patterson, the court ruled that Section 1981, banning racial discrimination in making and enforcing contracts, does not cover the terms and conditions of contracts. Thus, racial harassment on the job is not illegal under Section 1981. Congress should close that loophole. Second, Congress should overturn the Lorance decision which makes it more difficult to challenge certain intentionally discriminatory seniority systems.

These changes can be made without enacting H.R.1 with all of its other provisions encouraging quotas.

Also, let me state for the record my position on affirmative action. There are two forms of affirmative action. I support the following: Reaching out and encouraging minorities and women to apply for positions which historically have not been open to them or where the environment is seemingly hostile to them and encouraging them to apply. Particularly in the case of minorities because of historical failures in our education system I support providing mentoring services for those who need them. But when the position is filled it should be done solely on the merits with no bonus for being a member of a minority group or for being female and no handicap as a result of being white and/or male. The alternative form of affirmative action which I oppose is euphemistically described as goals, timetables and sanctions. I see no difference between that method and the use of quotas.

I have done what I said I wouldn't do -- discuss the bill in some detail rather than leave it to the accompanying documents,

but it is not possible to do otherwise and have an intelligent discussion.

I urge you to reconsider your position and withdraw your support for H.R.1

THE WALL STREET JOURNAL
February 5, 1991

Civil Rights Bill: The Way to Religious Quotas

By Edward I. Koch

Why is the newly introduced Civil Rights Bill still a quota bill?

Because, like the 1990 version known as Kennedy-Hawkins, the legislation finds that an unlawful employment practice is established when "a complaining party demonstrates that an employment practice (or group of practices) results in a disparate impact on the basis of race, color, religion, sex or national origin, and the respondent fails to demonstrate that such practice is required by business necessity."

The employer would have the burden of proving that the hiring practice or group of practices bear a "significant relationship to successful performance of the job." Contrary to the claims of the legislation's supporters, this standard is more stringent than the standard consistently applied in this area by the Supreme Court. The court says that employers may justify hiring practices if they bear a "manifest relationship to the employment in question."

Under the Supreme Court test, employers can justify many hiring practices as bearing a "manifest relationship" to the employment. Under the bill's proposed test, it is unlikely that employers would be able to prove that a challenged job requirement bears a "significant relationship" to "successful" job performance. To avoid potential liability under such a murky standard, employers would, of necessity, resort to quota hiring.

Cases under the disparate-impact standard have focused on racial and gender discrimination. But under the bill, disparate impact will be so easy to prove that it will be applied to alleged religious discrimination, and employers will react defensively to the threat of such lawsuits.

Proponents of the bill note that some Jewish organizations, traditionally opposed to quotas, endorse the legislation. I suggest that Jewish organizations haven't alerted their memberships to the fact that under such a law employers probably will have to justify why there are more Jews on a percentage-basis in a particular job than in the applicant job pool.

To defend themselves from suits, employers would have to justify the disparate impact. Surely that would mean keeping statistics on the number of Jews, Catholics, Protestants, Muslims, etc. It might even mean keeping track of all the subdivisions—such as Jehovah's Witnesses and Seventh Day Adventists; Sunni and Shiite Muslims; Orthodox, Conservative and Reform Jews—as well.

The proposed law would particularly create a misplaced incentive for governments and universities to hire on the basis of race, color, religion, gender or national origin. They would feel intense pressure to select the lesser-qualified individual of a group not adequately represented from a statistical standpoint—both to avoid the "disparate impact" and exposure to costly lawsuits they would be likely to lose, as well as to avoid student unrest, picket lines and adverse publicity. They will hire the statistically correct. (In New York City, those who would suffer disproportionately would be white Jewish males.)

Few employers, would be likely to want to run the risk of costly lawsuits, attorneys' fees and massive back-pay awards. The mere filing of a lawsuit could hurt sales and public acceptance of the company's product.

Nationwide, the percentage of blacks is 12%; Hispanics about 8%; Asians about 2%. Among whites, those who are Jewish would still suffer the most because they are only 2% of the population.

Many who support this bill deny they support quotas, but acknowledge supporting affirmative-action programs requiring goals, timetables and sanctions; they claim that these programs do not entail preferences and reverse discrimination. But goals and timetables quickly *become* de facto quotas when employers face sanctions if they don't achieve them, and when the burden of proof falls upon the employer to justify hiring practices.

It is not "immoral" to be for quotas, nor is it "immoral" to oppose them. New York Mayor David Dinkins publicly supports quotas, as do many other New York City leaders; they think the benefits outweigh the costs. But there is much more to be said in support of the position that this bill would create reverse discrimination and would be bad for America as a whole.

During November's election campaign, many editorials around the country denounced Sen. Jesse Helms's ad depicting a white worker losing his job as a result of quota preferences. What if his opponent, Harvey Gantt, had run an ad that showed two black hands and commentary saying, "Is it unfair for us to be given preferential treatment to catch up from the burden of slavery?" Would that ad have been denounced? I doubt it.

Will the supporters of this bill attack those of us who oppose it as racists because we honestly believe that it will foster quotas? Unfairly, they will probably do so again this year, as they did last year. False charges of racism are the refuge of those who cannot argue on the merits.

Civil-rights groups have been seeking a fig-leaf compromise with some opponents of the bill to facilitate an override of any presidential veto. Their latest ploy has been to approach some big businesses with a new offer. These civil-rights groups are hoping that if the damages available under the bill for intentional discrimination are reduced, the businesses will agree to language that, while ostensibly "solving" the quota problem, does not do so. But so long as this bill encourages quotas, and it does, it should not be acceptable no matter what compromise is offered.

Mr. Koch, former mayor of New York, writes a weekly column for the New York Post and is in private legal practice.

THE WALL STREET JOURNAL WEDNESDAY, FEBRUARY 20, 1991

Defenders of the Civil-Rights Bill Doth Protest Too Much

Rule of Law

By L. Gordon Crovitz

Actor Playing the Queen: Both here and hence pursue me lasting strife; If, once widow, ever I be wife!

Hamlet: Madam, how like you this play?

The Queen, his mother: The lady doth protest too much, methinks.

Shakespeare, whose wisdom did not end with first, let's kill all the lawyers, knew that people who issue the loudest claims also often know best that they're false. So it is with the din of assurances by its proponents that the Civil Rights Act of 1991 could never ever result in race, sex and religious quotas.

There is a lull before the battle resumes on the legislation President Bush vetoed last year as a quota bill and "lawyers' bonanza." It's a good time to stand back and parse some of the legal technicalities to see why the reintroduced legislation would still force employers to choose between quotas and ruinous lawsuits.

The civil-rights groups say they want to reverse five recent Supreme Court rulings. The Bush administration is happy to overrule two cases, which excluded some lawsuits over promotions and seniority. Mr. Bush says it would be unfair to reverse *Martin v. Wilks*, which said that people who were not parties to consent decrees can sue if they suffer from resulting racial quotas. There's also no reason to reverse *Price Waterhouse v. Hopkins*, which said an employer can somehow try to convince a court that it would have made the same promotion decision even if it hadn't used an unlawful factor such as sex.

The quota-inspiring change comes in provisions that civil-rights lawyers say would "only" reverse the case of *Wards Cove Packing Co. v. Atonio*.

To understand what's at stake here, note that the country has come so far since the 1964 Civil Rights Act that intentional discrimination is not the issue. The original law banned what civil-rights lawyers call "disparate treatment"; by now, most litigation is instead about "disparate impact." This refers to the expansion of the civil-rights laws by the Supreme Court in the 1971 case of *Griggs v. Duke Power*, which said that hiring practices that appear fair can still be unlawful if they disproportionately harm one group, such as where a utility company required educational degrees held by many fewer blacks than whites.

Wards Cove did not overturn *Griggs*. The justices still welcome disparate-impact cases based on statistical evidence without any evidence of intentional discrimination. What *Wards Cove* did was clarify that trial judges can recognize there are statistics and then there are statistics—and that only relevant numerical evidence can prove "disparate impact."

Wards Cove itself showed the slipperiness of numbers games. The family-owned firm hired seasonal workers to process and pack salmon in its Alaska plants. Several minority workers, including Frank Atonio, a Samoan, claimed discrimination. Their evidence was that half of the plant's unskilled workers were minorities, but that one-quarter of the skilled workers were minorities. They argued that half the skilled workers should also be minorities.

There were several problems with this claim. For one thing, the relevant labor market in Alaska was 10% minorities. Under a strict statistical approach, Wards Cove Packing probably hired "too many" skilled and unskilled minorities already. Also, many of the seasonal unskilled workers were hired through a minority-run local of a union, which might explain the irony of minority overrepresentation as the basis for a discrimination lawsuit.

The Supreme Court used the case to clarify the rules for numbers-based lawsuits: (1) Plaintiffs must identify a specific hiring practice that has an adverse impact on a minority group; (2) once such a practice is identified, the employer has the burden of showing that the practice "serves in a significant way the legitimate employment goals of the employer"; and (3) if the employer can show a legitimate justification for the hiring practice, plaintiffs can still win if they show that the employer could use other factors that don't disproportionately disqualify minorities.

The plaintiffs in *Wards Cove* lost, but worthy cases have won under its three-part test. John Dunne, head of the Justice Department's civil-rights division, told Congress this month about several of the winning cases. A teacher in Alabama was reinstated when a court found that minorities disproportionately failed a teacher-certification test, an almost all-white New Jersey town had to drop its residents-only rule for public employees and Jacksonville, Fla., had to change its exam for firefighters.

Employers would have to hire enough—but not too many—Catholics, Baptists, Jews, Muslims.

The proposed civil-rights bill would go far beyond reversing *Wards Cove*. Plaintiffs would not have to identify any single factor in hiring or promotion that the employer could then try to defend. The employer instead would have the entirely new task of proving the "business necessity" that all the objective and subjective requirements for employment "must bear a significant relationship to successful performance of the job." The phrase "successful performance" is especially vague.

Uncertain standards always promote litigiousness, but the problem is especially severe here because the bill would reverse the usual due-process rules to presume that the defendant is guilty until and unless he can prove himself innocent. If in doubt, a defendant is guilty of "discrimination."

No employer can prove that every requirement for a job is necessary for successful performance. No Wall Street law firm can prove that only lawyers from Ivy League-type schools can possibly do the job, for example. The law would also cover religion, so employers would have to hire enough—but not too many—Catholics, Baptists, Jews, Muslims.

The proposed bill also goes beyond the 1964 civil-rights law, *Griggs* or *Wards Cove* by replacing the ideal of mediation with the divisiveness of jury trials and punitive damages. This year's bill as introduced by Rep. Jack Brooks even put back the provision dropped last year that would allow unlimited punitive damages. The bill's section calling for punitive damages comes under the heading of damages for "intentional discrimination," but in fact no intention is required. All that's needed is "indifference to the federally protected rights of others," whatever that means.

Employers would be left in the position that Justice Sandra Day O'Connor warned against in a recent case limiting disparate-impact cases. "If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted."

During the debate on the 1964 Civil Rights Act, Hubert Humphrey said that the law guaranteed equal opportunity, and that no court could "require hiring, firing or promotion of employees to meet a racial 'quota.' " After all the lawsuits demanding goals, timetables and set-asides, any civil-rights bill should pass a simple test: Congress should be bound by its provisions. As the bill now stands, Congress is the only institution in the country that Congress would exempt.

Hizzoner Goes to Washington to Fight the Quota Bill

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.

Ed Koch is a Democrat mugged by quotas. The former How'm I Doin'? mayor of New York City and former liberal U.S. representative has lobbied Congress against the civil-rights bill, jawboned leaders of Jewish groups and planned strategy with White House lawyers.

Rule of Law

By L. Gordon Crovitz

Mr. Koch's reaction against the bill is one reason why it will make no difference that Democrats in Congress have temporarily withdrawn their bill. After two years of claiming this is not a quota bill, the week or so the Democrats plan for going back to the blackboard will not produce a non-quota bill.

Mr. Koch recalls that he first began to look closely at the bill after he read an article in November in the Forward, a national Jewish weekly, that described how the bill would force employers for the first time either to hire by religious quotas or risk legal liability. Joseph Morris of the Chicago-based Lincoln Legal Foundation wrote that the bill would outlaw "disparate impact" not just by race and sex but also by religion and national origin. Counting by religion sounded a warning.

As Mr. Koch wrote in a Feb. 5 article on the Journal editorial page, disparate-impact analysis is best understood as a fancy legal term inviting quotas. Under a 1971 Supreme Court case, plaintiffs can prove discrimination even when there is no evidence of intentional discrimination. Only lawyers could dream up an offense called non-intentional discrimination, but here's how it works: If an employer's work force does not precisely mirror the area's labor pool of minorities, presto, the defendant is presumed guilty.

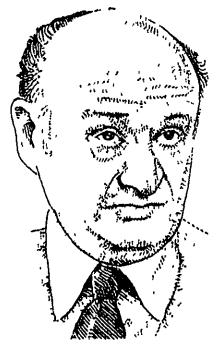
Again, only lawyers could claim that only discrimination prevents every company in every industry from hiring the statistically correct number of Hispanics, Methodists, Ukrainian-Americans. In a non-lawyer's world, of course, it would be a fluke if the employees of any single company anywhere managed to reflect perfectly every conceivable subgroup.

To be fair to the Democrats, the White House version of the bill would also continue the use of statistics alone to establish "discrimination." The big difference is that with punitive damages and other lures for contingency-fee lawyers, the Democrats' bill would create enormous incentives for companies to lock in quotas as the best and perhaps only defense to accusations of disparate impact. The bill would also water down defenses to lawsuits by making the definition of terms such as "business necessity" even more vague than the courts have left them.

Mr. Koch, soft-spoken as always, explained that his former Democratic colleagues in Congress "got out of touch because they are so frightened by militant black and white leadership in the civil-rights groups." Mr. Koch said, "It's the politically correct position that blacks need help, Hispanics need help, even Jews with Spanish surnames need help, but Asian-Americans don't. I happen to think that is insane.

"You get dragged along. Everyone wants to do the right thing, but you find that it's the wrong thing," he said. "The easy right thing to do is to give groups preferences, but this means that innocent white people are going to suffer. I do not accept that."

After he began to speak out, several Jewish groups also reconsidered their typically unblinking support for any legislation that calls itself a civil-rights bill. The groups that now most strongly oppose the bill represent Orthodox Jews, whose members follow strict dietary, dress and Sabbath observance rules that set them apart. They understand that the bill invites employers to start keeping track of the religion of workers and tempts them to hire and fire to come as close as possible to reflecting the makeup of the local community. Yet even asking someone's religion is now rightly considered out of bounds.



Ed Koch

Mr. Koch's outspokenness against the bill won him an invitation to the White House. Mr. Koch told Boyden Gray, the president's counsel, that race-norming was the smoking gun of quotas. This is the practice of grading test scores on a race and ethnic curve; a 300 on one aptitude test is reported to potential employers as a 79 for a black applicant, a 62 for an Hispanic and a 39 for a white or Asian.

Democrats now say they might try to limit test scoring by race-norming. They forget that the reason race-norming was invented in the first place in the early 1970s was as a defense to the then-new disparate-impact lawsuits. Any civil-rights bill that increases the exposure of employers to lawsuits based simply on statistics will only encourage race norming and other sleights of hand to meet quotas without admitting the deed.

"Over the years those who now advocate" this civil-rights bill, Mr. Koch said, "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," he said, "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."

Most Americans probably agree with Mr. Koch's praise for voluntary affirmative action. Nor is there any serious opposition to laws that prohibit intentional discrimination—that is, what non-lawyers call discrimination. The paradox for politicians who want a new civil-rights bill is that no law can go beyond this prohibition against discrimination to also capture all the nuances of encouraging minorities without discriminating against whites. This is why we ended up with a sterile and legalistic debate about statistics.

The best civil-rights bill now probably is no civil-rights bill. If there are problems prosecuting people who discriminate, let's have a bill that deals with the issue. We do not need to legally mandate the all-but-impossible requirement of perfectly matching the race, sex, religious and ethnic makeup of the available labor pool.

There is an alternative to expanding the imperial reach of lawyers, lawsuits and judges. This is to encourage voluntary affirmative action by people of good will. Put it this way. The civil-rights groups that support this bill believe that the way to accomplish harmony is to encourage more lawyers to bring more lawsuits. As the debate over this bill shows, lawsuits and harmony remain an unlikely combination.

LES ASPIN
1ST DISTRICT, WISCONSIN

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June 11, 1991

The Honorable Ed Koch
Robinson Silverman Pearce
1290 Ave. Of The Americas, 30th Fl.
New York, New York 10104

Dear Ed:

Knowing of your interest in civil rights, I wanted to let you know of my support for H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. Three versions, called substitutes, of this bill were considered by the House of Representatives on June 4 and 5, 1991.

The first substitute to H.R. 1 was offered by the Congressional Black Caucus of which I am an associate member. It was introduced by Representative Edolphus Towns (D-NY) and Representative Pat Schroeder (D-CO). This measure most closely mirrored the Civil Rights Bill as reported by the House Judiciary Committee and House Education and Labor Committee. It fully overturned all five 1989 Supreme Court decisions which drastically limited anti-bias court cases. Since the 1989 Supreme Court decisions, employees have experienced great difficulty in gathering the evidence necessary to prove discrimination. The substitute would have returned to the pre-1989 law which required the employer to prove that it did not discriminate. Furthermore, this measure would have placed no cap on compensatory or punitive damages which victims of discrimination could receive. I voted for the Towns-Schroeder Substitute because it was the most fair and intellectually honest version of the civil rights bill that the House considered. Unfortunately, it failed to pass the House by a vote of 152 to 277.

The next version of this bill that came before the House was the weakest of the three. It was introduced by Representative Robert Michel (R-IL) and supported by President Bush. While claiming to be a civil rights bill, it only overturned one and partially overturned two of the five 1989 Supreme Court decisions. Under this substitute, intentional discrimination on the basis of gender, race, color, religion and national origin could still be permissible if there were other contributing factors leading to an employer's decision. I believe that discrimination on the basis of race, sex, religious affiliation or ethnic background should never be permitted. Furthermore, this measure would safeguard employers from compensatory and punitive damages in certain cases of intentional discrimination. I voted against the Michel Substitute because I felt it would significantly water-down the Civil Rights Bill. This substitute was defeated 162 to 266.

Finally, the House considered the bipartisan compromise as introduced by Representative Jack Brooks (D-TX) and Representative Hamilton Fish (R-NY). Unlike the Michel Substitute, this legislation fully overturns all five 1989 Supreme Court rulings that severely undermined a plaintiff's ability to win a discrimination case. Specifically, it would return the burden of proving discrimination to the employer from the alleged victim. Furthermore, it would allow most victims of discrimination to receive punitive damages of up to $150,000 or the amount of compensatory damages, which ever is greater. Victims of racial discrimination would not be subjected to this cap, since they are already allowed uncapped punitive damages under an 1886 federal statute. Although the Towns-Schroeder Substitute was a better bill, I am pleased that the House passed this measure with my support by a vote of 264 to 166. Likewise I voted for final passage of H.R. 1, when it passed the House by a vote of 273 to 158.

The chances of enactment of the Civil Rights Bill remains uncertain. The Senate is expected to pass a bill similar to the House's Civil Rights Bill in the near future. However, President Bush has threatened to veto this historic legislation. Despite this obstacle, I will continue to support this bill and do all that I can to ensure that it ultimately becomes law.

Sincerely,

Les Aspin
Member of Congress

LA/meb

CS 1

ID # 249331 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

H1010

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

Name of Correspondent: DAVID McINTOSH

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

Subject: Copy of memo to the Vice President re: Educational Excellence or Counting by Race?

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	91/06/20		C	91/06/24 CS
		Referral Note:		~~Attn: FYI~~		CS
CUAT 10		A	91/06/20		C	91/06/24
		Referral Note:		Attn: FYI - see comments		
CUGray		I	91/06/20		C	91/06/20 CS
		Referral Note:				
CUAT 02		I	91/06/20		C	91/06/20 CS
		Referral Note:				
CUAT 07		I	91/06/20		C	91/06/20 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
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: Captioned Has Been Noted By G. Lund. --CS

May Be Closed out 6-24-91

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

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	Case Number 249331CU From David McIntosh to the Vice President Re: Educational Excellence or Counting by Race? (1 pp.)	06/20/98	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: 247345CU to 250500CU

Open on Expiration of PRA
(Document Follows)
By JL (NLGB) on 2.14.05

Date Closed: 8/10/1998	**OA/ID Number:** 00002-001
FOIA/SYS Case #: 2003-1835-S	**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

OFFICE OF THE VICE PRESIDENT

WASHINGTON

MEMORANDUM TO THE VICE PRESIDENT

From: David McIntosh DMM

Re: Educational Excellence or Counting by Race?

I thought you might be interested in news from the 4th District. The attached Fort Wayne News-Sentinel article describes a racially-based magnet school program that has been created by the Fort Wayne school district and the U.S. Department of Education's Office of Civil Rights.

Magnet schools are created around particular themes (eg. computer science) to attract students to them. While it may sound promising on paper, the actual practice has unintended consequences. An extraordinary amount of time, energy, and money is devoted not to educational excellence but instead to a byzantine system of "racial balancing." This is a process in which students are routinely denied admittance to a school because of the color of their skin.

In some cases, the magnet school program seems to have actually hurt blacks. For instance, before Irwin Elementary became a magnet school for math and science in September of 1989, its student body was comprised of 77% blacks. During its 1st year as a magnet school, the percentage of blacks dropped to 48%. This Fall the percentage of black enrollment will drop to 34%. Qualified black children will be turned away from the 4th & 5th grades soley because of their race. (Both Black and White children will be turned away from k-3.) This is assignment by lottery and race -- not exactly the ingredients for academic achievement -- and a poor way to promote parental "choice."

Minority parents worked to bring a rigorous math and science magnet program to Irwin Elementary because it would prepare their children for a more challenging academic setting as they got older. These parents now find that because of the race of their children, they must go to school elsewhere.

cc: William Kristol
Al Hubbard
C. Boyden Gray
Bill Burrow

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID#249331cu

____ 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 letters(s) not scanned.

____ Proposal not scanned.

____ Statement not scanned.

____ Duplicate letters attached - not scanned.

____ Only table of contents scanned.

____ No incoming letter attached.

____ Only tracking sheet scanned.

____ Photo(s) not scanned.

____ Bill not scanned.

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Comments:

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FORT WAYNE NEWS-SENTINEL
Friday, May 24, 1991

Lottery leaves pupils waiting

Racial-balance concerns inhibit selection process

By VALERIE VON FRANK
Of The News-Sentinel

Every child who wanted to will be able to attend Harris, Price and Shambaugh elementary schools.

Other children will have to wait until next week to learn the outcome of the Fort Wayne Community Schools lottery yesterday — and whether they will be able to attend the magnet school of their choice.

Each spring for the last three years, the district has had to have pupils vie for spots in some magnets, schools with a special academic emphasis. In many, there are more pupils who want to attend than there are spaces available since the district has begun racial balancing.

The magnet system is the creation of an agreement between the district and the Office of Civil Rights and a parents group that sued in 1986 to desegregate the elementary schools.

For the past three years, school officials have juggled numbers and pleaded with children of each race to fill the spots needed to come within the agreement's required range of 10 percent to 50 percent African-American pupils. In the lawsuit, children were classified either as African-American or as white, which included other minorities.

In 1986, 25 of 34 elementary schools were outside those bounds. This year, three are. In fall 1991, when the district must be in full compliance, only one school — Bunche — has the potential for breaking the bounds.

This year, a record number of children participated. The 1,394 applicants is rivaled only by the 1,304 who applied in 1988, the first year magnets were offered extensively.

The district has roughly 16,000 elementary school pupils, so less than 10 percent are opting for magnets.

Schools that turned down applicants, and the grade levels for those extra applicants, are:

■ Croninger — white children in kindergarten, first, second and fifth.

The 2-year-old magnet school emphasizes communications and foreign language.

■ Franke Park — white children in kindergarten and first.

Franke Park's 2-year-old program is in biological science

■ Harrison Hill — white children in second and fourth.

The school added a magnet program in 1989 called The Academy. It emphasizes basic skills and a traditional mode of learning.

■ Holland — white children in first grade.

The environmental program began in fall 1989.

■ Irwin — white children in kindergarten, first, second and third. African-American children in kindergarten, first, second, third, fourth and fifth.

Irwin was undoubtedly the success story of the system by yesterday's lotteries. The school was 77 percent African-American before it reopened in fall 1989 as a magnet school for math and science. It also offers full-day kindergarten. It opened at 48 percent African-American. This year, it was 36 percent African-American. It is projected to become 34 percent African-American this fall.

■ Pleasant Center — white children in first, second, third and fifth.

The aerospace science program was started last fall.

■ St. Joseph Central — white children in kindergarten, first, second, third, fourth and fifth.

A math enrichment program was added last fall.

■ Ward — white children in kindergarten. African-American children in kindergarten, first, second and fourth.

Ward became a magnet school in 1990 and is part of the Summit Program. It emphasizes theater and foreign language and offers full-day kindergarten and an after-school care program.

■ Washington Center — white children in kindergarten, first, second, third, fourth and fifth.

In 1989, the school added a program in computer science.

■ Waynedale — white children in second grade.

The physical education program was added in 1988.

■ Weisser Park/Whitney Young Elementary — white children in kindergarten, first, second, third, fourth and fifth grades. African-American children in kindergarten, first, second, third and fourth.

The popular Summit school emphasizes fine arts and foreign language, as well as offering a full-day kindergarten.

Children who applied to those schools listed above who are in grades or races not mentioned were accepted into their first-choice school.

Now the district will make an effort to place those children who didn't get their first choice in their second- or third-choice school.

In past years, around 85 percent of children got into one of the three magnet schools they listed on their applications

Districts craft magnet method for fair choices

By VALERIE VON FRANK
Of The News-Sentinel

This is how pupils are selected for magnets, schools with special academic emphases:

■ Each spring, the school district holds a magnet fair, at which representatives of each magnet tell parents about the special academic programs offered Brochures are available from the schools and central office.

■ Parents submit applications by a spring due date.

■ Pupils are ranked, with preference given to the children who would attend a school with their siblings and those who live in the old neighborhood attendance area of a magnet school, which accepts applications from children all over the city.

■ School officials meet and decide the numbers of students needed for racial balance in the school. To meet a court-approved agreement, schools must be between 10 percent and 50 percent African American.

■ If too many children of either race category (African-American or white, which includes other minorities) have applied for a particular school and grade level, the district schedules a lottery

■ A computer randomly generates three separate lists of names. A line is drawn on each list after the number of children matches the number of seats available. Those below the line are placed on a waiting list.

■ At a public lottery, a patron chooses one of the lists by blindly selecting a folder or envelope from the three for that race at a school and grade level.

■ Pupils may then be placed in their second- or third-choice school.

■ The lists are given to the schools, which mail letters to parents.

■ District representatives knock on doors in the summer, trying to convince some parents to send their children to a school where children of that race are needed for balance.

CS

INCOMING

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 249464

R 6/28
5.00

HU016

DATE RECEIVED: JUNE 25, 1991

NAME OF CORRESPONDENT: MS. LISA S. VAN AMBURG

SUBJECT: EXPRESSES CONCERN OVER REMARKS REGARDING THE PENDING CIVIL RIGHTS BILL AND ITS AFFECT ON ATTORNEYS

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	DISPOSITION TYPE RESP	C D	COMPLETED YY/MM/DD
~~C. BOYDEN GRAY~~ CWOF	ORG	91/06/25		C	91/07/05 CS
REFERRAL NOTE:					
SHIRLEY GREEN	RAR	91/06/25		C	91/07/05 CS
REFERRAL NOTE: COPY OF INCOMING CORRESPONDENCE ALSO					
CWOF 10	RA	91/06/25	NLA		91/07/05 CS
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: _____

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

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

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

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

COUNSEL'S OFFICE
RECEIVED
JUN 25 1991

249464

JAMES K. COOK
CHARLES A. WERNER
CHRISTOPHER T. HEXTER
MARILYN S. TEITELBAUM
JAMES I. SINGER
LISA S. VANAMBURG
SALLY E. BARKER
ARTHUR J. MARTIN
DAVID C. HOLTZMAN
NEAL M. DAVIS

LAW OFFICES

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STANLEY R. SCHUCHAT
(1939-79)

ARTHUR H. NISSENBAUM
Of Counsel

June 12, 1991

C. Boyden Gray

The Hon. George Bush, President
United States of America
The White House
Washington DC 20005-0001

RE: Civil Acts Right of 1991

Dear President Bush:

I graduated from law school in 1975 and entered the practice of labor law on the side of employees. I remain one of a handful of lawyers in St. Louis who represent employees in employment discrimination cases. Most plaintiff's attorneys view these cases as high-risk and certainly not lucrative because of the burden of proof an employee must meet to prevail. I am now Union Co-Chair of the American Bar Association Committee on Equal Employment Opportunity, of the Section of Labor and Employment Law. I would not characterize any of the attorneys on that committee as "greedy." Indeed, many of them are dedicated lawyers who fight an uphill battle against discrimination in the workplace.

I was therefore dismayed to read that you said that the pending civil rights bill would be a boon to "greedy" attorneys. I feel insulted when you, the President of the United States, impugn the integrity of plaintiff-side employment lawyers in this fashion. I must say that I am also saddened by your divisive rhetoric of late. Tragically, such rhetoric serves only to further divide the nation.

Very truly yours,

Lisa S. Van Amburg

Lisa S. Van Amburg

cc: The Hon. John Danforth, U.S. Senate
The Hon. Christopher Bond, U.S. Senate
The Hon. Joan Kelly Horn, U.S. House of Representatives
The Honorable William Clay, U.S. House of Representatives
Plaintiffs' Employment Lawyers Association
Lawrence Ashe, Co-Chair, EEO Committee, ABA Section on Labor and Employment Law
Richard Seymour, Co-Chair, EEO Committee, ABA Section on Labor and Employment Law

LSV:rmm

THE WHITE HOUSE

WASHINGTON

July 5, 1991

Dear Ms. Van Amburg:

On behalf of the President, thank you for your recent letter conveying your thoughts about the pending employment discrimination bills.

So far as I am aware, the President has never referred 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 legislation. I am enclosing for your information a copy of the President's bill along with an explanatory section-by-section analysis.

Thank you again for writing.

Yours truly,

Nelson Lund
Associate Counsel to the President

Ms. Lisa S. Van Amburg
Schuchat, Cook & Werner
The Shell Building, Suite 250
1221 Locust Street
St. Louis, MO 63103-2364

CS

INCOMING

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 249467

R:6/28
5.00

HU010

DATE RECEIVED: JUNE 25, 1991

NAME OF CORRESPONDENT: MR. DENNIS E. EGAN

SUBJECT: EXPRESSES CONCERN OVER REMARKS REGARDING THE PENDING CIVIL RIGHTS BILL AND ITS AFFECT ON ATTORNEYS

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	DISPOSITION TYPE RESP	C D	COMPLETED YY/MM/DD
~~C. BOYDEN GRAY~~ CWF	ORG	91/06/25	C		91/07/03 CS
REFERRAL NOTE:					
SHIRLEY GREEN	RAR	91/06/25	C		91/07/03 CS
REFERRAL NOTE: COPY OF INCOMING CORRESPONDENCE ALSO					
CWF 10	SDA	91/06/25	NEA		91/07/03 CS
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: _____

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

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

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

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

COUNSEL'S OFFICE
RECEIVED
JUN 25 1991

THE WHITE HOUSE

WASHINGTON

July 3, 1991

Dear Mr. Egan:

On behalf of the President, thank you for your recent letter conveying your thoughts about the pending employment discrimination bills.

So far as I am aware, the President has never referred 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.

Thank you again for writing.

Yours truly,

Nelson Lund
Associate Counsel to the President

Mr. Dennis E. Egan, Esq.
The Popham Law Firm, P.C.
13th Floor Commerce Trust Building
922 Walnut Street
Kansas City, MO 64106

THE WHITE HOUSE
WASHINGTON

Mr. Egan:

The documents referenced in our letter of July 3 (copy attached) were inadvertently omitted.

Please accept our apologies for the inconvenience.

849467

THE POPHAM LAW FIRM, P. C.

ARTHUR C. POPHAM, JR.
THOS. J. CONWAY
THOMAS A. SWEENY
ERNEST H. FREMONT, JR.
WILLIAM B. BUNDSCHU
WILLIAM L. HUBBARD
WM. DIRK VANDEVER
JOHN W. KURTZ

13TH FLOOR COMMERCE TRUST BUILDING
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KANSAS CITY, MISSOURI 64106
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TELEFAX - (816) 221-3999

SCOTT W. MACH
DENNIS E. EGAN
BERT S. BRAUD*
RICHARD I. BUCHLI, II
JUSTINE E. DEL MURO
MARK A. BUCHANAN*
CLAUDIO E. MOLTENI

*ADMITTED IN MISSOURI & KANSAS

June 14, 1991

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

Re: Civil Rights Act of 1991

Dear President Bush:

I am absolutely astounded to read that you said the pending civil rights bill would be a boon to "greedy" attorneys. What are you trying to accomplish anyway?

I graduated from law school in 1976, clerked for the Missouri Supreme Court, and have been engaged in practice since 1977. For the past eight years, I have developed a sub-specialty representing plaintiffs in employment law. I have had the pleasure of meeting other dedicated attorneys who have ventured into the often-cold, always-risky waters of plaintiffs' employment rights. As a member of the National Employment Lawyers Association, I can state, categorically, that I have never met a plaintiffs employment lawyer who I would characterize as "greedy."

To the contrary, very few plaintiffs lawyers practice employment law. Often, a single employee is pitted against a giant corporation which has its own in-house staff of lawyers, and hires silk-stockinged, hourly-rate lawyers to defend the corporation in employment cases. I venture to say that more often than not it is the defense firm that becomes "greedy" by prolonging cases and churning up time in files that should be settled early -- and could be -- if the corporation and/or counsel did not first run through the motions of trying to bleed the plaintiff dry.

Unlike personal injury/tort litigation, there never is any insurance company involved. The plaintiff's lawyer must endure countless motions, must fight tooth and nail to review records of the company to which the company knows plaintiff's lawyer has every right; always must take numerous depositions (at great expense); and, inevitably, faces a tree-killing "motion for summary judgment" (often frivolous), which seeks to throw the employee's case out of the court system without a trial. If plaintiff's counsel survives all such onslaughts, if plaintiff's counsel achieves victory (there is always the risk that he will not and will be penniless for his efforts), then he turns in his request for attorneys fees under our prevailing civil rights acts. But the battle is far from over, because now the corporate counsel who had a team of three attorneys and two paralegals

working endlessly churning up motions and performing other activities in the case, at that point will fly speck the time statement submitted by plaintiff's single counsel (two lawyers if it is an unusual firm) and will argue that the attorneys fees are "excessive." Even though defense counsel was being paid by the hour (sometimes as high as $250 per hour), often federal judges who recall practicing at a far lesser hourly rate than prevails in the market today, will reduce a plaintiff's counsel's fee -- (I have never received more than $125/hour) notwithstanding the fact that plaintiff's counsel was without one penny for one to two years while the case has been fought through the court system. Now, remember, I'm the one submitting the fee bill for $125 per hour, after having whipped the $250 per hour lawyer and his minions.

Greedy lawyers? I wish more lawyers practiced in this area, because I turn away too many meritorious cases because lawyers don't want these high-risk, labor-intensive, family-eating monsters. Many more cases must be turned away because under our current laws -- without the amended civil rights bill -- heinous, egregious acts of discrimination are without an effective remedy and do not justify an attorney risking 1,000 hours of time and effort to right the wrong.

I am most upset by your current rhetoric, because it is flat wrong -- and you know it. The civil rights bill is not a quota bill, it is not designed to compensate "greedy lawyers," and it will not have any destructive impact on corporate America, if law abiding corporations will only recognize their obligations under law. If they do their duty, we will have less litigation, not more.

I don't know who is pushing your buttons; but because I know for a fact that the civil rights legislation is "the right thing to do" and that your increasingly frail excuses for a veto do not stand up, I am doing everything in my power to tell your constituents the truth. I am just one person, but I will do everything in my power to pass along the word that anyone who stands in the way of this legislation should have their motives examined closely.

Very truly yours,

Dennis E. Egan
For the Firm

DEE:js

cc: Hon. Christopher Bond
Hon. John C. Danforth
Hon. Alan Wheat

CS

ID # 249760 CU

HU010 R: 6/27 11:25

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Frank A. Peters

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

Subject: Urge President to sign the Civil Rights bill.

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Code	Completion Date YY/MM/DD
CUOF	ORIGINATOR C	91/06/24		C	92/01/07 CS
CUAT10	Referral Note: A	91/06/25		C	92/01/07 CS
	Referral Note: see comments				
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /

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

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

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

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

Keep this worksheet attached to the original incoming letter.
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5/81

249760CU

June 6, 1991

COUNSEL'S OFFICE
RECEIVED
JUN 24 1991

The Honorable George Bush
President, United States of America
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Bush:

I am writing in reference to the Civil Rights Bill of 1991 which has been supported overwhelmingly by both houses of Congress.

I would like to share with you, if I may, what one of my college professors said in my basic Presidential Politics Course..."In a presidential election, wherever the majority happens to be, that's reality....that's the right person to be president of the United States, whether or not he or she is Republican or Democrat."

Unfortunately, this philosophy does not seem to apply to issues debated in the U.S. Congress, especially the civil rights bill simply because of partisan politics. I feel that because the support for the bill is so strong in both houses of Congress the President of the United States should bow to the will of the majority and sign the legislation. If this bill was not a good bill or not the right thing to do, it would not have progressed to the point that it has.

I remain hopeful and pray that you will support the majority of our leaders who supported and voted for this bill and that you will have the courage to bypass the partisan politics and sign the bill into law soon.

Sincerely,

Frank A. Peters, Plaintiff
Wards Cove vs. Antonio

cc: Washington Congressional Delegation

FAP:pcp

CS

ID # 249815 CU

R: 6/27
11:25

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: John Otten, M.D., F.A.C.S.

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

Subject: Comments on unfairness of hiring quotas

ROUTE TO:		ACTION			DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD		Type of Response	Code	Completion Date YY/MM/DD
CuOC		ORIGINATOR	91 06 24			C	92 01 07
Cuat 10		Referral Note: A	91 06 24			C	92 01 07
		Referral Note: See comments					
		_	/ /			_	/ /
		Referral Note:					
		_	/ /			_	/ /
		Referral Note:					
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		Referral Note:					

CS

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

Comments: No further action required per M. LUND 1-7-92 CS

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5/81

249815CU

JOHN W. OTTEN, M.D., F.A.C.S.

5401 N. KNOXVILLE
PEORIA, ILLINOIS 61614

GENERAL SURGERY
DISEASES OF THE COLON AND RECTUM

TELEPHONE
309-692-4200

June 14, 1991

COUNSEL'S OFFICE
RECEIVED
JUN 24 1991

President Bush
The White House
1600 N. Pennsylvania Ave.
Washington D.C. 20500

Dear Mr. Bush,

I am sure that with your exceedingly busy schedule and multi faceted schedule you did not have the opportunity to watch the television program featuring Dr. C. Everet Koop.

I thought it was rather interesting that Dr. Koop discussed many of the problems facing the delivery of health care today. What struck me was the magnificence of Dr. Koop's presentation which was consistence with his performance as the Surgeon General of the United States.

The current debate in congress over equal opportunity made Dr. Koop's presents on television even more dramatic from my standpoint.

I personally feel that the minority quotas which are obviously present through out the United States are grossly unfair to many individuals.

I, for example have very little confidence in Dr. Sullivan present Secretary of Health and Human Services. I say that because of a number of his appearances on television as well as written statements some of which seem to demonstrate his lack of knowledge of these complex issues.

I think it a personal affront to the American public to have the current "Surgeon General" appear before the American Public. In no way does this woman impart knowledge intelligence nor capability to perform in this important position.

I myself, I understand, was a victim of minority pressure in that Congressman Bob Michel submitted my name as Assistant Secretary of Defense for Health Affairs. I was informed that I was very high on the list and was advised not to make any long term plans in Peoria, Illinois, my home, and where my practice is located. Shortly thereafter I was informed that the Defense Department had received a great deal of pressure to appoint a minority person in this position.

Several articles have appeared not only in newspapers but in medical journals as well indicating the present Assistant Secretary of Defense for Health Affairs ineptness in handling various situations.

One that comes to mind was his stand of the illegality of a group of physicians in the South who offered to care for all dependents of service personal involved in Desert Storm without charge.

Dr. Mendenz grossly mishandled this issue and I think this points out again the potential risk of having quotas in hiring minority individuals.

My personal history shows a great deal of compassion and assistance to anyone who deserves same. This is evidence by the hundreds of hours I volunteered in developing a methadone maintenance program for heroin addicts who primarily were of black race. No one can say that I am a bigot but I do believe what is right is right and I am very much opposed to quotas.

Respectfully yours,

John W. Otten M.D. F.A.C.S.

ID# 250258

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

COUNSEL'S OFFICE
RECEIVED HU010
JUN 27 1991

INCOMING

DATE RECEIVED: JUNE 27, 1991

NAME OF CORRESPONDENT: W. J. TRENT JR.

SUBJECT: EXPRESSES SUPPORT FOR CIVIL RIGHTS BILL
PERSONAL NOTE

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
~~C. BOYDEN GRAY~~ cuge	ORG	91/06/27 CS	C		91/07/08
REFERRAL NOTE:					
JAN BURMEISTER	RSI	91/06/27		C	91/06/27
REFERRAL NOTE:					
cuat 10	A	91/06/28 CS	C		91/07/08 CS
REFERRAL NOTE:					
cugray	=	91/06/29 CS	letter to Trent		91/06/29
REFERRAL NOTE:					
		/ /			/ /
REFERRAL NOTE:					

COMMENTS: CC4; BILL

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

CU 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.

CBG:NL
CBGray
NLund
Chron.

THE WHITE HOUSE

WASHINGTON

July 8, 1991

Dear Mr. Trent:

I've been asked to respond to your recent note to the President, in which you urged him not to veto the pending civil rights bill.

As you know, the President feels strongly about the subject of civil rights and about the importance of leading the country in the right direction on this sensitive subject. The bill that he vetoed last year, however, would actually have done more to take us in the wrong direction than to solve any of the real problems that quite obviously do exist. Attaching the label "civil rights" to such a bill cannot alter its substance.

The President and the Administration have taken many steps in an effort to resolve this matter in a constructive fashion. Perhaps most important, the President has offered his own civil rights bill, which has unfortunately not received the attention it deserves. The President's bill includes all of the worthwhile measures on which Republicans and Democrats have agreed, along with generous compromise provisions dealing with the more controversial issues. All of us here hope that this bill will eventually pass both Houses of Congress, so that the President can sign it and we can lay this matter to rest.

On behalf of the President, thank you for writing.

Yours truly,

Original signed by CBG

C. Boyden Gray
Counsel to the President

Mr. W. J. Trent, Jr.
3609 Birchwood Lane
Greensboro, NC 27410

250258

CBGray

cc: J. Burmeister

Mr. and Mrs. W. J. Trent, Jr.
3609 Birchwood Lane
Greensboro, North Carolina 27410

5/24/91

Dear George—

Please be careful & take good care of yourself! I hope that you will soon overcome your disabilities. Vi joins me in this!

And listen - Please don't veto the Civil Rights Bill. I'm really worried about what's happening about race relations in USA.

Vi joins me in love to Barbara.

Devotedly

Bill

CS

ID # 250500 CU

HU010

R: 6/28
5.00

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

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

Name of Correspondent: Grant Erwin

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

Subject: Copy of letter to Senator Danforth, in support of the Administrations position on TR I

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
Cro(c	ORIGINATOR	91/06/27 TC		C	91/07/03 CS
Cra:10	Referral Note: A	91/06/28		C	91/07/03 CS
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:				

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- S - Suspended

FOR OUTGOING CORRESPONDENCE.

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: N. Lund sent copy to Nick Wisk for distribution to appropriate Senate staff 7-03-91 - CS
Close out.

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Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

rbh

Richardson,
Bellows, Henry
& Co , Inc.

COUNSEL'S OFFICE
RECEIVED
JUN 27 1991

Mr. Gray:

Any way I can help...

Administration's definition is right.

Jack Ervin

1140 Connecticut Avenue
Washington, D. C. 20036
202/659-3755

Richardson,
Bellows, Henry
& Co., Inc.

June 17, 1991

Honorable John C. Danforth
United States Senate
322 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Danforth:

I have spent over twenty years developing and validating employee selection and promotion procedures and also have been intimately involved in the development of professional measurement standards and the present federal Uniform Guidelines. What follows, therefore, is based on that experience and is meant to be a constructive input to the efforts of you and your colleagues to bring reason into the present civil rights debate. I also believe that what is written below on S.1208 would be found to be supported by the overwhelming majority of industrial and other psychologists, as well as their professional associations.

1. Section 3, which allows complaining parties to allege that parts of a "group of employment practices" result in a disparate impact, could force employers to abandon employment-related test batteries, which typically are better measures of individual merit than single tests or subjective procedures.

For example, based on a review of employment requirements, a psychologist conducts research into the employment-relatedness of three tests. The results indicate that scores on each of the tests are positively job-related, but their individual levels of job-relatedness are not high enough to meet federal requirements. As is commonly found, however, simultaneous analyses show that the individual test scores can be combined to produce one composite score which is sufficiently job-related. In the testing profession, such a test "battery" would be and is seen as one practice, or procedure.

Unfortunately, under the present version of S. 1208 (and H.R.1), even though the individual subpart tests are not used separately, complaining parties can "bypass" the battery's job-relatedness and subject each of the tests within the battery to an impact and job-relatedness test. If any one or more of the parts are shown separately to have impact, even in an operationally undefined "significant" way, they would be judged separately and would not prevail. The job-related battery thus would have been destroyed

1140 Connecticut Avenue, N W., Washington, D.C. 20036, tel. 202/659-3755

and the employer would be left with no alternative except hiring by the numbers with less reliable, less valid subjective procedures. Since the use of test batteries would increase the risk of liability, this scientifically preferred and fairer selection strategy would be abandoned.

Suggestion:
An addition should be made to Section 5 to provide that an employment-related procedure, such as a single test or a test battery whose parts are not used separately, shall be considered to be a single employment practice.

2. Use of the word "effective" in Section 5's definition of business necessity seems reasonable on the surface, but implies that performance is dichotomous; i.e., effective and ineffective, and may be interpreted to mean that there is an effectiveness line above which relative qualifications have no value and cannot be considered. This is quite contrary to decades of empirical scientific evidence which shows quite clearly that those who have performed higher on an employment-related selection practice also perform higher on the job. Griggs also quite clearly permitted selection on the basis of relative qualifications, and it repeatedly preserved the employer's right to do so. While Section 5 does state its intent to codify the meaning of business necessity used in Griggs, this relative qualifications recognition is missing from S.1208. As stated above, its absence could be interpreted to mean that performance is dichotomous and that the minimally qualified must be treated no differently than the relatively better qualified, no matter the employment-related evidence. Since "effective" also has no standarized, operational definition in the scientific or employer community, its meaning will become the source of endless, case by case debate leaving the courts and federal and state agencies to decide what constitutes effectiveness.

Suggestion
Section 5 should be revised to indicate that "effective" means relative levels of performance above an employer determined minimum (Clark-Case, Griggs"... An employer may set his qualifications as high as he likes..., and he may hire, assign and promote on the basis of test performance.")

3. Section 5's references to "the" job and "an" employment position may be confused as meaning that separate employment-relatedness studies must be conducted for each and every job in each and every location. This principle, referred to as situational specificity, has been abandoned by the scientific community on the basis of substantial evidence that job-relatedness is a generalizable phenomenon, at least for similar jobs and clerical, hourly wage, supervisory and managerial job families. Stated another way, once a sufficient weight of evidence has accumulated that a given test or test battery is predictive of performance in a specific job or job family, then it is not necessary to continue re-validating that test over and over

for similar use with the same job or job family in other settings. It also must be recognized (a) that the overwhelming majority of employers, including many of the largest in the country, do not have the worker sample sizes necessary to make showings of employment-relatedness for each job in each location, or even for job families, and (b) that they therefore must be able to "borrow" employment-relatedness proof from other sources. A "the job, the location" requirement therefore runs counter to accepted professional practice and the Uniform Guidelines and, again, leaves most employers with little choice other than to use less reliable, less valid subjective procedures and hire or promote by the numbers.

Suggestion:
All references to "the" job or "an" employment position should be changed to "the job or jobs involved."

Finally, I would add that we do have thoughts on S.1207 and 1209, but have limited these comments to the area of most expertise; i.e. S.1208. If there are any questions or comments, I would be happy to meet or speak with whomever you designate.

With best wishes.

Sincerely,

Frank W. Erwin
President