Bush Presidential Records
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Subject File - General

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WHORM Category Code: **HU010**
Document Number / Range: **250524CU to 258060**
Equality

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WHORM Category Name:	**Equality**

Document Number:	**250524CU to 258060**	**Entire Category Processed**
Alpha File Name:		

ID # 2 50524 CU

HU010 R: 6/28 5.00

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: FRED LOI MASCARENAS, JR

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

Subject: Requests that the President reconsider his position on the Civil Rights Act.

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	91/06/27 TC		C	91/09/09 CS
CUAT 10	Referral Note:	TC			CS
	A	91/06/28		C	91/09/09
	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

Comments: 9/9/91 OBE CS

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

5/81

Fred Loi Mascarenas, Jr.
Attorney at Law
14866 East Alabama Place
Aurora, Colorado 80012
(303) 750-5132

June 13, 1991

President George Bush
The White House
Washington, D.C. 20301-1600

Dear Mr. President:

In 1984, as Vice President, you wrote an article for the Executive Forum magazine entitled "The Administration's Support of Minority Business". In that article, you stated that in the course of our history, millions have come to the United States in poverty, but then enriched themselves and the country by practicing thrift, diligence, and hard work. You stated that your Administration was firmly determined to help those who now face poverty or **prejudice** to achieve the same prosperity.

Executive Forum, and its parent company, Restrepo & Associates, are now bankrupt following their involvement in the **whistle-blowing** involving the **Wed-Tech** incident. Keeping your comments in the article in mind, I am requesting that you reconsider your position on the proposed Civil Rights legislation.

The Civil Rights Act was amended in 1964 in an attempt to correct over 200 years of discrimination against minorities in this country. In 1978, Regents of the University of California vs Bakke, although not decided on constitutional grounds or issues directly relating to labor organizations, produced a loose thread in the fabric of the 1964 Civil Rights amendment. Although there is a Title VII on the books designed to protect the rights of the minorities you mentioned in your article, the fact is, discrimination is still prevalent in this country.

In my case, for example, I have worked as an attorney for the Department of Defense, OCHAMPUS, for nearly three years. I brought irregularities to the attention of management and was chastised for it. On March 26 of this year, I filed an EEO action against my supervisor. The retaliation for my action has been swift and potent by OCHAMPUS management. Title VII has been ignored and my livelihood as a federal attorney is questionable. The message to employees is clear, if one files an EEO action against management, they will be dealt with.

When a federal agency such as OCHAMPUS or the Small Business Administration are given unrestricted authority to do as they wish against minorities who are exercising their First Amendment

rights to speak out, then a stronger, not weaker Civil Rights Act is needed. I am in favor of equality, but until the differential treatment of minorities stops, especially from within the federal government itself, strong legislation to protect the rights of minorities is still unfortunately needed.

Mr. President, I am respectfully requesting that you reconsider your position on the Civil Rights legislation. Thank you for taking the time from your busy schedule to review this letter.

Sincerely,

Fred L. Mascarenas Jr.
Washington D.C. Attorney

cc: Hispanic Public Affairs Committee
Carlos Sanchez, Washington Post

ID# 250551

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HU 010

INCOMING

DATE RECEIVED: JUNE 28, 1991

NAME OF CORRESPONDENT: MR. MURRAY J. LAULICHT

SUBJECT: COMMENTS ON THE CIVIL RIGHTS LEGISLATION

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	91/06/28		C	92/05/04 RL
REFERRAL NOTE:					
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REFERRAL NOTE:					

COMMENTS: _____

ADDITIONAL CORRESPONDENTS: 1 MEDIA:L INDIVIDUAL CODES: ____ ____ ____

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

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

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

COMMUNITY RELATIONS COMMITTEE OF THE UNITED JEWISH FEDERATION OF METROWEST

June 26, 1991

Honorable George H.W. Bush
President of the United States
The White House
Washington, DC 20500

RE: Civil Rights Legislation

Dear Mr. President:

The Jewish community relations field continues to be in the forefront of the campaign fostering civil rights and equal justice for all Americans. As a minority which has long felt the pain of discrimination, the Jewish community strongly supported the wide-reaching Civil Rights laws of the 1960's and has urged their strengthening and aggressive enforcement since that time. We join the broad consensus of Americans seeking to re-strengthen Federal anti-discrimination laws widely perceived to have been weakened through rulings of the Supreme Court in 1989. We urge the passage this year of a strong Civil Rights Act to achieve these objectives. At the same time, we recognize that employment anti-discrimination laws should be kept fair and balanced in order to preserve the integrity of the legal process and an environment encouraging full enforcement.

With this background in mind and after considerable study and discussion, we are happy to take this opportunity to express to you, our views on the legislation (H.R. 1) which passed the House of Representatives this month. We note that many features of the legislation have not generated significant controversy. This letter will focus on what appears to be the key provisions which have been contested in debate and through alternative proposed legislation. While expressing these views, it must be observed that people strongly favoring civil rights in the Jewish community and elsewhere possess somewhat differing views on particular provisions of the present bill, particularly those focusing upon legal procedure.

We join those disfavoring efforts to create division between people through use of slogans which are inadequate to describe the proposed legislation. With good will on all sides, the prompt passage of a strong and fair Civil Rights Act can be assured.

The points we will address relating to specific features of the H.R. 1 fall into eight categories and are as follows.

60 Glenwood Avenue, East Orange, NJ 07017
(201) 673-0800 • Telefax (201) 673-4387

375 Route 10, Randolph, NJ 07869
(201) 366-3113 • Telefax (201) 366-1028

A. Disparate Impact

1. Standard to be met in proving disparate impact cases.

We endorse the provision of H. R. 1 specifying that in meaningful disparate impact, the employer should have the burden to demonstrate that the employment practice causing the disparate impact had a "significant and manifest relationship to the requirements for effective job performance." We believe that this is a reasonable burden for an employer to bear.

2. Burden to identify offending employment practice.

We agree with the provision of H.R. 1 requiring a plaintiff to demonstrate the specific employment practice causing a disparate impact. We would modify somewhat the language of H.R. 1 which would shift the burden of demonstration in this area to the employer where a plaintiff has been unable to identify the employment practice causing disparate impact despite "diligent efforts: to do so. It is our view that the employer should have the burden of identification only where it can be shown that the employer has not maintained employment records and data as required by federal law and promulgated regulations.

3. Definition of quotas.

We agree with the provisions of H.R. 1 outlawing quotas. We would modify the definition of quotas to some extent, to reflect that the use of numerical goals as affirmative action should be permitted only where court orders or federal regulations embody a need to prescribe such goals. We do not wish to see employers on their own allocating jobs based on numerical imperatives.

4. Race norming test scoring.

The Community Relations Committee strongly agrees with the provision of H.R.1 making the practice of race norming in test evaluation unlawful. We would support a provision allowing tests to be monitored for fairness under the "manifest relationship" standard which employers are required to demonstrate in disparate impact cases.

B. Intentional Discrimination

5. Right to sue for discrimination of various kinds, and damages.

We support the provisions of H.R. 1 specifying that all employment practices, not just hiring practices, should be covered in Federal Civil Rights legislation. We favor the provisions mandating recovery for actual and punitive damages in cases involving intentional violation of civil rights in employment. We favor permitting jury trials in all cases involving money damages under Title 7. We oppose the imposition of a requirement that an employer's grievances procedure must be followed as a prerequisite for going to court. These changes would make the Federal Civil Rights laws consistent with the provisions already present within New Jersey's Law Against Discrimination. At the same time, we believe that civil rights awards should be monitored to determine whether this expansion in remedies may lead frequently to "windfall" verdicts. Should that development occur, we believe that prompt modification of the law to safeguard against such a recurring development can be seriously considered.

6. Reopening prior civil rights judgments.

We favor the language of H.R. 1 providing that civil rights judgements should not be reopened through new lawsuits unless plaintiffs bringing such suits can show that they had no opportunity to object to the prior judgment and were not adequately represented in the prior proceeding.

7. Mixed-motive cases.

We disagree with the broad definition of discrimination in H.R. 1 providing that discrimination takes place wherever discriminatory intent compromises a "contributing factor" in the employment decision even if the same decision would be made for non-descriminatory reasons. This definition is too broad. We believe that the finder of fact in all cases should determine whether discrimination was the primary reason for the employment action.

8. Discrimination pertaining to U.S. citizens outside the United States

We note that no provision has as yet been added to the legislation to correct the April, 1991 Supreme Court decision in EEOC v. Aramco which held

that the Civil Rights laws do not protect American citizens from discriminatory treatment by American companies in their employment activities abroad. We strongly urge that a provision protecting American citizens from discrimination by American firms in their employment activities abroad be included in the present legislation. The Jewish community is particularly sensitive to foreign government imposed boycotts based on race, religion or nationality. Such practices should be stopped.

We would be please to respond to any inquiry you or your office may have relating to our position on this legislation or to receive any information you may wish to provide, including a response to this letter. We again urge prompt passage of a strong Civil Rights Act consistent with the principles expressed in this letter.

Lee A. Adlerstein
Chairperson
Ad Hoc Committee on
Civil Rights Legislation

Murray J. Laulicht
Chairperson
Community Relations Committee

ID# 251160

HU 010

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JULY 02, 1991

NAME OF CORRESPONDENT: LAVEEDA MORGAN BATTLE

SUBJECT: CONCERNS REGARDING ADMINISTRATION POSITION ON THE CIVIL RIGHTS ACT 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	91/07/02		C	92/05/04 RL
	REFERRAL NOTE:					
	REFERRAL NOTE:					
	REFERRAL NOTE:					
	REFERRAL NOTE:					
	REFERRAL NOTE:					

COMMENTS: _____

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

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

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
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*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.

ALABAMA LAWYERS ASSOCIATION

1990–1991

OFFICE OF THE PRESIDENT
Suite 700
2101 Sixth Avenue, North
Birmingham, Alabama 35203
(205) 254-3216

OFFICE OF THE TREASURER
P.O. Box 2645
Mobile, Alabama 36652-2645
(205) 433-0416

OFFICE OF THE EXECUTIVE ASSISTANT
Charlotte Coleman
3121 Zelda Court
Montgomery, Alabama 36106
(205) 834-3101

June 24, 1991

The Honorable George Bush
President
United States of America
White House
1600 Pennsylvania Avenue, NW
Washington, DC 20000

Dear Mr. President:

We are an association of lawyers throughout the State of Alabama who are deeply concerned and disturbed about the position which you have taken with regard to the Civil Rights Act of 1991.

The Civil Rights Act of 1991 has been carefully drawn to correct misinterpretations of legislative intent by recent Supreme Court decisions in the civil rights area, and to strengthen existing protections and remedies available under Federal Civil Rights Law in order to provide for effective deterrence and adequate compensation for victims of discrimination.

Mr. President, in Alabama where historic vestiges of discrimination are part of what have impeded the progress of this state into the society which you have envisioned as "kinder and gentler," we believe that your position on the Civil Rights Act of 1991 will impede your dream.

The road to harmony requires elimination of practices which foster discrimination in all areas of life. H.R. 1 addresses, in

a specific way, the restoration of federally protected civil rights while strengthening the measures of relief which should be afforded victims of discrimination.

As an association, we support the Civil Rights Act of 1991. We urge that you consider the divisive effect of a presidential veto on our state, our nation, and our multi-ethnic cultural world.

Sincerely yours,

GORHAM, WALDREP, STEWART,
KENDRICK & BRYANT, P.C.

LaVeeda Morgan Battle
President

cc: Honorable Howell T. Heflin
Honorable Richard C. Shelby
Honorable Ben Erdreich

ID# 251163

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JULY 02, 1991

NAME OF CORRESPONDENT: MR. EDWIN J. FEULNER JR..

SUBJECT: FORWARDS AN ADVANCE COPY OF AN ARTICLE WHICH WILL APPEAR IN THE SUMMER ISSUE OF "POLICY REVIEW", THE ARTICLE SUGGESTS THAT THE PRESIDENT'S CIVIL RIGHTS BILL IS A QUOTA 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	91/07/02	NAN	C	91/08/09
REFERRAL NOTE:					
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COMMENTS: _____

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

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

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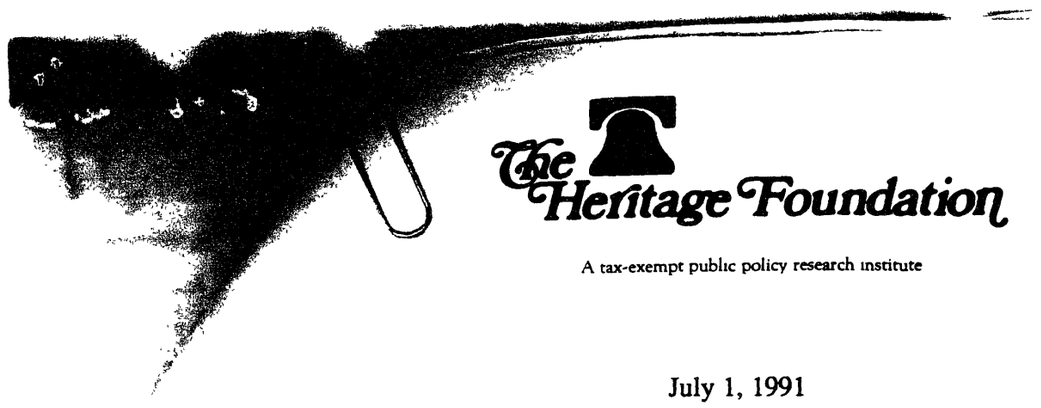
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

251163



The Heritage Foundation

A tax-exempt public policy research institute

July 1, 1991

THE CHIEF OF STAFF
has seen

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

Dear John:

I wanted to let you know in advance that the summer issue of our independent quarterly, *Policy Review*, will include the enclosed article by Terry Eastland entitled "George Bush's Quota Bill." Eastland argues that the President's civil rights bill is preferable to that of congressional liberals, but he suggests that it is a quota bill as well.

I continue to admire the courageous stand you have taken in opposing the most harmful forms of quota legislation.

Sincerely,

Edwin J. Feulner, Jr.
President

EJF/mbk

214 Massachusetts Avenue, N.E. • Washington, D.C. 20002-4999 • (202) 546-4400

ID# 251511

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JULY 03, 1991

NAME OF CORRESPONDENT: OPHELIA BALCOS

SUBJECT: CONCERNS REGARDING RECENT DECISION OF THE SUPREME COURT PERTAINING TO CIVIL RIGHTS

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
**BILL CANARY	ORG	91/07/03	C		91/7/9 LJ
REFERRAL NOTE:					
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		__/__/__			__/__/__
REFERRAL NOTE:					
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REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: SEE ID 051886
Author is not on dated attached. Thanks

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

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

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
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KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

COMMISSION ON CIVIL RIGHTS
239 City Hall
Minneapolis Minnesota 55415-1371

(612) 673-3012

minneapolis
city of lakes

June 26, 1991

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

Dear President Bush:

The Minneapolis Commission on Civil Rights voted at its meeting on June 17, 1991 to send you this urgent request for support. We are extremely concerned about recent decisions of the Supreme Court which have drastically undermined efforts to promote and defend the civil rights of all citizens in the United States: (87-1167) Price Waterhouse v. Ann B. Hopkins; (87-1387) Wards Cove Packing Company, Inc., et al. v. Frank Antonio, et al; (87-1428) Patricia A. Lorance, et al. v. A.T.& T. Technologies, Inc., et al.; (87-1614) John W. Martin, et al. v. Robert K. Wilks, et al.; (87-1639) Personnel Board of Jefferson County, Alabama v. Robert K. Wilks, et al.; (87-1668) Richard Arrington, Jr., et al. v. Robert K. Wilks, et al.

Research conducted by legal scholars has clearly shown that these decisions have drastically decreased the number of cases filed in the courts. In addition, it is clear from subsequent District Court decisions that plaintiffs' now face a heavier burden of proof when presenting their cases.

We urge you to take immediate action to support and work for legislation which will reverse the course set by those Supreme Court decisions. At a time when other nations are trampling on fledgling democracy movements, the United States cannot afford to return to an era where the rights of some citizens take precedence over those of others!

Thank you for your concern and support in this matter.

Sincerely,

Ophelia G. Balcos

Ophelia G. Balcos, Chair
Minneapolis Commission on Civil Rights

jb

ID # 251824 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: 8 Republican Senators

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

Subject: Danforth and civil rights legislation

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

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/07/03		C	91/07/08 CS
	Referral Note:				
CUAT 10	A	91/07/03		C	91/07/08 CS
	Referral Note:				
CUAT 07	I	91/07/03		C	91/07/03 CS
	Referral Note:				
CUGRAY	I	91/07/03		C	91/07/03 CS
	Referral Note:				
	—	/ /		—	/ /
	Referral Note:				

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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 RBG at 7-8-91 Staff mtg G Luno 7-8-91 CS

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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

United States Senate

June 28, 1991

The White House
1600 Pennsylvania Ave., N.W.
Washington D.C.

Dear Mr. President:

We are writing to express our deep concern about reports in today's media implying that our colleague, Senator Jack Danforth, did not act in good faith with regard to a recent proposal on civil rights legislation offered by Administration officials.

As members of the working group of Senators trying to craft a compromise civil rights measure, we want to clarify the apparent misunderstanding regarding the Administration proposal on the "business necessity" standard. We considered the proposal and as a group agreed to take it to the Democrats for review (and hopefully for their approval), and then reanalyze the situation in light of their comments. At no time during this process did we have an agreement to accept the White House language.

There can be no question that Jack Danforth is a man of the highest personal integrity. It distresses us to see what appears to be a miscommunication erroneously cast in terms of Senator Danforth's personal integrity. We would hope that this uncalled for challenge to our colleague's integrity will not affect the prospects for compromise legislation.

We want to give you our personal assurances that each of the nine Republicans involved in these discussions has been operating in good faith, and that our common goal is and always has been to find a means to the end we know you desire: the enactment of a fair and equitable civil rights bill.

We stand ready to discuss this matter with you at any time.

Sincerely,

John Chafee
James Jeffords
Dave Durenberger
Warren Rudman
Arlen Specter
William Cohen
Pete Domenici
Mark O. Hatfield

CS

R. 7-11-91

ID # 253732 CU

WHITE HOUSE HU010
CORRESPONDENCE TRACKING ~~WORKSHEET~~

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

Name of Correspondent: FRANK W. ERWIN

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

Subject: Copy of letter to Senator Danforth, re: S. 1208, Uniform Guidelines

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

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/07/09		C	91/07/29 CS
Referral Note:					CS
CUAT 10	~~A~~	91/07/10		C	91/07/29
Referral Note: Attn: FYI See comments					CS
CUAT07	I	91/07/10		C	91/07/10
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- Completion Date = Date of Outgoing

Comments: Captioned moved -- may be closed out
M [illegible] 7-29-91 — CS

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

rhb

Richardson,
Bellows, Henry
& Co, Inc

Governor Sununu.

CBGray

Any way I can help...

Administration's definition is right.

Brad Blum

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

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

CS

ID # 25594/CU

HUC10 F: 7.22
4.30

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Sheldon Rudoff

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

Subject: New York City Redistricting (copy of letter to A.G.)

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
CMSK	ORIGINATOR	91 10 7 18		C	92 01 07 CS
CUAT 10	Referral Note: A	91 10 7 19		C	92 01 07 CS
	Referral Note: see comments	1 1			1 1
	Referral Note:	1 1			1 1
	Referral Note:	1 1			1 1
	Referral Note:				

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

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

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

Comments: No further action required per N. Levin CS
1-7-92

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5/81

FAX MESSAGE

202-456-6218

Please Rush This Fax To:

C. Boyden Gray - White House 91 JUL 17 P4:47

You should find 1 pages, not including this cover.

From: Willie Raggazel Date: July 17, 91

***** ***** ***** ***** ***** ***** *****

NOTE:

THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

45 WEST 36 STREET • NEW YORK, NY 10018 • (212) 563-4000 • FAX (212) 564-9058

Union of Orthodox Jewish Congregations of America
איחוד הקהילות החרדיות באמריקה
45 WEST 36TH STREET
NEW YORK, NEW YORK 10018 (212) 563-4000
FAX: 212-564-9058

OFFICE OF THE PRESIDENT

בס"ד

July 17, 1991

Honorable Dick Thornburgh, Attorney General
United States Department of Justice, Room 5111
10th Street & Constitution Ave., N.W.
Washington, D.C. 20530

Subject: New York City Redistricting

Dear Mr. Attorney General:

We urge you to reject the New York City Council Redistricting that is now before you under Section 5 of the Voting Rights Act because it discriminates, on account of race, against a white incumbent City Councilmember, Susan D. Alter. Ms. Alter is an Orthodox Jewish woman who has represented a City Council district that was overwhelmingly black and Hispanic for the past decade. She has now been "gerrymandered" out of her former district so that its voters will elect a Black or Hispanic. Members of the Districting Commission have said publically that they took this blatantly racist step because the Department of Justice "frowns" on apportionments under which white legislators represent districts with a majority of Black and Hispanic residents. A Commission Vice-Chair specifically stated that Ms. Alter's race was the sole factor of the Commission's decision.

We do not believe that your Administration endorses such racist policies. We have supported the Bush Administration's opposition to civil rights legislation that would impose or encourage quotas. Furthermore, we have approved the Justice Department's position and the Supreme Court's ruling in cases involving discrimination against whites such as City of Richmond v. J.A. Crosan Co., 109 S. Ct. 706 (1989), and Wygant v. Jackson Board of Education, 476 U.S. 267 (1986). If the Justice Department were to permit the New York City Districting Commission to carry out its policy of "reverse discrimination" against Ms. Alter, it would undermine the beneficent positions of racial equality and "colorblindness" that resulted in these recent decisions. Indeed, the Districting Commission's policy of racial proportionality -- i.e., encouraging black and Hispanic voters in districts where racial minorities are in the majority to vote for black or Hispanic -- is racism at its worst. Rather than promoting the election of the best candidate, irrespective of that candidate's race, the racial gerrymander tells voters that the color of a candidate's skin is the overriding concern.

Sincerely,

Sheldon Rudoff
President

ID # 255966 CU

HU010

R. 7-19 E Am.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: EVAN J. KEMP, JR

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

Subject: Letter to Sununu re: Danforth Bill/civil rights

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	91/07/18		C	91/07/19 CS
CUAT 10	Referral Note: A	91/07/18		C	91/07/19 CS
CUGray	Referral Note: see comments I	91/07/18		C	91/07/18 CS
CUAT 07	Referral Note: I	91/07/18		C	91/07/18 CS
	Referral Note:	/ /			/ /
	Referral Note:				

ACTION CODES:
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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: I called in the changes marked on the attached to Jim Sharf, who accepted them all. Nelson Lund 7-19-91 CS

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5/81

07/18/1991 16:27 FROM OFFICE of the CHAIRMAN TO 94566279 P.01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

OFFICE OF
THE CHAIRMAN

TELECOPIER TRANSMITTAL SHEET

DATE: 7/18/91 TIME: 5:28 pm

NUMBER OF PAGES + COVER SHEET 3

TO : C. Boyden Gray
OFFICE : Counsel to the President
ROOM :
REMARKS : Call me at 7:00 pm on the following number: 703-718-0300

FROM : Evan J. Kemp, Jr. Chairman
OFFICE : OFFICE OF THE CHAIRMAN
PHONE NUMBER : 663-4001
FAX NUMBER : 663-4110

CONFIRMATION REQUESTED? YES X NO ___

IMMEDIATE DELIVERY REQUESTED? YES X NO ___

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

Dear Governor Sununu:

I am writing to you to express my concern that the terms of debate over the Danforth bill and the President's civil rights bill have been reduced to an all too simplistic sound bite. To wit: "the President's bill would require applicants for a janitor's job to have a high school diploma."

This "one-liner" ignores how dependent the promise of equal employment opportunity is on our educational system. It would be tragic to propose legislation which would send the signal to this nation's students that their education is irrelevant to their success in the workplace. Yet this would be the consequence of a law which requires proof of a relationship between all employment selection procedures including educational requirements and job performance.

Both Senator Danforth's bill and the President's bill agree that upon the charging party's establishing adverse impact on member(s) of a class covered by Title VII of the Civil Rights Act of 1964, the burden of proof shifts to the employer to defend the "business necessity" of the practice. Both Senator Danforth ~~and the~~ President cite language - albeit different language - from the 1971 Supreme Court Griggs v. Duke Power Co. decision to define the employer's "business necessity" burden.

If one insists that all selection procedures - even educational requirements - must be related to job performance it will be extremely difficult, if not impossible, for employers to show that use of such objective measures are a "business necessity." Take, for example, employers who give preference to candidates with a high school diploma or give preference to candidates with good national achievement test scores in, for example, English or history. Imagine the virtual impossibility of proving how that knowledge directly relates to job performance for most entry-level positions. It simply can't be done! Given the likelihood of litigation, the prudent employer will simply stop inquiring about diplomas and grades, and the signal to students will be loud and clear: grades don't count and neither does a diploma. It seems to me this is precisely the wrong signal to be sending students in light of the universal desire in this country to improve our educational system.

To take an example from Senator Danforth's home state, assume for the moment that you are the Superintendent of the Hazelwood School District in St. Louis. Because of the burden Senator Danforth's "business necessity" definition places on the school district to prove that the qualification standards for kindergarten teachers are related to the actual job performance of classroom teaching, in many cases you would not be able to prefer candidates with liberal arts degrees in English or history or advanced degrees, for example, because the undergraduate education degree is the only "correct" curriculum directly related to job performance.

Perhaps the most tragic of unintended consequences is on those who seek entry-level jobs such as janitors who will never be able to move beyond that job without the tools that only a good education will give them. The American Dream of upward mobility depends on education as a means of opening the doors of meaningful opportunity. If the reward for investing one's effort in education is absent, we will have missed an historic opportunity to recognize the interdependence of education and equal opportunity. What needs to be made clear to the American public is why the President's bill encourages academic achievement as the most fundamental path toward this nation's commitment to true equality of opportunity.

Finally, this focus on job performance will undermine the President's America 2000: An Education Strategy. One of the strategic national goals established by President Bush is that by the year 2000:

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

The President needs to articulate the positive incentives for individual improvement that his bill creates by virtue of encouraging employers to reward academic achievement. It makes little sense (unless you are in the business of litigation) to burden employers with defending educational credentials and objective measures of achievement every time a job opening is posted. The common sense proposition of preferring an A student over a C student should not depend on whether you are willing to pay a lawyer to defend the practice in court. Yet this would be the ~~unintended~~ consequence of the Danforth bill.

We all have the same goal in mind: A civil rights bill that will eliminate employment discrimination. A definition of discrimination which starts with bad numbers and presumes liability on the basis of using an educational requirement will do little to eliminate employment discrimination and do nothing to improve equal employment opportunity.

Sincerely,

EK

07/19/1991 09:10 FROM EEOC EXEC. SEC. TO 94567929 P.01

WASHINGTON, D.C. 20507

OFFICE OF
THE CHAIRMAN

TELECOPIER TRANSMITTAL SHEET

DATE: _____ TIME: _____

NUMBER OF PAGES + COVER SHEET _____

TO : Nelson LUND

OFFICE : 456-7929

ROOM :

REMARKS :

FROM : Jim Sharf 663-4118

OFFICE : OFFICE OF THE CHAIRMAN

PHONE NUMBER :

FAX NUMBER :

CONFIRMATION REQUESTED? YES ___ NO ___

IMMEDIATE DELIVERY REQUESTED? YES ___ NO ___

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL

_____ AT _____.

EEOEDUC4

Dear Governor Sununu:

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If one insists that all selection procedures - even educational requirements - must be related to job performance it will be extremely difficult, if not impossible, for employers to show that use of such objective measures are a "business necessity." Take, for example, employers who give preference to candidates with a high school diploma or give preference to candidates with good national achievement test scores in, for example, English or history. Imagine the virtual impossibility of proving how that knowledge directly relates to job performance for most entry-level positions. It simply can't be done! Given the likelihood of litigation, the prudent employer will simply stop inquiring about diplomas and grades, and the signal to students will be loud and clear: grades don't count and neither does a diploma. It seems to me this is precisely the wrong signal to be sending students in light of the universal desire in this country to improve our educational system.

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Sincerely,

EK

CS

ID #255966 CU

HU010 R. 7/30

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Evan Kemp

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

Subject: Letter to Governor Sununu re terms of debate over the Danforth bill and the President's civil rights bill

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	Chron	ORIGINATOR	91/07/29		C	91/08/11 CS
Cu Ltr to		Referral Note: A	91/07/30		C	91/08/11 CS
Cu Ltr to		Referral Note: I	91/07/30		C	91/07/30 See comments CS
Cu Ltr to		Referral Note: I	91/07/30		C	91/07/30 CS
		Referral Note:	/ /			/ /
		Referral Note:				

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C - Completed
S - Suspended

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

Comments: No Further Action Required Per R. Lundy CS

8/11/9 –

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5/81

07/29/1991 15:06 FROM OFFICE of the CHAIRMAN TO 94566279 P.01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

OFFICE OF
THE CHAIRMAN

TELECOPIER TRANSMITTAL SHEET

DATE: 7/29/91 **TIME:** 4:10 pm

NUMBER OF PAGES + COVER SHEET 4

TO : C. Boyden Gray

OFFICE : Counsel to the President

ROOM :

REMARKS : The last ~~P~~ on p.1 and first two o... p.2 are our "trump CARDS" which have been added to this ltr which I saw last week. We are awaiting your instruct... on sending this.

FROM : Evan J. Kemp, Jr., Chairman

OFFICE : OFFICE OF THE CHAIRMAN

PHONE NUMBER : 663-4001

FAX NUMBER : 4110

CONFIRMATION REQUESTED? YES ✓ NO ___

IMMEDIATE DELIVERY REQUESTED? YES ✓ NO ___

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL
Debra **AT** # above .

Dear Governor Sununu:

I am writing to you to express my concern that the terms of debate over the Danforth bill and the President's civil rights bill have been reduced to an all too simplistic sound bite. To wit: "the President's bill would require applicants for a janitor's job to have a high school diploma." This "one-liner" ignores how dependent the promise of equal employment opportunity is on our educational system.

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

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

Both Senator Danforth's bill and the President's bill agree that once the charging party establishes adverse impact on member(s) of a class covered by Title VII of the Civil Rights Act of 1964, the burden of proof shifts to the employer to defend the "business necessity" of the practice. Both Senator Danforth and the President cite language - albeit different language - from the 1971 Supreme Court Griggs v. Duke Power Co. decision to define the employer's "business necessity" burden.

If one insists, however, that all selection procedures - even educational requirements - must be related to job performance, it will be extremely difficult, if not impossible, for employers to show that use of such objective measures are a "business necessity." Take, for example, employers who give preference to candidates with a high school diploma or give preference to candidates with good national achievement test scores in, say, history or geography. Imagine the virtual impossibility of proving how that knowledge directly relates to job performance for most entry-level positions. It simply can't be done! Given the likelihood of litigation, the prudent employer will simply stop inquiring about diplomas and grades, and the signal to students will be loud and clear: Grades don't count and neither does a diploma. It seems to me this is precisely the wrong signal to be sending students in light of the universal desire in this country to improve our educational system.

The legitimate use of professionally developed ability tests such as the national achievement tests as well as hiring on the basis of relative qualifications were both addressed by Congress when Title VII was passed in 1964. In Section 703(g) of Title VII, the EEOC is obligated to recognize the legitimate use of professionally developed ability testing as follows:

> "(I)t shall not be an unlawful employment practice for an employer... to give and to act upon the results of any professionally developed ability test 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.

Additionally, Senators Clark and Case, sponsors of Title VII in 1964, clarified the legitimacy of hiring on the basis of relative qualifications in their Memorandum of Understanding which they read into the legislative record:

> "There is no requirement in Title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance."

An unintended consequence of focusing on job performance which would likely preclude hiring on the basis of relative qualifications can be illustrated with an example from Senator Danforth's home state, the Hazelwood School District in St. Louis. Senator Danforth's "business necessity" definition places the burden on the school district to prove that the qualification standards for kindergarten teachers are related to the actual job performance of classroom teaching. Under the Danforth definition, the school district would likely not be able to hire on the basis of relative qualifications by preferring candidates with liberal arts degrees in music or literature or advanced degrees because the undergraduate education degree is the only "correct" curriculum directly related to teaching job performance. Such a situation would seem to me to contradict the very promise of equality of opportunity mandated by Congress when they passed Title VII in 1964.

We need look no farther for the realization of equal opportunity envisioned by the President in his bill than the stunning success of the military in Operation Desert Storm. In that performance-driven culture of competence, virtually every recruit in today's military has a high school diploma. Continuing education is the rule, not the exception, and objective measures of academic achievement are used to inform individualized remedial course work in reading, writing and math as needed. Widely viewed as providing a non-discriminatory, level playing field, the military has been singularly successful both in attracting minorities into entry-level jobs and providing unparalleled avenues of upward mobility by rewarding merit, not race.

Perhaps the most tragic of unintended consequences of the Danforth

bill will be on those who seek entry-level jobs such as janitors and who will never be able to move beyond that job without the tools that only a good education will give them. Should any job be characterized as precluding upward mobility for those individuals willing to invest their efforts in continuing adult education whether provided by the employer or by the community? Yet this would be the unintended consequence of a law which requires proof of a relationship between all employment selection procedures including educational requirements and job performance.

The American Dream of upward mobility depends on education as the means of opening the doors of meaningful opportunity. This promise should be just as true for that adult who invests his or her effort in continuing education after being employed as it is for the individual just entering the job market. I doubt that Senator Danforth intends to stigmatize the janitors of this nation as stuck in their job for life or to deny those individuals opportunities based on individual initiative, yet this is certainly one possible interpretation of his "one liner."

What needs to be made clear to the American public is that the President's bill encourages academic achievement as the most fundamental path toward this nation's commitment to true equality of opportunity. If the reward for investing one's effort in education is absent no matter when that individual effort is made, we will have missed an historic opportunity to recognize the interdependence of education and equal opportunity. Moreover, it makes little sense (unless you are in the business of litigation) to burden employers with defending the use of educational credentials and objective measures of achievement each and every time a job opening is posted. Furthermore, the common sense proposition of hiring on the basis of relative qualifications by preferring an 'A' student over a 'C' student should not depend on whether you are willing and able to pay a lawyer to defend the practice in court. These would be the unintended consequences of the Danforth bill.

We all have the same goal in mind: A civil rights bill that will eliminate employment discrimination. A definition of discrimination which starts with bad numbers and presumes liability on the basis of using an educational requirement or an objective measure of achievement will do little to eliminate employment discrimination and do nothing to improve equal employment opportunity.

Sincerely,

EK

CS

ID # 155992 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: C. Boyden Gray

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

Subject: Draft Letter on Danforth Civil Rights Bill

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU OFC	ORIGINATOR	91/07/23		C	91/07/23 CS
	Referral Note:				CS
CU GRAY	A	91/07/23 CBG		C	91/07/23
	Referral Note:	Memo to Steve Domanski - Jul 23			
CU ATTO	A	91/07/23 NG		C	91/07/23 CS
	Referral Note:	Memo to CB Gray - Jul 2391			
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	Referral Note:				
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	Referral Note:				

ACTION CODES.
A - Appropriate Action
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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
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Comments: _____

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

THE WHITE HOUSE

WASHINGTON

July 23, 1991

MEMORANDUM FOR C. BOYDEN GRAY

FROM: NELSON LUND

SUBJECT: Lamar Alexander Letter

Attached, as we discussed, is a revised draft letter for Sec. Alexander. I've also attached a cover memo from you to Danzansky in case you need it.

Attachments

CBG:NL
CBGray
NLund
Chron.

THE WHITE HOUSE

WASHINGTON

July 23, 1991

MEMORANDUM FOR STEPHEN I. DANZANSKY

Original signed by CBG

FROM: C. BOYDEN GRAY

SUBJECT: Draft Letter on Danforth Civil Rights Bill

Attached is an edited version of the draft letter commenting on Senator Danforth's disparate impact bill. Please let me know what you think.

Thanks for your help.

DRAFT

Dear Senator Hatch:

Thank you for your recent letter requesting my views on the effects that S. 1408 ("Equal Employment Opportunity Act of 1991") could have on the Administration's program for the reform of American education.

I am deeply concerned that this bill could undermine important elements of any serious effort to improve our educational system. Study after study has confirmed that our young people and our adult population lack the knowledge and skills that will be needed to succeed in a rapidly changing global economy. In order to persuade students to stay in school and study hard while they are there, it is absolutely vital that employers be allowed, and indeed encouraged, to reward such behavior by considering diplomas, grades, and test scores when hiring entry-level workers.

S. 1408 will create major new risks of legal liability for employers who require diplomas or rely on grades or test scores in the hiring process. Although the "business necessity" language is ambiguous in some respects, it is clear that employers will have much more difficulty in defending legitimate and sensible educational criteria than they have under current law. It is well-established that performance in school and on standardized tests are well correlated with economic productivity. Employers should not have to re-invent the wheel with scientific "validation studies" for every test and every job in the economy, any more than the military should have to prove why it makes sense to require every recruit to have a high school education.

Under S. 1408, it also appears that employers will not be able safely to require entry-level employees to have the skills and knowledge necessary to perform functions other than those required by the exact job for which they are being considered. In effect, the bill demands that employers treat every job as a dead-end job.

This interpretation is confirmed by Senator Danforth's remarks on the floor of the Senate on July 10, when he framed the issue as follows: "Should an employer be able to say that janitors must have a high school diploma; yes or no?" As you know, the law already prevents the use of such requirements unless they significantly serve the employer's legitimate employment goals. The blanket condemnation of such practices reflected in S. 1408, however, would send precisely the wrong message to students, teachers, and employers. It would say to them all that staying in school doesn't matter because employers don't have the right to ask whether you graduated or whether you did well. And that message -- transmitted as an economic fact of life -- will be

received much more clearly than anything I or anyone else can say about the value of education.

I hope that the Congress will not do anything to remove or undercut the ability of the labor market to reward students who work hard and finish school. Without the incentives that only this market can provide, I fear that our efforts to stimulate improvements in American education will be seriously undermined. S. 1408, I believe, would have exactly this unfortunate effect.

Lamar Alexander

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	Case Number 255992SS From C. Boyden Gray to POTUS RE: Civil Rights - Senator Danforth (2 pp.)	07/19/91	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Records Management, White House Office of (WHORM)
Series: Subject File - General
Subseries: Scanned
WHORM Cat.: HU010
File Location: 250524CU to 258060

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

Date Closed:	1/10/2000	**OA/ID Number:**	00002-001
FOIA/SYS Case #:	1999-0285-F	**Appeal Case #:**	
Re-review Case #:		**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

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

P-1 National Security Classified Information [(a)(1) of the PRA]
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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)]

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DG

253992 SS

NLC 10

THE WHITE HOUSE

WASHINGTON 91 JUL 19 PM 4:35

July 19, 1991

MEMORANDUM FOR THE PRESIDENT

FROM: C. BOYDEN GRAY

SUBJECT: Civil Rights - Senator Danforth

Although Senator Danforth's July 10 letter to you is incorrect in many respects, it does focus attention on the real issue: whether Federal law should permit measures of educational achievement to have any role in employment decisions.

Under Danforth's proposal, employers will not be able safely to use tests, diploma requirements, or other measures of educational achievement unless they conduct a scientific validation study that proves a direct link between the criteria adopted and performance of the exact job at issue. Such studies are so costly that only the largest corporations can afford them. And they only prove what everyone already knows. Experience with the Armed Forces test, practices in other countries, and many studies by industrial psychologists, all show that educational achievement is highly correlated with worker productivity. It makes no sense to require each employer to reinvent the wheel, especially when it is prohibitively expensive to do so.

Danforth believes that Federal law should forbid employers from requiring diplomas for janitorial jobs. His proposal will certainly do that, and more. But he does not explain why employers should be stopped from requiring that a janitor finish high school. One study found that high school diplomas predict very little besides low absenteeism and low job turnover, the very qualities that are probably most important for janitors.

Bill Coleman has repeatedly said that he wants to stop employers from requiring high school diplomas for any entry-level job because blacks have a much higher dropout rate than whites. Danforth's bill, like its Democrat predecessors, is designed to produce a complete disconnect between performance in school and opportunities in the entry-level job market. But the job market is the only mechanism that can reliably provide kids with the incentive to work hard in school. If we eliminate that link, all our efforts to revitalize American education will be fruitless.

The Coleman/Danforth approach undermines the central premise of Brown v. Board of Education, that basic education is "the very foundation of good citizenship." And that is on top of the damage their approach will do to the economy. Fortunately, there is one bright spot: the Armed Forces are exempted from Title VII, so at least the military will still be able to select high quality personnel.

Finally, a quick review of the major errors in Danforth's letter:

- o As the Attorney General explained to him in a five-page letter a month ago, Danforth's interpretation of the 1971 Griggs decision is untenable.

- o Danforth also misinterprets current law and the relevant provisions of your bill. He suggests, for example, that current law would allow employers to "screen out" women by refusing to hire single parents. Under well-settled law (and your bill), it would be virtually impossible to defend such a practice. It is interesting and revealing that Danforth does not cite a single case in which the courts have ever upheld a silly or unconscionable employment practice under the well-established legal test incorporated into your bill.

- o Strangest of all, Danforth says that he and the Democrats have accepted the language insisted on by the Administration. This is flatly wrong.

The single most important issue raised by Danforth's letter is the relation between this civil rights legislation and America 2000. For that reason, I recommend that any meeting you have with Danforth include Evan Kemp and David Kearns (and perhaps Secretary Alexander).

THE WHITE HOUSE
WASHINGTON

July 11, 1991

MR. PRESIDENT:

Fred McClure advises that you asked this be sent directly to you. Copies have been provided to the Chief of Staff and Boyden Gray, and they understand this is a personal, private communication.

Thank you.

Phillip D. Brady

UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C DANFORTH
MISSOURI

July 10, 1991

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

Dear Mr. President:

Many thanks for your phone call and for your willingness to visit with me about the civil rights legislation when you return from Europe. I think we are now at the point where the resolution of one policy question is the key to concluding the civil rights debate. Here is the question:

Should it be lawful for an employer to use job qualifications which are unrelated to ability to perform the job and which have the effect of screening women or minorities from employment?

Examples of such job qualifications might include the possession of a high school diploma as a condition of employment as a janitor, or a rule that an employer will not hire single parents. In both cases, the qualifications would be unrelated to ability to perform the job, and would have the practical effect of screening out minorities or women.

Exactly this question was decided by the Supreme Court in the case of Griggs v. Duke Power Co. In Griggs, the Court held that an employer could not require a high school diploma as a qualification for a job where the diploma had no relationship to ability to perform the job and where the practical effect was to screen out blacks. This remained the law from 1971 until the Supreme Court decided the Wards Cove case in 1989.

Throughout the lengthy discussions of the civil rights legislation, the Administration has taken the position that we should restore the Griggs decision. In fact, the Administration has said that the exact

wording of Griggs should be included in the statutory language. Both Republican and Democratic Senators who have been working on the legislation have accepted the Griggs language insisted on by the Administration.

EEOC Chairman, Evan Kemp, has stated that an employer's requirement of academic credentials might further the Administration's education program. However, such a policy, even if justified on the basis of education, would contradict Griggs unless the academic credentials are related to ability to perform the job. To endorse such a policy would be viewed as a negative statement on civil rights and a reversal of the Administration's support of the Griggs case.

Mr. President, if you agree that the Griggs case was decided correctly, and that qualifications unrelated to ability to perform the job should not be lawful where they are used to screen women or minorities from employment, I believe we are a short step from reaching a successful conclusion to the civil rights debate.

Sincerely,

91 JUL 19 PM 7:34

THE SITUATION ROOM

PRECEDENCE: IMMEDIATE / PRIORITY / ROUTINE (ROUTINE circled)

RELEASER: _____

DTG: _____

MESSAGE NO. _____ **CLASSIFICATION** UNCL **PAGES** 5

FROM FRAN WESSEL/THE WHITE HOUSE _____ _____
(Name) (Phone Number) (Room No.)

MESSAGE DESCRIPTION _____

BOYDEN GRAY MEMO RE SENATOR DANFORTH LETTER ON CIVIL RIGHTS

TO (Agency)	DELIVER TO:	DEPT/ROOM NO.	PHONE NUMBER
PHILLIP D. BRADY/ATHENS			

REMARKS _____

PB: Attached memo is a follow up to copy of Sen. Danforth ltr sent to Boyden Gray and COS. I have attached your note to POTUS and Danforth ltr which we sent to Patty in K-port on July 11. --Fran

TIME OF TRANSMISSION

TIME OF RECEI

16482

THE SITUATION ROOM

PRECEDENCE: IMMEDIATE / PRIORITY / ROUTINE

RELEASER: O'Leary

DTG: 121607

MESSAGE NO. 63 CLASSIFICATION ~~S/NF~~ UNCLASSIFIED PAGES 3

FROM PHIL BRADY (Name) (Phone Number) / (Room No.)

MESSAGE DESCRIPTION LETTER FROM SENATOR DANFORTH

TO (Agency)	DELIVER TO:	DEPT/ROOM NO.	PHONE NUMBER
PATTY PRESOCK	(for the President)		

REMARKS

ID # 256671 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Stephen J Angarsky

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

Subject: Correspondence between Hamar Alexander and Senator Hatch re 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
Cuoto	ORIGINATOR	91/07/22		C	91/08/01
Cuato	Referral Note: A	91/07/22		C	91/08/01
Cuglan	Referral Note: Attn: FYI-See comments I	91/07/22		C	91/07/22
Cuato7	Referral Note: I	91/07/22		C	91/07/22
	Referral Note:	/ /			/ /
	Referral Note:				

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S - Suspended

FOR OUTGOING CORRESPONDENCE.
Type of Response = Initials of Signer
Code = "A"
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Comments: Captioned noted -- Close out -- M. Lund

8-1-91

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Office of the Secretary
Fax Transmission Cover

Date: 7/22/91

To: Boyden Gray

Location: White House

Fax Number: 456-6279

From: **Stephen I. Danzansky**
Chief of Staff

Number of pages to follow: 2

Office of the Secretary
Telephone (202) 401-1110
Fax (202) 401-0596

COMMENTS:

456-6279

July 17, 1991

Secretary Lamar Alexander
US Dept of Ed

Dear Mr. Secretary,

I am writing to ask for your candid opinion of the civil rights legislation now under consideration. It is my impression that the bill passed by the House, H.R. 1, as well as the bill now being advanced by Senator Danforth (S. 1408) might be interpreted by the Courts to make it an unlawful employment practice for employers in many circumstances to consider whether prospective employees have a high school diploma or whether they did well in school. How would this affect your plans for the reform of American education?

Senator Orrin Hatch

Dear Senator Hatch,

I am deeply concerned about the possible effect of H.R. 1 and S. 1408 on student motivation to stay in school and to work hard in school. I have grave doubts about the wisdom of any legislation that would threaten employers with civil liability if they asked prospective employees for a high school transcript or a diploma. To tell employers not to consider such information when making hiring decisions would surely undermine the importance of staying in school and working hard in school. It would send precisely the wrong message to students and teachers. It would say to students that staying in school doesn't matter, because employers don't have the right to know whether you graduated or whether you did well. It would say to teachers that their work has no value in the world outside the school.

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

I hope that the Congress will not do anything to remove or

undercut those incentives that encourage students to work hard and finish school.

Lamar Alexander

CS

ID # 257172 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Nelson Lund

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

Subject: Revised Talking Points - POTUS meeting with Danforth on 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
CMOFC	ORIGINATOR	91/07/23		C	91/07/23 CS
	Referral Note:				CS
CUATIO	A	91/07/23 NLL		C	91/07/23
	Referral Note:	Memo to CBGray - Jul 23 91			
CUGRAY		91/07/23 CBG		C	91/07/23
	Referral Note:	Memo to POTUS - Jul 23 91 CS			
		/ /			/ /
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THE WHITE HOUSE

WASHINGTON

July 23, 1991

MEMORANDUM FOR THE PRESIDENT

FROM: C. BOYDEN GRAY

SUBJECT: Talking Points -- Meeting with Sen. Danforth on Civil Rights

Attached are talking points for your meeting with Senator Danforth. I have also attached copies of his recent letter to you and my memo about that letter (both of which you have already seen).

Attachments

- I appreciate the efforts you've made to head off another divisive battle over this bill. I agree that civil rights should not be turned into a partisan political issue, and I want to see this worked out in a constructive way.

- My civil rights bill offers a great deal to the proponents of this legislation, and I'm disappointed that this offer of compromise has not been taken seriously. Nevertheless, I'm willing to work from another vehicle if that's what it takes to get this behind us.

- I will not sign a bill that my legal advisors believe will lead to quotas. And they tell me that your current bill will do just that. We haven't criticized your bill publicly, but unless we work out some very important changes, we will have to call it as we see it.

- You have framed the issue in terms of whether employers can require high school diplomas for janitorial jobs. I have to tell you that I am firmly committed to leaving current law as it is on this point: <u>if an employer has a good business reason for an educational requirement, he should be allowed to use it, even if he can't prove that it's directly needed for the performance of that particular job</u>. (And the Attorney General tells me this is perfectly consistent with the 1971 Griggs decision.)

- One of the major elements of our educational reform program is to get employers to put <u>more</u> emphasis on rewarding kids for staying in school and working hard in school. We'll never be able to accomplish this if we simultaneously change the law to make it more dangerous for employers to rely on diplomas, transcripts, and test scores.

- I also understand that there are other important issues besides the one you have focused on. <u>All</u> the issues have to be resolved before we can have a bill.

- My staff tells me that Bob Dole and Nancy Kassebaum have been working on this, too. I don't know the details of their proposal, but I know they want to get this resolved. I hope you'll be able to work with them.

THE WHITE HOUSE

WASHINGTON

July 23, 1991

MEMORANDUM FOR C. BOYDEN GRAY

FROM: NELSON LUND

SUBJECT: Revised Talking Points - POTUS Meeting with Danforth

Attached are revised and reformatted talking points for the President's meeting with Danforth.

Attachment

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID#257172cu

____ 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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UNITED STATES SENATE
WASHINGTON, D. C.

JOHN C. DANFORTH
MISSOURI

July 10, 1991

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

Dear Mr. President:

Many thanks for your phone call and for your willingness to visit with me about the civil rights legislation when you return from Europe. I think we are now at the point where the resolution of one policy question is the key to concluding the civil rights debate. Here is the question:

Should it be lawful for an employer to use job qualifications which are unrelated to ability to perform the job and which have the effect of screening women or minorities from employment?

Examples of such job qualifications might include the possession of a high school diploma as a condition of employment as a janitor, or a rule that an employer will not hire single parents. In both cases, the qualifications would be unrelated to ability to perform the job, and would have the practical effect of screening out minorities or women.

Exactly this question was decided by the Supreme Court in the case of Griggs v. Duke Power Co. In Griggs, the Court held that an employer could not require a high school diploma as a qualification for a job where the diploma had no relationship to ability to perform the job and where the practical effect was to screen out blacks. This remained the law from 1971 until the Supreme Court decided the Wards Cove case in 1989.

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Mr. President, if you agree that the Griggs case was decided correctly, and that qualifications unrelated to ability to perform the job should not be lawful where they are used to screen women or minorities from employment, I believe we are a short step from reaching a successful conclusion to the civil rights debate.

Sincerely,

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

Date Closed: 1/10/2000	**OA/ID Number:** 00002-001
FOIA/SYS Case #: 1999-0285-F	**Appeal Case #:**
Re-review Case #:	**Appeal Disposition:**
P-2/P-5 Review Case #:	**Disposition Date:**
AR Case #:	**MR Case #:**
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THE WHITE HOUSE

WASHINGTON

July 19, 1991

MEMORANDUM FOR THE PRESIDENT

Original signed by

FROM: C. BOYDEN GRAY

SUBJECT: Civil Rights - Senator Danforth

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Bill Coleman has repeatedly said that he wants to stop employers from requiring high school diplomas for <u>any</u> entry-level job because blacks have a much higher dropout rate than whites. Danforth's bill, like its Democrat predecessors, is designed to produce a complete disconnect between performance in school and opportunities in the entry-level job market. But the job market is the only mechanism that can reliably provide kids with the incentive to work hard in school. If we eliminate that link, all our efforts to revitalize American education will be fruitless.

The Coleman/Danforth approach undermines the central premise of <u>Brown</u> v. <u>Board of Education</u>, that basic education is "the very foundation of good citizenship." And that is on top of the damage their approach will do to the economy. Fortunately, there is one bright spot: the Armed Forces are exempted from Title VII, so at least the military will still be able to select high quality personnel.

Finally, a quick review of the major errors in Danforth's letter:

- As the Attorney General explained to him in a five-page letter a month ago, Danforth's interpretation of the 1971 Griggs decision is untenable.

- Danforth also misinterprets current law and the relevant provisions of your bill. He suggests, for example, that current law would allow employers to "screen out" women by refusing to hire single parents. Under well-settled law (and your bill), it would be virtually impossible to defend such a practice. It is interesting and revealing that Danforth does not cite a single case in which the courts have ever upheld a silly or unconscionable employment practice under the well-established legal test incorporated into your bill.

- Strangest of all, Danforth says that he and the Democrats have accepted the language insisted on by the Administration. This is flatly wrong.

The single most important issue raised by Danforth's letter is the relation between this civil rights legislation and America 2000. For that reason, I recommend that any meeting you have with Danforth include Evan Kemp and David Kearns (and perhaps Secretary Alexander).

CBG:NL
CBGray
NLund

THE WHITE HOUSE

WASHINGTON

July 23, 1991

MEMORANDUM FOR THE PRESIDENT

FROM: C. BOYDEN GRAY

SUBJECT: Talking Points -- Meeting with Sen. Danforth on Civil Rights

Attached are talking points for your meeting with Senator Danforth. I have also attached copies of his recent letter to you and my memo about that letter (both of which you have already seen).

Attachments

- I appreciate the efforts you've made to head off another divisive battle over this bill. I agree that civil rights should not be turned into a partisan political issue, and I want to see this worked out in a constructive way.

- My civil rights bill offers a great deal to the proponents of this legislation, and I'm disappointed that this offer of compromise has not been taken seriously. Nevertheless, I'm willing to work from another vehicle if that's what it takes to get this behind us.

- I will not sign a bill that my legal advisors believe will lead to quotas. And they tell me that your current bill will do just that. We haven't criticized your bill publicly, but unless we work out some very important changes, we will have to call it as we see it.

- You have framed the issue in terms of whether employers can require high school diplomas for janitorial jobs. I have to tell you that I am firmly committed to leaving current law as it is on this point: <u>if an employer has a good business reason for an educational requirement, he should be allowed to use it, even if he can't prove that it's directly needed for the performance of that particular job</u>. (And the Attorney General tells me this is perfectly consistent with the 1971 Griggs decision.)

- One of the major elements of our educational reform program is to get employers to put <u>more</u> emphasis on rewarding kids for staying in school and working hard in school. We'll never be able to accomplish this if we simultaneously change the law to make it more dangerous for employers to rely on diplomas, transcripts, and test scores.

- I also understand that there are other important issues besides the one you have focused on. <u>All</u> the issues have to be resolved before we can have a bill.

- My staff tells me that Bob Dole and Nancy Kassebaum have been working on this, too. I don't know the details of their proposal, but I know they want to get this resolved. I hope you'll be able to work with them.

ID# 257404

HU 010

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JULY 25, 1991

NAME OF CORRESPONDENT: MR. WICK ALLISON

SUBJECT: URGES THE PRESIDENT TO PUBLICIZE HIS SUPPORT OF THE OPEN HOUSING ACT OF 1968 TO OFFSET THE PUBLICITY ON HIS OPPOSITION TO THE CIVIL RIGHTS ACT OF 1964

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
DEBORAH AMEND	ORG	91/07/25	C		91/08/05
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

COMMENTS: CC5 (-R unswered 8/6/91 - blue sheet did not get added to Presidential - Sorry! C Palm

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 4620 ___ ___

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.

TC

THE PRESIDENT

August 6, 1991

HU010

Dear Wick,

Your good letter of July 22 was waiting for me when I returned from Moscow, and I will share it with others here. So many thanks for weighing in with words of encouragement and support.

Stay in touch. Warm regards.

Sincerely,

FROM
THE WHITE HOUSE
WASHINGTON, D.C

910806

Mr. Wick Allison
Publisher
National Review
150 East 35th Street
New York, New York 10016

GEORGE BUSH

cc Lacovia

done + to
✓ C Baker
✓ John Sununu
✓ Martin / Donovan

8-6
POTUS orig note
sent to RM.
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JW

NATIONAL REVIEW
150 East 35th Street
New York, N.Y. 10016
Phone. 212-679-7330

WICK ALLISON
Publisher

7409

July 22, 1991

Dear Mr. President:

If your opposition to the Civil Rights Act of 1964 can be used against you, why can't your support of the Open Housing Act of 1968 be used for you? You were a young man, your seat was at stake, your district was against you on the issue. I remember how you carried one unfriendly crowd with personal testimony of your visit to a public housing tract and a little girl you met there whose arm was covered with rat bites. You told the crowd this could no longer be tolerated, and when you were finished they agreed.

In winning that election with that vote in your record, you helped to change the South forever by keeping the young Republican Party on an even keel as a new reform movement and not as a refuge for aging Dixiecrats.

We're not the right place for the story, but it ought to be told. Carl Rowan's version of your record should not be allowed to stand unchallenged. Someone in the White House could start with the 1968 clip file from the Houston Post.

Best as always,

Wick

ID # 257446 CU

HU010

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: J. SCOTT DOUGLAS

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

Subject: Writes to inquire whether CBG apologized for remark he allegedly made about homosexuals

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	91/04/12		C	91/06/21 CS
CUAT 19		Referral Note: A	91/04/12	JSB	C	91/06/21 CS
		Referral Note: Jun 21 91 ✓ Memo for File	/ /			/ /
		Referral Note:				
		Referral Note:				
		Referral Note:				

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

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

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

Comments: _____

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

5/81

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Memo	Case Number 257446CU From Jay S. Bybee for the file RE: Letter from Scott Douglas (1 pp.)	06/21/91	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Records Management, White House Office of (WHORM)
Series: Subject File - General
Subseries: Scanned
WHORM Cat.: HU010
File Location: 250524CU to 258060

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

Date Closed: 1/10/2000	**OA/ID Number:** 00002-001
FOIA/SYS Case #: 1999-0285-F	**Appeal Case #:**
Re-review Case #:	**Appeal Disposition:**
P-2/P-5 Review Case #:	**Disposition Date:**
AR Case #:	**MR Case #:**
AR Disposition:	**MR Disposition:**
AR Disposition Date:	**MR Disposition Date:**

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE

WASHINGTON

June 21, 1991

MEMORANDUM FOR THE FILE

FROM: JAY S. BYBEE
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Letter from Scott Douglas

Mr. Douglas called me on the phone several months ago to inquire whether Boyden had apologized for a remark he allegedly made about homosexuals. I knew nothing of the incident and said I would get back to him. He has since called several times. I have not returned his calls. After seeing the letters to which Mr. Douglas referred, it is my judgment that no response is due Mr. Douglas.

FAX TRANSMITTAL

COPY

TO: JAY BYBEE,ESQ.
OFFICE OF THE COUNSELOR TO THE PRESIDENT
THE WHITE HOUSE
202-456-7929

FROM: J. SCOTT DOUGLAS
DIRECTOR
THE COMMITTEE FOR CHILDREN
5415 CONNECTICUT AVENUE, N.W. - SUITE 133
WASHINGTON, D.C., 20015
202-543-3790

Dear Mr. Bybee: April 12, 1991

I send the following as requested in our recent telephone conversation during which time you told me that you would ascertain for me whether Mr.Gray made an apology following Mrs. Morella's request for same after using the term "faggot" during an address to Republicans in Montgomery County.

Thank you for your attention to this matter.

Sincerely,

J. Scott Douglas

CC: The Hon. Connie Morella

COMMITTEE FOR CHILDREN
5415 Connecticut Avenue, N W
Suite 133
Washington, D C 20015
202-966-7396

J. SCOTT DOUGLAS
Director

CONSTANCE A. MORELLA
8TH DISTRICT, MARYLAND

COMMITTEES
POST OFFICE AND CIVIL SERVICE
SCIENCE, SPACE AND TECHNOLOGY
SELECT COMMITTEE ON AGING

WASHINGTON OFFICE
1024 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5341

DISTRICT OFFICE
11141 GEORGIA AVENUE
SUITE 302
WHEATON, MD 20902
(301) 946-6801

Congress of the United States
House of Representatives

November 13, 1990

Mr. C. Boyden Gray
Counselor to the President
The White House
Washington, D.C. 20500

Dear Mr. Gray:

I was surprised and disappointed to read the news accounts that, while in Montgomery County recently, you used a derogatory stereotype to describe a member of the gay community.

If these reports are correct, I believe you should apologize for what I consider an apallingly poor choice of language. As a major White House official, you have an impact on public discussion on a variety of issues, including civil rights. Your insensitivity will help perpetuate stereotypes in some segments of our society at a time when most of us are seeking to overcome negative divisions.

I find your statement especially unfortunate because the President earlier this year signed into law the Hate Crime Statistics Act, which is aimed at placing the spotlight on negative actions and statements aimed at minority groups.

Sincerely,

Connie Morella

Constance A. Morella
Member of Congress

Lambda Legal Defense and Education Fund, Inc.

666 Broadway, New York NY 10012 (212) 995-8585 FAX (212) 995-2306
606 S Olive St, Suite 580, Los Angeles, CA 90014 (213) 629-2728 FAX (213) 629-9022

April 1, 1991

The Honorable Richard Thornburgh
Attorney General of the United States
Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, DC 20530

Re: <u>Steffan v. Cheney</u>, <u>et. al.</u>,
<u>Civil Action No. 88-3669-OG</u>

Dear Mr. Thornburgh:

On March 13, 1991, our co-counsel in the above-referenced matter wrote John R. Dunne, Assistant Attorney General, Civil Rights Division, to advise him of the filing of a motion to disqualify the Honorable Oliver J. Gasch from further proceedings in the above-referenced action. The case involves a challenge by a former midshipman at the United States Naval Academy to his discharge six weeks before graduation solely on the basis of his statements that he is gay. The motion grew out of a March 6, 1991 hearing at which Judge Gasch said on the record that he would not permit discovery concerning "every homo that may be walking the face of the earth at this time." Later in the hearing when Judge Gasch was referred to an affidavit that Mr. Steffan had submitted, Judge Gasch asked whether Mr. Steffan had stated in the affidavit "that he's a homo and knows other homos." Since that time, the Department of Justice has filed its response to our motion and we have filed our reply. Copies of the briefs (which include the transcript of the hearing) and of the prior letter to Mr. Dunne are enclosed for your reference.

In its opposition, the Department has taken the position that the repeated and derisive use of the word "homo" by Judge Gasch in a March 6 court proceeding does not reflect bias or prejudice on the part of the judge and expresses doubt as to whether "homo" itself is a pejorative term. Frankly, we are astonished that the Department has taken these positions. Any teenager knows that "homo" is a derogatory term that is used by individuals to express their prejudice. If there can be any doubt as to the truth of this self-obvious proposition, I refer you to the reply affidavit of Professor John Boswell, Chairman of the Department of History at Yale University submitted in

support of our motion. Professor Boswell concludes that "'homo' is and has always been a derogatory term that is usually employed by adolescents or acknowledged opponents of civil rights for gay people."

The Department's position in this case is particularly troubling in light of the recent adoption of the Hate Crimes Statistics Act. We have no doubt that the Department would conclude that a crime that includes an assailant calling his victim a "homo" would be counted as a "hate crime" within the meaning of the Act because the use of the word "homo" objectively evidences bias on the part of the speaker. In light of this, we do not see how the Department could conclude that the deliberate and repeated use of the same word by a federal judge in the dignified confines of a courtroom does not reflect bias or prejudice. Indeed, unless reversed, the Department's position that "homo" may be a benign term will eviscerate the provisions of the Act requiring the Department to acquire data concerning crimes that manifest evidence of prejudice based on sexual orientation and will no doubt be offered as a defense to a prosecution under state laws penalizing bias related crimes.

We are also astonished that the Department has taken the position that Judge Gasch's repeated and derisive use of the word "homo" "arose out of the trial judge's judicial responsibilities." Nothing in the record of this case warrants this conclusion. Before he was discharged, Joseph Steffan was one of the ten highest-ranking midshipmen at the United States Naval Academy and the proceedings before Judge Gasch reflect only Mr. Steffan's extraordinary accomplishments. There was no justification for the Court deriding Mr. Steffan. Nor is there any justification for deriding Mr. Steffan and other lesbians and gay men on the basis of their sexual orientation. As the title of the Hate Crimes Statistics Act itself recognizes, homosexual orientation is neither a criminal nor a moral offense. Indeed, the discrimination that Mr. Steffan suffered is challenged precisely for these reasons.

In short, it is simply incredible to us that the Department has suggested that the recreated use of the word "homo" in a derisive manner is appropriate or acceptable in a United States courtroom. Accordingly, we request that you review the actions of

the attorneys involved in this case and join us in urging Judge Gasch to recuse himself in the interest of promoting all of the public's confidence in the impartiality of the judiciary.

Sincerely,

Sandra J. Lowe
Staff Attorney
Lambda Legal Defense and
Education Fund, Inc.

cc: John R. Dunne, Esq.
Vincent M. Garvey, Esq.
David Glass, Esq.

ID# 257880

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JULY 29, 1991

NAME OF CORRESPONDENT: THE HONORABLE GERALD R. STOCKMAN

SUBJECT: URGES THE PRESIDENT TO TAKE TO HEART SENATOR BILL BRADLEY'S FLOOR STATEMENT ON RACE AND CIVIL RIGHTS

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
MARY MCCLURE	ORG	91/07/29	MM A		91/08/09 DJ
REFERRAL NOTE:					
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REFERRAL NOTE:					
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REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 2200 ____ ____

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

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

WASHINGTON

August 9, 1991

Dear Senator Stockman:

On behalf of President Bush, thank you for your thoughtful letter referencing Senator Bradley's statement on civil rights and urging the President to use his influence to improve race relations in this nation.

President Bush acknowledges--and deeply regrets--that racism and bigotry still exist in America; and his Administration is committed to striking at discrimination wherever it exists. In the President's words: "Because, you see, prejudice and hate have no place in this country, period. The real question that's facing us is not whether to fight these evils, but how."

The President chooses to talk not of redistributing rights but of opportunity. That is why the Administration has mounted a comprehensive attack on the problems facing disadvantaged Americans. By revolutionizing education with the America 2000 strategy, reforming public housing into an ownership system, creating enterprise zones to encourage economic growth, offering tough anti-crime legislation, and advocating community opportunity areas which would shift power away from the state into the hands of the people, the President intends to move us toward the goal of equal opportunity.

In addition, the Administration has offered its own civil rights package forbidding the consideration of factors such as race and sex in employment practices.

Enclosed are excerpts from the President's remarks at the Commencement Ceremony of the United States Military Academy which provide more of his thoughts on elements of the American Character and "a society in which people respect each other, work with--not against--each other...."

Your perspective on the President's role in effecting positive change has been most helpful, and your letter most appreciated.

Thank you, too for your gracious greeting to Mrs. Bush and your prayers and best wishes for the President in his work.

Sincerely,

Mary McClure
Special Assistant to the President
for Intergovernmental Affairs

The Honorable Gerald Stockman
State Senator
State of New Jersey
176 West State Street
Trenton, NJ 08608

NEW JERSEY SENATE

GERALD R. STOCKMAN
SENATOR, DISTRICT 15 (MERCER)
176 WEST STATE STREET
TRENTON, NEW JERSEY 08608
609-392-1117

July 24, 1991

President of the United States
White House
Washington, D.C. 20500

Dear Mr. President:

Respectfully, I write this letter to urge you to take to heart Senator Bradley's floor statement on race and civil rights. I am a Democrat. I am often described as a liberal Democrat in my Senate although I do not believe that term to be particularly accurate or fair in this day and age. Be that as it may, I do not consider this letter to be written by a Democrat or a liberal. I write as someone who feels deeply that, as a people, we are increasingly threatened by our difficulty in dealing with racism. For me, it has been a pre-eminent concern during all of my public life.

I submit Senator Bradley raises a very serious question in his recent floor statement. You have tremendous capacity to influence the debate and the direction of our nation with regard to race relations. History will unquestionably judge your record on this issue. I urge you to re-examine your life's experiences and redirect your talent and energy to improve race relations in this greatest pluralistic democracy in the world. While there is substantial evidence to suggest you will be re-elected whether you do or not, history will be more discerning.

Please extend my best wishes to your very charming, warm and attractive wife and accept my prayers and best wishes for you in all of your work.

Very truly yours,

Gerald R. Stockman

GERALD R. STOCKMAN

GRS:pgf

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04. Memo	Case Number 258060 From Charles E.M. Kolb to Roger Porter RE: Civil Rights, GATB, and Testing (1 pp.)	07/02/91	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Records Management, White House Office of (WHORM)
Series: Subject File - General
Subseries: Scanned
WHORM Cat.: HU010
File Location: 250524CU to 258060

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

Date Closed:	1/10/2000	**OA/ID Number:**	00002-001
FOIA/SYS Case #:	1999-0285-F	**Appeal Case #:**	
Re-review Case #:		**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

TJ

258060

THE WHITE HOUSE

WASHINGTON

July 2, 1991

MEMORANDUM FOR ROGER B. PORTER

FROM: CHARLES E.M. KOLB CEMK

SUBJECT: Civil Rights, GATB, and Testing

Attached is correspondence between Governor Sununu, Senator Danforth, the Attorney General, and Evan Kemp concerning the civil rights bill and the definition of "business necessity." (Tab A). I call to your attention the Evan Kemp letter which explains that the Danforth proposal defining "business "necessity," if adopted, "will...undermine the President's America 2000: An Education Strategy by making it extremely difficult for employers to show that use of educational credentials and objective measures of academic achievement are legally defensible." This point is elaborated upon on page 2 of the Kemp letter where there is an explicit reference to Goal 3 and an extended quotation from a recent New York Times piece by Checker Finn.

The testing issue is also at the heart of the pending GATB issue and will undoubtedly be raised in connection with the regulatory proposal submitted by the Department of Labor. I am also attaching, for your information, comments submitted to OMB on the GATB issue. (Tab B). The three affected agencies -- Justice, Education, and EEOC -- oppose race-norming and have advised against jettisoning the GATB. OIRA intends to advise Labor later this week, through a letter from Jim MacRae to Bob Jones, that its proposed regulatory notice suspending the GATB must be revised. The Education Department's comments make an explicit link between the GATB issue and "the America 2000 strategy of encouraging businesses to use 'American Achievement Test' scores...in their hiring decisions."

I can foresee a situation soon where these issues -- civil rights, achievement tests, and the GATB -- face intense and simultaneous scrutiny. An additional complication might well be the relationship between the GATB and the EEOC's Uniform Guidelines on Employee Selection Procedures. After all, Clarence Thomas administered these Guidelines during his tenure at the EEOC.

Attachments:
Tab A
Tab B

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID# 258060

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

/ Remainder of case not scanned.

___ Oversize attachment not scanned.

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___ 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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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,

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

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

OFFICE OF
THE CHAIRMAN

JUN 24 1991

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:

As Chairman of the principal Federal agency charged with implementing civil rights laws as they apply to employment discrimination, I am urging that the Administration not accept the "business necessity" language proposed by Senator Danforth in his letters to you of June 19 & 20, 1991.

The focus of the Danforth "business necessity" language will, if adopted, undermine the President's America 2000: An Education Strategy by making it extremely difficult for employers to show that use of educational credentials and objective measures of academic achievement are legally defensible. The tragedy of the Danforth proposal is that it would actually cause disproportionate harm to minorities, while claiming the flag of civil rights.

In proposing his latest 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 Senator Danforth's letter).

My concern is that the Commission and the courts have so broadly construed the meaning of Griggs 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. The 1978 Uniform Guidelines on Employee Selection Procedures, for example, define the universe of affected practices as follows:

> Section 2B: Employment decisions. These guidelines apply to tests and other selection procedures which are used as the basis for any employment decision. Employment

> decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above (emphasis added).

The most serious shortcoming of Senator Danforth's proposal is its focus on job performance in the "business necessity" definition. While seemingly reasonable at first blush, Senator Danforth's focus on job performance will make it extremely difficult, if not impossible, for employers to show that use of educational credentials and objective measures of academic achievement are legally defensible.

The Danforth proposal may constrain an employer in unexpected ways. Imagine the virtual impossibility of defending, for example, an employer's use of a high school diploma or a liberal arts degree in English or history in terms of how that knowledge directly relates to job performance for most entry-level positions. It simply can't be done. Furthermore, are undergraduate education majors the only teaching candidates qualified to teach? The Danforth proposal's focus means a school district in many cases would not be able to prefer candidates with advanced degrees because the undergraduate education degree is the only "correct" curriculum directly related to job performance. The Administration's bill, by contrast, would permit that same school district to insist on candidates with advanced degrees and non-education majors with degrees, for example, in English or history.

An additional unintended consequence of the Danforth's bill's focus on job performance is that it will undermine the President's America 2000: An Education Strategy. One of the strategic national goals established by President Bush is that by the year 2000:

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

Yet as Chester Finn recently wrote in a New York Times op-ed piece (5/18/91) entitled "Educational Reform vs. Civil Rights Agendas," realizing the President's educational strategy will mean challenging the status quo:

> How many personnel directors will be able to convince a Federal enforcer or judge that a young person's command of science and geography is germane to the work of a forklift operator or receptionist? Yet so long as

> employers are inhibited from examining a candidate's test scores, 'rational' students will see no payoff for buckling down to learn such subjects. High marks won't matter.

Challenging the status quo means reexamining Griggs in light of an economy that is significantly more complex and demanding than is suggested by the facts at issue in that power plant. 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 used an alternative requirement that instead of having a high school diploma, in order to qualify for positions requiring more than a strong back, it was necessary to attain the average score for high school graduates nationwide on two professionally developed ability tests. As I am sure by now you are aware, both the high school diploma and test requirements adversely affected minorities and the rest, as they say, is history.

The Supreme Court has held that an employer has the burden to defend the "business necessity" of any employment standard that adversely affects members of a class covered by Title VII. Unreasonably narrow interpretations of "business necessity" by the EEOC, the Labor Department, and some lower courts created terrible legal risks for firms that required educational achievement of their applicants. As a consequence of Griggs, given the expense and uncertainty of Title VII litigation, many employers simply abandoned requiring high school diplomas and checking transcripts for any job. Furthermore, the Supreme Court in Griggs stated that:

> "(I)t is unnecessary to reach 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."

We think that improving this nation's competitiveness warrants addressing the promotability issue of "capability for the next succeeding position" and the Administration's bill does so.

The unintended consequence of Griggs has been to eliminate employers' ability to reward learning. The resulting lack of signals to students from employers that academic achievement counts has meant that for the past two decades since the 1971 Griggs decision, the most basic incentive for many students to take school seriously has been missing. Now, more than a quarter of a century after the Civil Rights Act of 1964 was passed and in an increasingly competitive multi-national marketplace, we find that our economy is less dependent on strong backs and is more dependent on jobs requiring developed cognitive skills and abilities and the capability to benefit from training for the next succeeding

position.

According to the Hudson Institute's 1988 report Opportunity 2000, more than half of all new jobs created over the next 20 years will require some education beyond high school and almost a third will be filled by college graduates (compared with only 22% of all occupations today). Notwithstanding employers' ever increasing dependence on individual competence in order to remain competitive, students, parents and teachers will not be able to point to a reward for learning if employers are for all practical purposes precluded from even inquiring about degree status much less rewarding academic achievement. As the Secretary of Labor's Commission on Workforce Quality and Labor market Efficiency has recently urged:

> The business community should...show through their hiring and promotion decisions that academic achievements will be rewarded.

The need to encourage academic achievement by encouraging employers to reward students who achieve academically will be met by the Administration's definition of "business necessity" which is the same as the definition adopted by the Supreme Court. The Danforth bill's definition of "business necessity," focusing on job performance, will in effect make use of educational credentials and objective measures of academic achievement indefensible unless quotas are also employed.

For fifteen months, I've maintained that we would not have an acceptable civil rights bill until we aired the philosophical differences between the Administration (back to merit hiring) and the civil rights community (proportional representation in the workplace). Lawyers could not write a satisfactory bill until these very real philosophical differences were openly confronted.

As you know, Governor, I was deeply involved in the early negotiations on the Americans With Disabilities Act (ADA). The White House and disability community had few differences on sections concerning employment, transportation, relay communications for the deaf, or coverage of state and local governments. The area of contention was public accommodations. At that time, I told you the disability community wanted total access: a "flat world" tomorrow. Because it was a question of civil rights, the disability community did not believe there could be a cost defense. You replied that it wasn't fair to place a financial burden on small businesses that had no government contracts or received no federal money.

You stated that the disability community's demand was not reasonable and clearly against Republican Party philosophy. Eventually both sides agreed to the "readily achievable" standard for existing public facilities to ensure mainstream opportunities

for disabled people. The ADA negotiations were exemplary in that both sides thoroughly discussed areas of philosophical disagreement. Had we not done so, the ADA would never have become law.

Hopefully the information I have provided will encourage additional candor about these differing philosophies between the parties. Unless the latest Danforth definition of "business necessity" is rejected, when employers realize that they will be unable to defend use of educational credentials and objective measures of academic achievement under the Danforth bill, they will have little choice but to revert to hiring by the numbers. For these reasons I urge the Administration not agree to the Danforth compromise "business necessity" language.

Best regards,

Evan

Evan J. Kemp, Jr.
Chairman

DRAFT

MEMORANDUM TO JIM MACRAE

THROUGH: Diana Rowen

FROM: Steven Semenuk

SUBJECT: NAS Report on the GATB

Background

On July 24, 1990, the Department of Labor (DOL) issued a notice, proposing to discontinue the use of an Employment Service (ES) referral test known as the GATB (General Aptitude Test Battery, pronounced "gat-bee"). OMB did not review the notice prior to publication. DOL received some 1,500 comments regarding the proposed action, most of which expressed opposition to the proposed suspension of the test.

DOL has submitted for OMB review a final notice to announce the Department's position regarding the GATB. The Department has decided to formally prohibit the use of the GATB for all job referrals through the Employment Service. Under the notice, the test could only be administered if a job candidate specifically requested test results for counseling purposes.

Actions leading to this notice began in 1986 when the Civil Rights Division of the Department of Justice (DOJ) threatened legal action against DOL. The Justice Department intended to issue a "cease and desist" order to prevent DOL from using the GATB with a scoring method called "within-group" scoring that adjusted test takers' scores solely with respect to the person's race. Since 1981, DOL had recommended that all ES offices use this method to score blacks, Hispanics, and nonminorities (whites and Asians) based upon a person's percentile rank in a relevant racial category.

In response to the imminent Justice Department order, DOL commissioned a National Academy of Sciences (NAS) study of the GATB and the "within-group" scoring system. DOJ withheld its action pending the completion of the study.

NAS concluded its study in 1989 with a report entitled "Fairness in Employment Testing: Validity Generalization, Minority Issues, and the General Aptitude Test Battery." Stated briefly, the NAS findings are as follows:

- NAS issued no firm conclusion as to whether DOL should continue to administer the GATB. However, it is important to note that the panel clearly did not recommend that the use of the GATB be discontinued. Rather, the NAS

recommended that improvements be made in the administration of the test.

- NAS concluded that the GATB is a more reliable predictor of job performance than any other single selection criterion, such as interviews, past job experience, etc.

- NAS found that the GATB provides beneficial, though imperfect, information as to a person's ability to perform a given job. This flaw, however, is universal; no test can definitely predict a person's future job performance. Because of the test's imperfect predictiveness, the panel recommended that the GATB not "become the sole means of filling all job orders" placed with the ES.

- NAS settled the fundamental question of whether the GATB is inherently, or culturally, biased against members of minority groups; it is not. Looking at 72 existing studies of the GATB, the panel concluded that "the use of a single formula for relating GATB scores to performance criteria would not be biased against black applicants; if anything, it would slightly overpredict their performance, especially in the higher score ranges."

- NAS recommended that the Employment Service continue within-group scoring for blacks, Hispanics, and Asians and whites. Because the GATB is not inherently biased against these groups, the panel could not find scientific support for the practice of race-norming. Instead, the NAS argued that a policy of preventing "disparate impact" on minorities warrants within-group scoring. The panel wrote that race-norming is necessary to compensate for the test's larger underprediction for low scorers, who tend to be minorities ("...these effects are a function of high and low test scores, not racial or ethnic identity.").

- NAS expressly criticized only two features of the GATB: One, that test security is lacking, allowing ES participants to memorize answers to the test. Two, that the "speededness" of the test is such that coaching could significantly alter students' scores. NAS recommended that both these weaknesses be rectified through more rotation of test versions and research into "less speeded" tests.

Conclusion

Commissioned to study the fairness of the Employment Service's primary referral tool, the GATB, the National Academy of Sciences concluded that the test was fair and useful. The test "would generally not give predictions that are biased against blacks." Rather, the test "is somewhat more likely to overpredict the

performance of blacks than to underpredict. The degree of overprediction is slight at the lower score ranges, and somewhat larger at higher score levels." In sum, the GATB is a beneficial tool for making job referrals based upon predicted performance.

Policy Options

o Continue use of the GATB, but discontinue practice of race-normalization of scores.

  - o Would promote a more productive workforce through better matching of skills to jobs.
  - o Would result in "adverse impact" on minority job applicants. Given equal numbers of test takers, minorities would be referred to jobs at about one-seventh the rate for whites and Asians.
  - o Could lead employers to discontinue use of ES because of legal liabilities.

o Continue use of the GATB and race-normalization of test scores for job seekers, but report both raw and race-adjusted GATB scores to potential employers.

  - o Would give employer more information as to ability of a given job candidate.
  - o Would allow employers more freedom to their own balance between productivity gains and equal opportunity goals.

o Discontinue use of the GATB.

  - o Could decrease the productivity of the workforce due to less available information about job skills.
  - o Would give the job candidate less information about his/her ranking against other candidates; less incentive to improve his/her skills.
  - o Would allow introduction of more subjective measures of job ability into selection decisions.

Robert T. Jones
Assistant Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Mr. Jones:

This letter is in response to the DRAFT "Training and Employment Guidance Letter" (#6-90) which is to be issued by the Employment and Training Administration. This directive when issued would announce suspension of the General Aptitude Test Battery (GATB) until further notice and a policy review of the GATB's validity, fairness and relationship to the Uniform Guidelines on Employee Selection Procedures.

We think that the proposed suspension is unwarranted for several reasons. First of all, the issue is not whether the GATB is a valid predictor of job performance for virtually all jobs in our economy. The cumulative knowledge of the validity of the GATB is as extensive and well-understood as any employment test in this country outside the military. Rather, the issue is the practice of "within-group scoring." Since the predictive validity of the GATB is not improved by "race norming," the practice serves only to reduce the disparate impact of the test. Race norming should be abandoned but the GATB should be retained because when it comes to making employment decisions, judging an individual on the basis of a job-related employment standard such as the GATB without regard to race, color, religion, sex or national origin is the cornerstone of equal employment opportunity.

Ways in which the validity of the GATB might be improved and investigations of how well the various applicant populations are served could be studied without suspending use. We think such studies are a good idea. Giving employers no viable alternative but to turn to less valid selection procedures contributes neither to the economic well being and competitiveness of this nation nor to equal employment opportunity. With regard to the issue of the relationship of the GATB to the Uniform Guidelines on Employee Selection Procedures to which both DOL and EEOC are signatory agencies along with Justice and OPM, I feel confident that all parties recognize the timeliness of undertaking a thorough review and we are about to initiate such a review. Such a review, however, would not prevent continued GATB use.

Finally, the one additional issue which needs to addressed in your study is the relationship of the GATB to the Armed Services Vocational Aptitude Battery and to national achievement tests that will soon be available nation-wide under the lead of the Department of Education. If the Administration were to walk away from the best understood employment test in this country, the wrong signal would be sent that we are turning our back on job-related competency and merit. So for all these reasons, we think the only appropriate path would be to abandon the practice of race-norming

but retain the GATB for use by employers while at the same time studying these additional questions including Uniform Guideline review.

Best regards,

EK

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

Mr. Steven Semenuk
725 17th Street, N.W.
Room 3001
Washington, D.C. 20503

Dear Mr. Semenuk:

On July 24, 1990, the Department of Labor (DOL) solicited comments on a proposed directive suspending the use of the General Aptitude Test Battery (GATB) pending further study of its predictive value. We understand that DOL now intends to announce a new policy suspending the use of the GATB as a device for employee selection and referral "until further notice." The new policy would permit the use of the GATB only on a voluntary basis at the request of an individual, and only for counseling purposes. The policy also contemplates a 6-month study on issues of validation, fairness, and the "Uniform Guidelines on Employee Selection Procedures" (Guidelines).

We support the decision -- reflected in this new policy -- to end the practice of race-norming GATB test results, which for nearly a decade has been an integral part of the administration of the GATB. We challenged the legality of this race-norming in November 1986, reaffirmed that view in our letter to DOL of August 17, 1990, and reaffirm it again now. Quite simply, the goal should be the best -- most predictive -- test possible with the least disparate impact.

Race-norming could be eliminated, of course, by using the GATB without the within-group scoring system. Thus, in order to eliminate race-norming, it is not necessary to suspend the GATB. We understand, though, that DOL proposes to suspend the GATB because of legal and policy concerns. Those concerns apparently stem from the fact that the GATB has not been validated under the Guidelines and from DOL's belief that "serious questions" have been raised about whether, in light of the disparate impact, the GATB is an accurate predictor of job performance. We only address here DOL's legal concerns.

Certainly, suspension of the GATB would lessen the likelihood of legal challenges to the test. As a matter of law, however, we do not believe that suspension is required. The

Civil Division has advised that the Labor Department would not be liable for making GATB available so long as it informs employers that use of the GATB, like the use of any test, is subject to the civil rights laws.

Any challenges to the GATB based upon disparate impact theory will be litigated by employers under the standards that have been laid down by Congress and the Supreme Court for such cases, with each challenge being decided on its own merits. Resolution of such cases will necessarily involve examination of the degree of disparate impact. The legal issue is properly not whether GATB is job-related in the abstract for all jobs, but whether the test, or portions of the test, do predict performance for the job at issue. Employers have the responsibility to identify the jobs for which the test may be used, within the overall context of the civil rights laws and subject to judicial determinations in the face of court challenges.

With respect to the proposal to begin studying other matters in addition to use of the GATB, principally the Guidelines, we agree that the Guidelines are outdated, in error in some areas, and, in important respects, inconsistent with current law. See, e.g., Connecticut v. Teal, 457 U.S. 440 (1982). Indeed, because of these serious legal defects, the Guidelines should be revised as soon as possible. To this end, we believe that the Justice Department and the Equal Employment Opportunity Commission because of their central role in enforcing Title VII of the Civil Rights Act of 1964 should immediately begin deliberations to formulate a revised set of guidelines.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

COMMENTS REGARDING THE GENERAL APTITUDE TEST BATTERY (GATB)

We have reviewed the Department of Labor's (DOL) proposed notice regarding the suspension of the General Aptitude Test Battery (GATB) for employment and job referrals. We have several concerns about the stated rationales for this action and possible ramifications. Below is a brief description of the GATB, rationales for its proposed suspension, terms of the proposed suspension, and our comments on this action.

What is the General Aptitude Test Battery?

The General Aptitude Test Battery is a series of timed tests aimed at measuring aptitudes in specific job-related skills. According to DOL, the GATB is used by approximately 30 state employment agencies, 800 local offices of the public employment service, and Job Training Partnership Act (JTPA) programs. Some of the skills for which GATB measures aptitude include:

- General learning ability
- Numerical skills
- Verbal skills
- Form perception
- Clerical perception
- Motor coordination
- Finger and manual dexterity

GATB results are based on within-group scoring, also referred to as "race-norming". Using this method, each individual is assigned a percentile rank that defines his test performance relative to that of other test-takers within his racial group, not the whole group of test-takers. This practice ensures that the percentage of individuals at any percentile is the same across all races, even if the distribution of raw scores is not.

Rationales for the Proposed Suspension of GATB

The notice cites several reasons for the proposed suspension of GATB, including:

- Questions about the legality of within-group scoring. This scoring procedure has elicited questions from the Department of Justice and has attracted considerable attention in the mass media.

- Questions about the GATB's accuracy in predicting job performance. According to the proposed Notice, a recent National Academy of Sciences study[1] indicated that the GATB was only a 'modest' predictor of job performance, that its validity has dropped in recent years, and that validity coefficients were much lower for blacks than for other test-takers.

- Questions about the effect of GATB time limitations ("speadedness") on some worker groups. Because the test is timed, critics have charged that GATB scores might underestimate the job performance potential of older and disabled individuals, as well as those with limited English-speaking ability.

Terms of the Proposed Suspension

The Department of Labor proposes to suspend use of the GATB for employment selection and referral in any Employment and Training Administration (ETA) program, including JTPA and Employment Service programs. The suspension would remain in effect until further notice, while DOL researches employment assessment and selection techniques, including possible modifications of the GATB. ETA grantees, contractors, and National Apprenticeship Act programs henceforth would be permitted to use the GATB for voluntary counseling only. The use of Specific Aptitude Test Batteries (SATBs), which are adaptations of the GATB, would be likewise proscribed.

The notice states that State and local agencies can still purchase and use privately developed tests. However, it warns that "DOL/ETA programs contemplating the use of tests having parts similar to parts of the GATB, but for which few, if any, newer and independent research studies are available, should be extremely cautious about embarking on such use."

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[1] Hartigan, John A. and Widgor, Alexandra K., editors. Fairness in Employment Testing: Validity Generalization, Minority Issues, and the General Aptitude Test Battery. A report of the Committee on the General Aptitude Test Battery, Commission on Behavioral and Social Sciences and Education, National Research Council. Washington, D.C.: National Academy Press, 1989.

Comments on the Proposed Suspension of the GATB

The notice does not present a strong case for the suspension of GATB. Most of the rationales for the suspension are not integral to the GATB, and several could be addressed through modifications in how the test is administered and scored. Specific comments are as follows:

- The notice never explicitly states that the National Academy of Sciences study recommended that the GATB be discontinued. In fact, the notice acknowledges that NAS found that the GATB "met professional standards for predictiveness", though it also suggested areas for improvement.

- Several rationales have nothing to do with test content and could be addressed through administrative adjustments. Any test, even ones that are perfectly reliable and valid, could suffer from problems arising from within-group scoring. Changing the scoring system would seem a more direct way to address this issue. Similarly, speededness (the "timed" feature of the GATB), if inappropriate, could be adjusted through administrative procedures.

- Most comments received oppose the proposed suspension and laud its success. The majority of responses came from local apprenticeship councils and their parent unions, professional testing organizations, State employment service agencies, and employers who felt that GATB "provided employers with a more productive work force while helping them to attract qualified minority workers."

- The commenters who support the suspension did not list specific problems with the GATB. Instead, the notice reports that these respondents "asserted that tests [in general] tend to be culturally unfair and a barrier to employment." These commenters appear to oppose all employment tests, not just the GATB.

- There is no statement of alternatives to the GATB. The notice explains that use of privately developed tests is permitted but warns that state and local DOL/ETA programs should be "extremely cautious" about using anything similar to the GATB--even though the GATB has not been judged discriminatory or otherwise invalid. The Labor Department, after suspending a test that seems to meet at least minimum standards of validity and reliability, should offer a list of alternative tests or at least a list of criteria to be considered. Without indicating such alternatives, the section on "use of privately developed tests" might best be eliminated.

We are concerned that the suspension of the GATB would discourage employment agencies and employers from using test results in hiring decisions. Ultimately, this might undermine the America 2000 strategy of encouraging businesses to use American Achievement Test scores an in their hiring decisions. More important, it would remove a vital incentive for students and job applicants to develop pertinent skills.

Further, the Department of Labor's proposed suspension of the GATB seems at odds with other on-going executive branch initiatives aimed at changing federal employment regulations to permit consideration of aptitude test results and educational records in employment and promotion decisions.

We do not think that the DOL notice presents a compelling case for suspending the GATB, nor does it provide sensible alternatives.