Bush Presidential Records
Records Management, White House Office of (WHORM)
Subject File - General

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Alpha Name (if Alpha File):
WHORM Category Name:

WHORM Category Code: **HU010**
Document Number / Range: **282591CU to 285920CU**
Equality

Processed for: 2007-0758-S

Box Number _____

Entire Category Processed

Original FOIA Number: 2007-0758-S

2nd FOIA Number:

3rd FOIA Number:

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Record Group:	Bush Presidential Records
Office:	Records Management, White House Office of (WHORM)
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WHORM Category Code:	**HU010**
WHORM Category Name:	**Equality**

Document Number:	**282591CU to 285920C Entire Category Processed**
Alpha File Name:	

CS

R: 10/31

ID # 282591 CU

HU012

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: copy of letter to Alan Simpson re re proposed amendment to the Civil Rights Act of 1991 authorizing a study on misrepresentation by persons stating the existence of employment discrimination

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Code	Completion Date YY/MM/DD
Evep	ORIGINATOR	91/10/29 TC		C	91/12/06 CS
Exec Sec	Referral Note:	TC			CS
	A	91/10/29		C	91/12/06
Ciaray	Referral Note:	ATN: FYI see comments --			
	I	91/10/29		C	91/10/29 TC
Cabinet	Referral Note:				
	I	91/10/29		C	91/10/29 TC
	Referral Note:				
		/ /			/ /
	Referral Note:				

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

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

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

Comments: No further action required per N. Lund CS 12-6-91

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

5/81

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents:_____ Media: _____ Individual Codes: __.____ __.____ __.____

Prime Subject Code: __ ____.__ Secondary Subject Codes: __ ____.__ __ ____.__
__ ____.__ __ ____.__
__ ____.__ __ ____.__

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C __ __	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
- n - **0** - Unknown
- n - **1** - George Herbert Walker Bush
- n - **2** - George Bush
- n - **3** - George

CLn - First Lady's Correspondence
- n - **1** - Barbara Bush
- n - **2** - Barbara
- n - **3** - Bar
- n - **4** - Mrs. Barbara Bush

CBn - Presidential & First Lady's Correspondence
- n - **1** - Barbara & George Bush
- n - **2** - Barbara & George

MEDIA CODES:

- **B** - Box/package
- **C** - Copy
- **D** - Official document
- **G** - Message
- **H** - Handcarried
- **L** - Letter
- **M** - Mailgram
- **O** - Memo
- **P** - Photo
- **R** - Report
- **S** - Sealed
- **T** - Telegram
- **V** - Telephone
- **X** - Miscellaneous
- **Y** - Study

282591ca

U.S. Equal Employment Opportunity Commission
Office of Communications and Legislative Affairs
1801 L Street, N.W., Room 9024
Washington, D.C. 20507

FAX TRANSMITTAL FORM

DATE: 10-29-91 TIME: 5:30

TO: The Honorable C. Boyden Gray

FAX TELEPHONE NUMBER: 456-6279

FROM: Chairman Evan J. Kemp, Jr.

DOCUMENT: Letter

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER): 2

SPECIAL INSTRUCTIONS:

IF YOU DO NOT RECEIVE THE ENTIRE MESSAGE, PLEASE NOTIFY US IMMEDIATELY AT: (202) 663-4900
OCLA FAX #: (202) 663-4912

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

OCT 29 1991

Office of
the Chairman

The Honorable Alan Simpson
United States Senate
261 Dirksen Senate Building
Washington, D.C. 20510

Dear Senator Simpson:

I have been asked by a member of your staff to comment on a proposed amendment to the Civil Rights Act of 1991 that would authorize a study on misrepresenation by persons testing the existence of employment discrimination. I have no objection to the Comptroller General conducting a study on the reliability of a program designed to test the existence of unlawful employment practices under Title VII.

However, I do not favor the proposal prohibiting the Commission from issuing a finding of discrimination or a right to sue letter in the interim.

Sincerely,

Evan J. Kemp, Jr.
Chairman

cc: The Honorable William P. Barr
The Honorable John C. Danforth
The Honorable Robert J. Dole
The Honorable John R. Dunne
The Honorable C. Boyden Gray
The Honorable Orrin Hatch
The Honorable Edward Kennedy
The Honorable Nelson Lund
The Honorable George J. Mitchell
The Honorable John Sununu

R: 10/29
8:45
A

CS

ID # 282628 CU

Mk read

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: Donald J. Kroes

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

Subject: Copy of letter from the U.S. Chamber of Commerce to Members of the U.S. Senate

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	ORIGINATOR	91/10/28		C	91/12/05 CS
Exec Sec Cmt 10	Referral Note:				
	A	91/10/29		C	91/12/05 CS
	Referral Note:	see Comments			
	_	/ /		_	/ /
	Referral Note:				
	_	/ /		_	/ /
	Referral Note:				
	_	/ /		_	/ /
	Referral Note:				

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DISPOSITION 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 CS

Comments: N. Further action required per N. Hwo 12-5-91-

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

U.S. Chamber of Commerce

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

Ted Maness
Senate Liaison

TO: C. Boyden Gray
456 6279

FROM: TED MANESS

F.Y.I.

MESSAGE: The attached letter was delivered to the Senate earlier today.

IF YOU DO NOT RECEIVE _____ PAGES INCLUDING THIS COVER, PLEASE CALL THE ABOVE NUMBER.

U.S. Chamber of Commerce
LEGISLATIVE AND PUBLIC AFFAIRS
1615 H Street, N.W. Washington, D.C. 20062 202/463-5401 Fax 202/463-3173

Donald J. Kroes
Vice President

October 28, 1991

MEMBERS OF THE UNITED STATES SENATE:

This afternoon you are scheduled to vote on S. 1745, the "Civil Rights Act of 1991." Senator Grassley (R-IA) has indicated he will offer an amendment to the bill to include Congress in the coverage of the Civil Rights Act of 1964. While the U.S. Chamber of Commerce continues to oppose to S. 1745, we believe Congress should be subject to the same laws it imposes on employers. The Chamber strongly urges you to vote for the Grassley amendment.

The primary reason given for opposition to congressional coverage is that it will violate the Constitution's pivotal Separation of Powers Doctrine. Even assuming, for the sake of debate, that this is a valid legal argument, Senator Grassley has crafted his amendment to avoid any such concern. Under the Grassley amendment, congressional employees, after exhausting the Congressional administrative process, would be entitled to go directly into federal court with their complaints, thus bypassing any Executive Branch enforcement.

Thank you for your consideration of our views.

Sincerely,

Donald J. Kroes

Donald J. Kroes

GS

R: 10/29 3:30p

ID # 282659 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET HU010

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

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

Name of Correspondent: Phil Brady

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

Subject: Forwards question from the President re application of Civil Rights Act of 1991 Standards to the Executive Office of the President

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Exec	ORIGINATOR	91/10/29		C	91/11/29 GS
Exec 10	Referral Note: CBE SIGNATURE				GS
	D	91/10/29		C	91/10/29 GS
Exec 07	Referral Note: Letter to Cmte 30				
	I	91/10/29		C	91/10/29 GS
Cmte	Referral Note:				
	I	91/10/29		C	91/10/29 GS
Cmte	Referral Note:				
Cmte 30	D	OPK signature		C	91/10/29
	~~Referral Note:~~	91/10/29		C	91/10/29 GS

11/29/91 GCS Memo to the file

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

Comments: assumed on 11/5 memo GS from Bowder Callen

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5/81

THE WHITE HOUSE

WASHINGTON

November 29, 1991

MEMORANDUM FOR THE FILE

FROM: GENE C. SCHAERR
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Senior Advisors Veto Threat on HR 3435, RTC Recapitalization Legislation

Counsel's office has reviewed the matter, and answered in 11/5 memo from Boyden. Thank you for the opportunity to comment on this matter.

THE WHITE HOUSE
WASHINGTON

DATE: 10/29/91

NOTE FOR: BOYDEN GRAY

The President has reviewed the attached, and it is forwarded to you for your:

Information ☐

Action ☒

Thank you.

PHILLIP D. BRADY
Assistant to the President
and Staff Secretary
(x2702)

cc:

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Mel Brady

☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Forwards question from the President re application of Civil Rights Act of 199 Standards to the Executive Office of the President

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Exec	ORIGINATOR	91/10/29			91/12/02
Exec 10	Referral Note: CBE SIGNATURE				
	D	91/10/29		S	91/12/02
Exec 07	Referral Note: see comments				
		/ /			/ /
Cuspay Cuats	Referral Note:				
		/ /			/ /
	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: Captioned matter undertaken by events geo

N. Lund 12-2-91

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THE PRESIDENT HAS SEEN

On Friday the **Senate Banking, Housing and Urban Affairs Committee** held a confirmation hearing on Susan M. Phillips to be a member of the Board of Governors for the Federal Reserve System.

THE WEEK OF OCTOBER 28 - NOVEMBER 1

HOUSE AND SENATE FLOORS

HOUSE

On Monday the House will debate a number of bills including the following: H. J. Res. 281, extending Most Favored Nation status to the Mongolian People's Republic; H. J. Res. 282, extending Most Favored Nation status to Bulgaria; H.R. 2454, the Generic Drug Enforcement Act of 1991; H.R. 3402, the Health Information and Health Promotion Amendments of 1991; and H.R. 3508, the Health Professional Education Amendments of 1991. Votes will be postponed on these bills until Tuesday.

On Tuesday the House will debate the conference report to accompany H.R. 2508, the FY 1992-93 Foreign Assistance Authorization bill; and H.R. 3489, reauthorizing the Export Administration Act.

Throughout the remainder of the week the House will consider the following legislation: H.R. 3575, the Federal Supplemental Compensation Act of 1991 (the Democrats' new unemployment insurance bill); H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991 (the banking reform bill); and H.R. 2, the Family and Medical Leave Act of 1991. The conference report to accompany H.R. 2707, the FY 1992 Labor/HHS Appropriations bill may also be considered if conference action is completed.

SENATE

On Monday the Senate will resume consideration of S. 1745, the Civil Rights Act of 1991. An amendment will be offered to adopt the compromise language reached Thursday evening. Amendments are expected to be offered to:

- lift the self-imposed exemption on Congressional offices from the provisions in this bill.
- apply the same standards to the Executive Office of the President.
- reduce the impact of new jury trials for businesses.
- prohibit race norming, the practice in which employment tests are adjusted according to racial groups.

CS

ID # 282993 CU

HUOTD R: 11-1 3:30p

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Michael Suozzi

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

Subject: White men and the new 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
Cuofe	ORIGINATOR	91/10/30	WS	C	91/12/19 CS
Cuot 10	A	91/10/31		C	91/12/19 CS
		91/12/19	WS		
		/ /			/ /
		/ /			/ /
		/ /			/ /

Referral Note: 91/12/19 mtg w/ Simon from NL

Referral Note:

Referral Note:

Referral Note:

Referral Note:

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Comments: _____

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THE WHITE HOUSE

WASHINGTON

December 19, 1991

MEMORANDUM FOR DAVID SIMON
COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

FROM: NELSON LUND
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Dr. Michael Suozzi

The captioned correspondent appears to be alleging a violation of Federal laws that I would suppose are within the jurisdiction of your office. Would you be willing to look into this and take whatever action, if any, is appropriate?

Thanks.

Attachment

28293CU
3751 Third Ave.
San Diego 92103
Oct. 25, 1991

Dear President Bush:

What does your agreement to the "civil rights" bill mean for white men who are being removed to make room for "minorities" and women? Do you care?

I refer you + Mr. C. Boyden Gray to California law, AB 1725 (1987-88 legislative session), which is an explicit, open, insolent mandate to hire under quotas. Why does your Dept. of Education, Office of Civil Rights REPEATEDLY refuse to move against the State of California on this matter? Why does not the Dept. of Justice not act?

Section 87107 as amended of AB 1725 reads: "By 1992-3, 30% of all new hires (in community colleges) must be ethnic minorities".

Is this not a quota?

I request your immediate concern in this matter. White men are being destroyed. EEOC is run by minorities. No help there for us. Your Dept. of Education, OCR, is run by left-over liberals. No help there especially from its San Francisco

office.

I hope, Mr. President, that the federal government will move against the State of California in the federal Courts to nullify 87107 + its corollaries at once. Our situation as white men in higher education has already been destroyed. I urgently request that you order the Dept. of Justice to intervene to request the courts to nullify this law.

Thousands of jobs are available in the Calif. Community College System from now until 1996. These jobs are been given to minorities + women. White men are being passed over under AB1725. The federal government is asleep. My requests for federal action have been stonewalled. Your direct interest alone, will be necessary.

Sincerely,

Michael Suozzi

Enclosure: OP/ED Article San Diego Tribune: May 29, 1991

M. SUOZZI

Michael Suozzi, Ph.D.

3751 3RD AVE., APT B

~~P.O. Box 8782, Hillcrest Station~~

San Diego, California 92103

SAN DIEGO TRIBUNE

Wednesday, May 29, 1991 B-9

White male will be new minority

By **MICHAEL SUOZZI**

SAN DIEGO

In the 1987-88 legislative year, the California Legislature passed AB1725, a law on the governance of all community colleges.

Only a polemical legal historian might want to read the 63 dense pages of this monstrous law, full of legalistic double talk. A trained legislative analyst told me that he could not handle it. I daresay that 99 percent of all voters have never heard of the law.

In 1989, I first learned of the consequences of this law when Chancellor Bill Henrich of the San Diego Community College District announced that the district had achieved its "goals." He said that of 59 new full-time hires, 26 were minorities and 24 were women for a total of 40, counting overlap. This appeared to me as unrestricted quota hiring. I told the chancellor that I believed this was unconstitutional.

I began to plow through the law and discovered that in 87107 of Section 25, as amended, the law read: "... the goal that by the year 2005 the system's work force will reflect proportionately the adult population of the state." It also said that by fiscal year 1992-93, 30 percent of all new hires had to be ethnic minorities.

How could our legislators project population for 2005 and use fictive projections to order quota hiring now? The law states that they have so mandated.

Surely our legislators knew the decisions of the U.S. Supreme Court in Bakke and other cases. Did they purposely and surreptitiously float this law to bring about a constitutional case, testing whether mandated quota hiring will be allowed in this state?

A law may pass the constitutional test if it is cleverly worded so that it can pass as affirmative action. However, in the Stotts and Wygant cases, the U.S. Supreme Court ruled out any attempt to bring about the firing of white men so that they could be replaced by minorities and women.

I saw that the Legislature had cleverly avoided this test by mandating quotas that would prevent white men from even being considered and by forcing out highly qualified men who were part-timers. AB1725 orders that new full-time teachers be hired and that every measure be taken to search throughout the country to bring in minorities. By mandating the hiring of minorities in the full-time positions, it orders, more or less, that highly qualified white men who are part-timers be laid off and not even considered for the full-time jobs.

Moreover, it encourages that unqualified graduate students of minority background be brought in to teach as part-timers even if they have no experience. This is to groom them for later teaching as full-timers.

The expulsion of white men from the ranks of our community college system thus is brought about under cover of diversity and multiculturalism. In numerous community college systems, including those in the San Diego area, minorities and women already comprise a large share of the administrative posts. What appears to be a politicized and ideological battle to seize total control of the community college system is the result of this defective law.

One local college advertised nationwide for a pair of Western Civilization instructors, but to date the post has not been filled. I was advised there were insufficient minorities in the pool of candidates. This is amusing, because I have never encountered many minorities who major in Western Civilization.

It is time to blow the whistle on this fraud. In bringing about the hiring of minorities and women although there are an enormous number of highly qualified white men available, a department will rig the qualifications in a way that excludes consideration of the majority of white men.

For instance, if a historian has a Ph.D. from Harvard or Princeton, he might believe he is highly qualified. He applies for a post to teach his field, which might be Europe. However, to exclude him because he is a white man, the department might demand that he have a minor in women's studies and minority studies as well, or that he have a minor in Africa and/or Asia.

The candidate might protest that his graduate school did not have those studies when he was being trained. Tough luck. He is excluded even if he is the top man in his field. This has been the case in many departments since 1970.

In the Bakke case, the high court decided that quotas are in themselves illegal. However, further federal court tests are needed to decide whether a college or department can rig the qualifications in such a way as to exclude the majority of white men as candidates.

In terms of AB1725, which mandates quotas on the basis of fictive population projections for 2005, the constitutional test is fairly clear.

First, AB1725 projects that white men will be a minority in 2005 in California. Therefore, the law orders that they be reduced to a minority in the faculties and administrations of all community colleges *now*. It thus mandates a quota even if it is not at all sure that the population will be in that proportion in 2005. This is lunacy.

Also, if the white man is to be a minority, he should be protected as such even now, if the absurd projections of AB1725 were to have any logical consistency.

AB1725 requires a federal court test as to its constitutionality. It is amazing that no constitutionalists have broached this problem. The mandates of AB1725 are directly and indirectly in opposition to the Constitution, and the sooner we find out, the better.□

Michael Suozzi, Ph.D., teaches European and American history part-time at San Diego City College.

CS

ID # 283060 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: NELSON LUND

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

Subject: Side-by-Side comparison of President's and Danforth's Civil Rights bills

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/10/16		C	91/10/16 CS
	Referral Note:				
CUAT 10	A	91/10/16		C	91/10/16
	Referral Note:	10/16/91 NL's note to Cgray			
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

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Comments: _____

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5/81

THE WHITE HOUSE
WASHINGTON

Date: 10/16/91

TO: CBG

FROM: NELSON LUND
Associate Counsel
to the President

As promised.

President's Bill	Danforth Bill
Authorizes a new monetary remedy for harassment in the workplace on the basis of race, sex, religion, or national origin. No punitive damages.	Authorizes compensatory damages (including pain and suffering), as well as punitive damages, for virtually all Title VII cases, including cases of unintentional discrimination.
Complaining party is required to use employer's internal grievance procedure (if any) before going to court.	Plaintiff can by-pass the employer's internal grievance procedures and go straight to court.
$150,000 cap.	No caps on past pecuniary losses (for example, psychiatrist's fees). Caps on other damages depending on firm size: 100 or fewer employees: $50,000. 101-500 employees: $100,000. More than 500 employees: $300,000.
All cases to be tried by a judge, as in current law, unless the Constitution requires a jury for the liability phase of the trial. Juries would never set the amount of the award.	Jury trials on demand. Juries would both determine liability and set the amount of the award.
Special provisions creating incentives for employers to (1) establish compliance programs; (2) establish internal grievance procedures; and (3) take prompt corrective action in response to harassment complaints.	No such provisions for ensuring that employers have incentives to resolve problems outside the courts.
Special provision authorizing courts to issue an emergency order to put an immediate halt to on-going harassment.	No provision for emergency relief.

- Because of Anita Hill's allegations against Clarence Thomas, a lot of attention has been focused on the problem of sexual harassment in the workplace.

- We need to follow up with 2 major reforms. First, we must strengthen the remedies for victims of sexual harassment. Second, we must start applying the civil rights laws, including the rules against sexual harassment, to Congress.

- My civil rights bill already addresses both these issues.

  - My civil rights bill creates a new monetary award, up to $150,000, specifically for victims of harassment in the workplace.

  - My bill also has special provisions that create incentives for employers to discourage harassment; to act promptly upon complaints; and to take corrective action where warranted.

    Does the Danforth bill focus on the right problem? It does not focus specifically on harassment, and it does not include specific provisions to encourage responsible behavior by employers.

    Instead, the Danforth bill creates a whole new system for trying discrimination cases in general. This new system, which is modeled after a tort system that has practically broken down, will benefit contingency-fee lawyers. But will it really reduce discrimination in the workplace?

  - My civil rights bill applies the law against employment discrimination to Congress just as it applies to the Executive Branch.

    The Danforth bill looks at first as though it covers Congress. But when you look at the fine print, it turns out that it does not give congressional employees any legal rights (because these provisions are inserted merely as exercises of the rulemaking authority of each House, and they can be changed at any time by the House in question).

- Unfortunately, my bill has been held hostage to the special interests that are insisting on provisions that will lead to quotas and to a lawyers' bonanza.

- The Senate should take up my bill and pass it promptly.

In recent days, a great deal of attention has been focused on the serious problem of sexual harassment in the workplace. The circumstances that led to this attention are extremely regrettable, but the President hopes that the Congress will now respond constructively by moving forward with an appropriate legislative initiative.

In light of anticipated floor action in the Senate on a civil rights bill, the President urges the Congress to give its consideration to the Administration's civil rights bill, which was transmitted to the Congress several months ago (S. 611). That bill includes two major reforms whose urgency was highlighted by the events of recent days. First, we must strengthen the remedies for victims of sexual harassment. Second, we must start applying the civil rights laws, including the rules against sexual harassment, to Congress.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment, but provides inadequate remedies for harassment in the workplace, including sexual harassment, which the Supreme Court has recognized as actionable under Title VII. Such harassment frequently will not be so intolerable that an employee subjected to it immediately leaves. In such circumstances, the only remedy the victim of harassment can obtain under Title VII's existing remedial scheme is declaratory and injunctive relief against continuation of the harassment.

Such a rule is plainly inequitable. It effectively tells employers that the only consequence of creating an environment so hostile to an employee that he or she is forced to sue to obtain relief is a directive to refrain in the future. This defect must be corrected.

The President's bill creates a new remedy for on-the-job harassment. The bill authorizes courts to make a monetary award, up to $150,000, in addition to granting declaratory and injunctive relief. The new remedy is available on the same terms for all forms of on-the-job harassment, whether based on race, color, religion, sex, or national origin.

The President's bill also has special provisions that create incentives for employers to discourage harassment, to act promptly upon complaints, and to take corrective action where warranted. The competing bill, unfortunately, does not focus on the right problem. Instead, it creates a whole new system for trying discrimination cases. This new system, which is modeled after a tort system that has practically broken down, is designed mainly to benefit contingency-fee lawyers.

Just as the President's bill focuses on repairing the real problems in the law of sexual harassment, he has also proposed meaningful reform of the congressional exemption from our civil rights laws. The Executive branch, like private employers and state and local governments, is forbidden by law to discriminate on the basis of race, color, religion, sex, or national origin. The Congress, however, has exempted itself from the law. The President's bill extends Title VII to the Congress on the same terms as it applies to the Executive branch.

In addition to setting a helpful example, and providing congressional employees with the same rights enjoyed by other Americans, coverage under Title VII will

provide the Congress with the valuable experience of living under the same rules that it imposes on other employers. This experience should prove useful in encouraging the Congress to give prompt and serious consideration to proposals for improving the law and in enabling the Congress to resist ill-considered proposals -- like the bill that President Bush vetoed on October 22, 1990 -- that would undermine the cause of civil rights and impose completely unjustified burdens on the employers of this nation.

Unfortunately, the President's bill has been held hostage to the special interests that are insisting on provisions that will lead to quotas and to a lawyers' bonanza. The Senate should take up the President's bill and pass it promptly.

THE PRESIDENT'S CIVIL RIGHTS BILL

- The President's bill -- S. 611 -- includes <u>all</u> the worthwhile measures supported by a bipartisan consensus:
  - Overturns the Patterson and Lorance decisions.
  - Overturns the Wards Cove decision by shifting the burden of proof to the employer in defending "business necessity."
  - Creates new monetary remedies under Title VII with <u>meaningful caps</u>.
  - Authorizes expert witness fees in civil rights cases.
  - Extends the statute of limitations and authorizes the award of interest against the U.S. Government.
- The President's bill uses the <u>exact</u> language of the Griggs holding in defining "business necessity" -- "manifest relationship to the employment in question."
- The President's bill includes the <u>exact</u> "business necessity" language from the 1979 Beazer opinion, which was accepted in the Wards Cove <u>dissent</u> (written by the author of Beazer).
- <u>Any</u> deviation from the <u>exact</u> language of the Supreme Court's pre-Wards Cove holdings will inevitably raise the risks for employers who do not have the "right" numbers. Years of litigation will be needed to sort out the meaning of the new definition, and employers who cannot endure that litigation will have to use quotas.
- The President's bill will permit the President's <u>educational reform</u> initiative to go forward unimpeded (see attached op-ed by Dr. Chester Finn).
- The President's bill preserves the right of victims of illegal quotas to have their day in court and be treated like other civil rights plaintiffs.
- The President's bill will avoid a new litigation explosion and new attorneys fees -- a lawyers' bonanza.

DAMAGES

- In 1964, Congress carefully considered what remedies should be available for a violation of Title VII. The decision was that reinstatement and back pay would best serve to remedy discrimination quickly and efficiently.

- This "make whole" relief -- which restores victims of discrimination to their rightful places in the economy and minimizes conflicts between employers and employees -- was modeled after other labor statutes, particularly the National Labor Relations Act, none of which authorizes damage awards.

- The past 27 years have shown the wisdom of the choice Congress made. Title VII has proven tremendously effective in transforming the workplace and fighting discrimination.

- Like H.R. 1 and last year's Kennedy-Hawkins bill, the Danforth proposal radically alters the remedial focus of Title VII by authorizing awards of compensatory damages (including pain and suffering), punitive damages, and jury trials.

- The Danforth bill even goes <u>beyond</u> H.R. 1 and Kennedy-Hawkins by authorizing damages in disparate impact cases, where no discriminatory intent has been shown.

- Damage awards will encourage litigation and discourage conciliation as plaintiffs and their attorneys roll the dice in hopes of hitting a jackpot verdict. This process will distract the parties from the productive quest to get the victims of discrimination into their rightful places in the workforce.

- Litigation will bog down and become a source of new and costly uncertainties for plaintiffs and defendants alike. This is inevitable as claims for pain and suffering, as well as for punitive damages, become staples of Title VII litigation. Sadly, many plaintiffs who could have gotten a job and back pay quickly will wait years for their cases to be resolved and many will end up with nothing.

- As the Washington Post said: "Punitive damages are a form of Russian Roulette whose availability, not just in [civil rights] but other proceedings should be narrowed, not increased." (<u>Washington Post</u>, April 26, 1991, p. A22.)

- The model adopted by the Danforth bill, like that in Kennedy-Hawkins, is the medical malpractice system, which is widely acknowledged to be in a state of crisis because it is unpredictable, expensive, and slow.

- By increasing the unpredictability of disparate impact cases, as well as of disparate treatment cases in which statistics often play a significant evidentiary role, the Danforth damages provisions will increase the pressure on employers to adopt hiring and promotion <u>quotas</u>.

THE DANFORTH BILL IS A QUOTA BILL

The Danforth bill is a quota bill for the same reasons that last year's Kennedy-Hawkins bill and this year's H.R. 1 were quota bills. **First**, it stacks the deck against employers in disparate impact suits so that they have no choice but to adopt surreptitious quotas. **Second**, it slams the courthouse door in the faces of those who want to challenge illegal quotas.

Stacking the Deck

- By making it almost impossible for employers to defend "bad numbers," the Danforth bill creates enormous pressure for employers to avoid any selection criterion that has a disparate impact. This bill will drive employers to meet a quota for every racial, sexual, ethnic, and religious classification. "Demographic correctness," not qualifications or ability, will determine who gets a job.

- By eliminating the requirement that the plaintiff identify a particular employment practice that caused any disparate impact, the Danforth bill permits challenges to a group of practices that simply results in a bad "bottom line," and imposes on employers the expense of proving the "business necessity" of each practice, even though none of them caused a disparate impact.

- The Danforth bill will force employers to defend, on narrow "job performance" grounds, selection criteria that are perfectly legitimate but not necessarily related to how an individual performs the daily tasks of an entry level job.

- The Danforth bill would allow courts to hold an employer liable for refusing to use an alternative selection device with less disparate impact -- even though that device may be prohibitively expensive.

Slamming the Courthouse Door

- Like Kennedy-Hawkins and H.R. 1, the Danforth bill overturns Martin v. Wilks. In that case, the Supreme Court permitted a group of firefighters who were not parties to a consent decree to challenge the promotion quotas embedded in the decree. This decision simply reflects fundamental notions of fairness and due process that apply to all other civil litigants: everyone is entitled to his or her day in court.

- Moreover, the only consent decrees that will ever be successfully challenged are those that contain illegal preferences. Why should such decrees ever be insulated from challenge?

- The fact is, this provision is designed to disadvantage a specific class of civil rights plaintiffs: those who have been victimized by consent decrees implementing quotas and unfair preferences.

WHY THE DANFORTH BILL IS A QUOTA BILL

Situation	Danforth Bill	S. 611 President's Bill
At the mayor's request, a fast food chain rejects dropouts below age 18 for jobs during school hours.	NO DEFENSE	DEFENSIBLE POLICY
A trucking company promotes from within. Dock workers (the pool for future drivers) are not allowed to have drunk driving convictions.	NO DEFENSE	DEFENSIBLE POLICY
The American Cancer Society refuses to hire cigarette smokers for any job.	NO DEFENSE	DEFENSIBLE POLICY
A state police force denies employment to any applicant with a criminal conviction.	NO DEFENSE	DEFENSIBLE POLICY
To reduce health insurance costs, a mining company refuses to hire those who smoke on or off the job.	NO DEFENSE	DEFENSIBLE POLICY
A lawyer hires law students as interns so that she can choose new lawyers based on their performance as interns.	NO DEFENSE	DEFENSIBLE POLICY
None of these employers is biased against women or minorities. They want to keep their policies without being sued. How?	**USE QUOTAS**	**TREAT EVERYONE THE SAME**

THE DANFORTH BILL IS ANTI-EDUCATION

- Under the Danforth bill, employers will risk ruinous lawsuits if they use educational criteria when making hiring decisions. In defending against such lawsuits, employers will have to prove their own innocence under a test that is much more difficult than anything the Supreme Court has ever imposed.

- Secretary of Education Lamar Alexander has warned that the Danforth proposal threatens to undermine the educational reform efforts that are needed to salvage our failing schools.

  - Our young people are not being prepared to meet the demands of the 21st century. Students will not stay in school and work hard at their studies unless they are rewarded for the effort.

  - The Danforth bill <u>undermines</u> incentives to get a good education. The bill restricts employers' ability to require skills and knowledge beyond what they can prove in court is strictly needed for the initial job for which an individual is being hired. The Danforth bill tells employers not to ask for high school diplomas or transcripts for typical entry-level jobs.

  - This sends the wrong message to students and teachers alike. It says to students that staying in school does not matter, because employers do not have the right to know how well you did or even whether you graduated. It tells teachers that their work is unimportant in the outside world.

- Prominent union leader Albert Shanker agrees:

  > "[I]nstead of downplaying achievement, we should be letting students know that what they do in school will make a difference and that this will be true for <u>all</u> students. And we should be sure that the new civil rights act will permit employers to reward students who have done well. Anything else will teach students the wrong lesson." (New York Times, March 24, 1991).

- The U.S. military (which is not covered by Title VII) requires high school diplomas and high test scores from all recruits. The military asks our young people to "Be All That You Can Be," and Operation Desert Storm demonstrated the results. The Danforth bill will encourage our kids to be the least they can be and still get away with it.

- Foreign companies that compete with us economically routinely rely on the educational records of prospective employees. Like our military, these foreign companies think it is obvious why these records are so important. Under the Danforth bill, however, America's civilian employers will be threatened with lawsuits if they use these common sense criteria in hiring.

- If employers want to use common sense educational standards, the Danforth bill does offer one surefire way to avoid legal liability: <u>Use Quotas</u>. If you hire by the numbers, you can use whatever other hiring criteria you want, and you will never have to fear a disparate impact lawsuit.

THE DANFORTH BILL DOES NOT "RESTORE" THE LAW

Proponents of H.R. 1 and the Danforth bill claim that they want only to "restore" the law to what it was prior to some 1989 rulings by the Supreme Court. This is not true.

Proponents of these bills are rewriting the law to institutionalize quotas and guarantee full employment for lawyers. The Danforth bill differs from the President's bill on four major issues -- in each case, the Danforth bill creates new law, not a restoration of the law as it stood prior to the 1989 decisions.

- With respect to Wards Cove, the Danforth bill (1) changes the definition of "business necessity"; (2) eliminates the requirement that a plaintiff always identify the particular employment practice being challenged; and (3) may bar consideration of the expense of plaintiff's proposed alternative selection devices.

  None of these three provisions "restores" prior Supreme Court law. Instead, the Danforth bill stacks the deck against employers in ways that are supported by no Supreme Court precedent -- and that will drive employers to adopt surreptitious quotas.

- With respect to Martin v. Wilks, the Danforth bill places a unique burden on certain civil rights plaintiffs. It would slam the courthouse door in the face of those who want to challenge illegal quotas. This is both unconstitutional and unfair. It has no basis in prior Supreme Court law.

- With respect to the new compensatory and punitive damages provisions of the Danforth bill, such remedies have never been available under Title VII of Civil Rights Act of 1964. Congress itself made that decision over a quarter of a century ago, and no Supreme Court decision -- in 1989 or any other year -- has ever disturbed this settled principle.

- With regard to Price Waterhouse v. Hopkins, the Danforth bill would overturn a pro-plaintiff Supreme Court decision written by Justice Brennan, by creating a brand new rule designed primarily for the benefit of lawyers.

  - When Justice Brennan's opinion was issued, the decision was hailed by the NOW legal Defense Fund, National Women's Law Center, Women's Legal Defense Fund, and the New York Times as a victory for plaintiffs. Since that time, plaintiffs have prevailed over 70% of the time under this decision.

  - Only lawyers -- who are the true beneficiaries of the Danforth provision -- could have the nerve to suggest that going far beyond Justice Brennan has anything to do with "restoring" the law.

THE DANFORTH BILL IS A LAWYERS' RELIEF ACT

Like H.R. 1 and last year's Kennedy-Hawkins bill, the Danforth bill is a dream-come-true for the plaintiffs' bar. It will radically rewrite Title VII of the Civil Rights Act of 1964, turning it into a tort-style litigation machine. And it contains a special provision designed so that plaintiffs' lawyers will get paid in cases in which the plaintiff herself does not get a cent.

Litigation Machine

o Like H.R. 1, the Danforth bill will, for the first time, authorize compensatory and punitive damages in Title VII cases. It specifically contemplates awards for "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses," as well as punitive damages.

o Like H.R. 1, the Danforth bill provides for these cases to be tried to a jury, which will determine both liability and the amount of damages.

o Moreover, as drafted the bill would even go beyond H.R. 1 and make these damages available in disparate impact cases, where discriminatory intent was not shown.

o All of this is radical and new. Damages have never before been awarded under Title VII, a statute that has worked well for over a quarter of a century.

o Yet the Danforth bill would toss it out, and substitute instead the same tort-style model that has made medical malpractice litigation a nightmare.

Lawyers' Gold Mine

o Like H.R. 1, the Danforth bill contains another provision included at the demand of the plaintiffs' bar. It overturns the Supreme Court's decision in Price Waterhouse v. Hopkins, a victory for plaintiffs that was written by Justice Brennan.

o The reason? To guarantee that the lawyer will receive his attorney fees, even if the employer's actions did not cause any harm to the plaintiff and the plaintiff receives no relief.

o Under the Danforth bill, incentives are created for a whole new class of litigation in which there is no prospect of relief for any plaintiff and in which the litigation is conducted solely to generate attorney fees for the lawyers.

* * * *

There is already too much litigation and too many lawyers. America doesn't need the Danforth "lawyers' relief bill."

JUL 25 '90 12:43

TJ

283069
HU010

To Roger Porter
Boyden Gray
???
Andy

SMALL BUSINESS ADMINISTRATION
WASHINGTON

OFFICE OF THE ADMINISTRATOR

7/25/90

Andy Card:

The attached provision to the Civil Rights Act is extremely important to small business and the Administrator would like to send a letter to Hill covering these points. A proposed letter is in clearance at OMB but since Governor Sununu is personally managing the bill I wanted you to know of our proposal and it's importanceof this provision to the small business community.

Would appreciate any guidance you may have. Thanks.

Kay Bulow

Title VII Remedies -- Provision of the Impact of Civil Rights Bill on Small Business

- Changes in the bill would potentially expose 4 million small businesses to significant liability.
- The new provision which allows for punitive and compensatory damages and the right to a trial by jury will discourage pre-trial settlement and encourage the filing of lawsuits, which are costly to defend regardless of the verdict.
- The damage scheme in the Civil Rights Act of 1964 should remain intact, as it was designed to encourage conciliation and quick resolution of meritorious claims. The new remedies provision would supersede the 1964 Act which was recently ratified in the Americans with Disabilities Act.
- Changes in Title VII remedies will also affect the remedies available under the Americans with Disabilities Act, which incorporates by reference those presently provided in the 1964 Act.

OFFICE OF THE ASSISTANT TO THE PRESIDENT
FOR ECONOMIC AND DOMESTIC POLICY
OFFICE OF POLICY DEVELOPMENT

CORRESPONDENCE TRACKING SHEET
GENERATED: 08/13/90

Control No : 213

Entry Date : 08/13/90 Due Date : 08/20/90

Assigned to : MARIANNE MCGETTIGAN

Action : Appropriate Action

Correspondent : BULOW, KAY .

Subject : CIVIL RIGHTS

Comments:

close out

PLEASE NOTE ACTION TAKEN:

R: 11-5
4pm.

CS

ID# 283082

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

HU010

COUNSEL'S OFFICE
RECEIVED
NOV 0 1 1991

DATE RECEIVED: OCTOBER 31, 1991

NAME OF CORRESPONDENT: MR. JAMES C. DINEGAR

SUBJECT: URGES CONGRESS TO CLARIFY THAT SUBSECTION (A) (2) OF THE PROPOSED CIVIL RIGHTS ACT OF 91 IS NOT INTENDED TO APPLY TO TITLE III OF THE AMERICANS WITH DISABILITIES ACT

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
~~C. BOYDEN GRAY~~ Cmofc	ORG	91/10/31		C	91/12/19 CS
REFERRAL NOTE:					
Cmat10 PD	A	91/11/01		C	91/12/19 CS
REFERRAL NOTE:					91/12/19 memo to Livingston from WH
		__/__/__			__/__/__
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: _____

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

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

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

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

THE WHITE HOUSE

WASHINGTON

December 19, 1991

MEMORANDUM FOR DON LIVINGSTON
GENERAL COUNSEL
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FROM: NELSON LUND
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from James C. Dinegar

The attached correspondence addresses an issue that I believe falls within the jurisdiction of the EEOC.

Would you be willing to respond to the incoming correspondence as appropriate?

Thanks.

Attachment

283082

C B Gray

October 30, 1991

The Honorable George Bush
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Congress and the Administration have apparently agreed on the content of a new Civil Rights Act. Before the bill is enacted into law, BOMA International would like it to be made clear that the provisions allowing persons with disabilities to recover compensatory and punitive damages, based on an employer's intentional violation of Title I of the Americans with Disabilities Act (ADA), **are not intended to cover complaints under Title III of the ADA.**

We seek this clarification for three reasons. First, BOMA International has been conducting an all-out effort to educate the nation's building owners and managers on their responsibilities to provide increased access and accommodations for persons with disabilities under the ADA's Title III. This effort to promote voluntary compliance has been tremendously successful to date, with more than 12,000 **ADA Compliance Guidebooks** printed and distributed and over 30 seminars already scheduled and well underway within the nation's building community.

Second, Title III of the ADA already spells out several types of legal remedy if a building or facility is found to be in violation of the accessibility requirements. The first remedy is correction of the problem, which will be mandated in all cases where discrimination is proved. However, if a "pattern or practice" of discrimination is alleged, the government can file a civil suit seeking monetary damages -- up to $50,000 for the first violation and $100,000 for any subsequent violation. These penalties are more than sufficient to encourage compliance.

Third, from BOMA's discussions with the Justice Department, as well as with organizations representing persons with disabilities, it is clear that everyone wants to see Title III of the ADA fulfilled through voluntary, good faith efforts. The least preferred means of recourse is through the court system. No one that we have spoken with is seeking to have punitive and compensatory damages added through the Civil Rights Act or any other legislation.

For these reasons, BOMA International respectfully urges Congress to clarify that subsection (a)(2) of the proposed Civil Rights Act of 1991 is not intended to apply to Title III of the Americans with Disabilities Act.

Thank you very much. If you have any questions, please do not hesitate to contact me at (202) 408-2684.

The Building Owners and Managers Association (BOMA) International is the oldest and largest trade association exclusively representing the office building industry. Its 15,000 members are directly responsible for more than 5 billion square feet of office space nationwide.

Sincerely,

Jim Dinegar

James C. Dinegar
Vice President
Government and Industry Affairs

ID# 283096

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

H4010

INCOMING

DATE RECEIVED: OCTOBER 31, 1991

NAME OF CORRESPONDENT: MR. A. BALTAZAR BACA

SUBJECT: URGES THE PRESIDENT TO RECONSIDER HIS POSITION AND SUPPORT AND 91 CIVIL RIGHTS ACT

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
JEFF VOGT	ORG	91/10/31		C	91/11/04 WS
REFERRAL NOTE:					
Shree Sanchez	A	91/11/26		C	91/12/20
REFERRAL NOTE:					
		__/__/__			__/__/__ WS
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

COMMENTS: ENCLOSURES TELEPHONE CALL WS

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

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		
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*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.

8

Jeff Vogt

283096

NATIONAL Image INC.
930 W. 7th Ave., Suite 117-121
Denver, CO 80204
303/534-6534 · FAX 303/595-8977

October 22, 1991

The Honorable George Bush
President of the United States of America
The White House, 16th and Pennsylvania St. N.W.
Washington, D.C. 20500

Dear Mr. President:

National Image, Inc., is a national Hispanic organization committed to bettering the life of Hispanics through employment, education, and civil rights. On May 18, 1991, during its 19th annual Training Conference and Convention, the membership passed the attached resolution calling for the passage of the 1991 Civil Rights Act.

We understand the role of your advisors and confidants, in providing you with sound advice. However, we feel that if you would take the proposed bill and study it carefully, without subjective advice, you would come to the same conclusion as Senator John Danforth of Missouri, that the Act as written, makes it clear that quotas are illegal.

We in the Hispanic community do not expect something for nothing. All that we and your grandchildren ask is that we be free to exercise our inalienable rights to succeed or fail on our own merits, but first we need to have equal access and all opportunities available without society imposing artificial barriers.

The membership of National Image requests that you reconsider your position and support the ~~1991 Civil Rights Act.~~

Sincerely,

A. Baltazar Baca
General Counsel
For, National Image, Inc. Executive Board

cc:The Honorable Thomas Foley
Speaker of the House
United States House of Representatives

NATIONAL Image INC.
930 W. 7th Ave., Suite 117-121
Denver, CO 80204
303/534-6534 • FAX 303/595-8977

Resolution #3

Whereas, in recent years there has been an absence of a clear, positive unequivocal national civil rights policy and program in the United States, and

Whereas, this vacuum in leadership has created doubt and confusion in the public and private sectors regarding their respective responsibilities in promoting equal employment opportunities and affirmative action, and

Whereas, the Civil Rights Act of 1991 would restore confidence in our country's ability to provide the legal protection necessary to promote equality of opportunity to all of its citizens,

Be it resolved therefore, that National Image, Inc. assembled in St. Louis, Missouri this 18th day of May 1991 calls upon the Congress of the United States to pass this vitally needed legislation,

Be it further resolved, that this Resolution be sent to the President of the United States.

Respectfully submitted,

Image de Austin

As passed and adopted by National Image, Inc. on May 18, 1991

National Image, Inc. Executive Board

PD

283199
HU010

May 17, 1990

Dear Representative:

In a ceremony today honoring the U.S. Commission on Civil Rights and its new Commissioners, the President reiterated his commitment to "equal opportunity and equal protection under the law for all Americans."

During the President's remarks, he specified three principles by which he will be guided when considering any civil rights legislation enacted by Congress. The principles enunciated by the President are:

- Civil rights legislation must operate to obliterate consideration of race, color, religion, sex, nation of origin, age, or disability from employment decisions;

- Civil rights legislation must reflect fundamental principles of fairness that apply throughout our legal system; individuals who believe their rights have been violated are entitled to their day in court, and an accuser must shoulder the burden of proof; and

- Federal law should provide an adequate deterrent to sexual or religious harassment, or harassment on the basis of disability in the workplace, and should ensure a speedy end to such discriminatory practices.

Since Congress is currently considering the Civil Rights Act of 1990, I have enclosed a copy of the President's remarks, and hope that it will prove useful in your deliberations.

With best regards,

Sincerely,

Frederick D. McClure
Assistant to the President
for Legislative Affairs

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID#_____

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

_____ Remainder of case not scanned.

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_____ Report not scanned.

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Comments:

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 17, 1990

REMARKS BY THE PRESIDENT
DURING MEETING WITH
COMMISSION ON CIVIL RIGHTS

The Rose Garden

10:02 A.M. EDT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END 10:16 A.M. EDT

GRC

283307
HU010

11-9-91
Hague to D.C.

ABOARD AIR FORCE ONE

Dear Justin & Yoshiko,

I saw you at the Reagan Library, Tue, but I couldn't get over to say Hi. I wanted to thank you for your wire on the Civil Rights Bill —

You two are very thoughtful

Warm Regards,

cc: IN & OUT
Patty Presock

FROM
THE WHITE HOUSE
WASHINGTON, D.C.

The Honorable and Mrs. Justin Dart, Jr.
907 6th Street, SW
APT 516 C
Washington, DC 20024

8 cc5

Shirley Green

Reading File

1-004954S299 10/28/91

ICS IPMBNGZ CSP

91 OCT 28 A9:31

2024887684 POM TDBN WASHINGTON DC 39 10-26 0700P EST

PMS PRESIDENT GEORGE BUSH

WHITE HOUSE DC 20500

CONGRATULATIONS ON YOUR ENDORSEMENT OF A CIVIL RIGHTS LAW THAT WILL EMPOWER AMERICANS TO BE PRODUCTIVE, RATHER THAN PROMOTING HOSTILITY AND LITIGATION THROUGH QUOTAS AND PUNITIVE REMEDIES. AS ALWAYS, WE ARE PROUD OF YOU AND OF AMERICA. LEAD ON.

JUSTIN & YOSHIKO DART

907 6TH ST SW APT 516C

WASHINTON DC 20024

0826 EST

CS

ID # 283307 CU

HU010 R:11-4-

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

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

Name of Correspondent: Justin and Yosi

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

Subject: Congratulations on Civil Rights

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Exofc	ORIGINATOR C	91/10/31		C	91/12/05 CS
Exec 10	Referral Note:				CS
	A	91/11/01		C	91/12/05
Exec 07	Referral Note: A FYI: FYI—see comments				CS
	I	91/11/01		C	91/11/01
Cugay	Referral Note:				CS
	I	91/11/01		C	91/11/01
	Referral Note:				
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ACTION CODES:

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

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

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

CS

Comments: No further action required per N. Lund 12-5-91

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

5/81

JUSTIN DART, JR.
907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202-488-7684 (H)
202-653-5044 (W)

2833074

OCTOBER 26, 1991 MAILGRAM

PRESIDENT GEORGE BUSH
THE WHITE HOUSE
WASHINGTON, DC 20500

CONGRATULATIONS ON YOUR ENDORSEMENT OF A CIVIL RIGHTS LAW THAT WILL EMPOWER AMERICANS TO BE PRODUCTIVE, RATHER THAN PROMOTING HOSTILITY AND LITIGATION THROUGH QUOTAS AND PUNITIVE REMEDIES. AS ALWAYS, WE ARE PROUD OF YOU AND OF AMERICA. LEAD ON.

JUSTIN AND YOSHIKO DART
907 6TH ST. SW, APT. 516C
WASHINGTON, DC, 20024

CS

ID # 283444 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

☐ 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: 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
CUOFC	ORIGINATOR	91/09/27		C	91/09/27 CS
CUAT 10	Referral Note:				
	A	91/09/27		C	91/09/27
	Referral Note:	9/27/91 NL Memo to Kennedy			
	_	__/__		_	__/__
	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:

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

Close out H.D.
9/27
3:40
to Kennedy
& Gray —

THE WHITE HOUSE
WASHINGTON

September 27, 1991

MEMORANDUM FOR JACQUELINE KENNEDY
OFFICE OF THE CHIEF OF STAFF

FROM: NELSON LUND
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Danforth Civil Rights Bill

Attached is a draft SAP (as submitted to OMB) on the Danforth Civil Rights bill, along with several pages of talking points on specific aspects of the bill.

Attachments

cc: C. Boyden Gray

DRAFT

DRAFT SAP - S. 1745, Civil Rights Act of 1991

If S. 1745 were presented to the President in its current form, his senior advisors would recommend a veto. The bill suffers from essentially the same major problems as H.R. 1, which was passed by the House of Representatives this year, and last year's Kennedy-Hawkins bill, which the President vetoed.

S. 1745 is a quota bill. The disparate impact provisions would overturn two decades of Supreme Court precedent, replacing this settled body of law with novel rules of litigation that will drive employers to adopt quotas and other unfair preferences. Employers who have not intentionally discriminated against anyone, but whose bottom-line numbers are not "demographically correct," will risk being dragged into lawsuits where the deck is stacked in ways that make a successful defense almost impossible.

In addition to flawed provisions dealing with the prima facie case and with "alternative employment practices," S. 1745 also defines the "business necessity" defense much too narrowly. S. 1745, for example, would prevent employers from defending a host of perfectly legitimate hiring and promotion criteria, including educational standards that all of our students should be encouraged to meet.

The bill's use of 8 words taken from the Americans with Disabilities Act ("ADA") is a misleading gimmick. These 8 words do not define "business necessity" either in the ADA (which uses "business necessity" as an undefined term) or in S. 1745. Nor does the use of these 8 words materially alter the definition in S. 1745's predecessor bill (S. 1408). The same 8 words could be inserted into the President's bill without changing its meaning, yet the proponents of S. 1745 have not suggested that they would accept the Administration bill if these 8 words were added to it.

S. 1745 is also a quota bill because it would close the courts to those who have been victimized by quotas in consent decrees. This provision is both manifestly unjust and constitutionally suspect. It would, moreover, create new incentives for collusive lawsuits in which employers would be encouraged to settle complaints by one portion of their workforce by illegally violating the rights of another group of employees.

Any new civil rights bill should include adequate provisions for deterring harassment in the workplace, but it should not create a lawyers' bonanza. S. 1745 provides for jury trials and compensatory damages in all Title VII cases, along with punitive damages in some cases. (Damages would be made available in disparate impact cases, which goes even beyond H.R. 1 and last year's Kennedy-Hawkins bill.) These damages provisions would

transform Title VII from its original design, which emphasizes conciliation and make-whole relief, into an entirely different structure modeled on our Nation's tort system -- which is now widely recognized to be in a state of crisis.

S. 1745 also continues the congressional pattern of exempting itself from the civil rights laws. Although the bill includes provisions that pretend to extend coverage to Congress, S. 1745 grants no judicially enforceable rights to congressional employees.

The Administration's Proposal

The Administration's proposal, S. 611, would strengthen our Nation's civil rights laws without creating powerful new incentives for quota hiring. S. 611 also avoids subjecting American businessmen and -women, and the victims of discrimination, to endless and costly litigation.

Like S. 1745, the Administration bill would overturn the Lorance and Patterson decisions; overturn Wards Cove by shifting the burden of proof to the employer in defending "business necessity"; authorize expert witness fees in civil rights cases; and extend the statute of limitations and authorize the award of interest against the U.S. Government. The Administration bill would also make available new monetary remedies under Title VII, with a $150,000 cap, for victims of harassment in the workplace, and extend Title VII to apply to Congress.

In sum, the Administration bill achieves every legitimate goal of S. 1745. These important new protections for American employees should not be held hostage for S. 1745, which will produce quotas and other forms of unfair preferential treatment, disproportionately disadvantage small and medium-sized businesses, and unduly enrich the plaintiffs' bar.

THE PRESIDENT'S CIVIL RIGHTS BILL

- The President's bill -- S. 611 -- includes all the worthwhile measures supported by a bipartisan consensus:
  - Overturns the Patterson and Lorance decisions.
  - Overturns the Wards Cove decision by shifting the burden of proof to the employer in defending "business necessity."
  - Creates new monetary remedies under Title VII with meaningful caps.
  - Authorizes expert witness fees in civil rights cases.
  - Extends the statute of limitations and authorizes the award of interest against the U.S. Government.
- The President's bill uses the exact language of the Griggs holding in defining "business necessity" -- "manifest relationship to the employment in question."
- The President's bill includes the exact "business necessity" language from the 1979 Beazer opinion, which was accepted in the Wards Cove dissent (written by the author of Beazer).
- Any deviation from the exact language of the Supreme Court's pre-Wards Cove holdings will inevitably raise the risks for employers who do not have the "right" numbers. Years of litigation will be needed to sort out the meaning of the new definition, and employers who cannot endure that litigation will have to use quotas.
- The President's bill will permit the President's educational reform initiative to go forward unimpeded (see attached op-ed by Dr. Chester Finn).
- The President's bill preserves the right of victims of illegal quotas to have their day in court and be treated like other civil rights plaintiffs.
- The President's bill will avoid a new litigation explosion and new attorneys fees -- a lawyers' bonanza.

THE DANFORTH BILL DOES NOT "RESTORE" THE LAW

Proponents of H.R. 1 and the Danforth bill claim that they want only to "restore" the law to what it was prior to some 1989 rulings by the Supreme Court. This is not true.

Proponents of these bills are rewriting the law to institutionalize quotas and guarantee full employment for lawyers. The Danforth bill differs from the President's bill on four major issues -- in each case, the Danforth bill creates new law, not a restoration of the law as it stood prior to the 1989 decisions.

- With respect to Wards Cove, the Danforth bill (1) changes the definition of "business necessity"; (2) eliminates the requirement that a plaintiff always identify the particular employment practice being challenged; and (3) may bar consideration of the expense of plaintiff's proposed alternative selection devices.

  None of these three provisions "restores" prior Supreme Court law. Instead, the Danforth bill stacks the deck against employers in ways that are supported by no Supreme Court precedent -- and that will drive employers to adopt surreptitious quotas.

- With respect to Martin v. Wilks, the Danforth bill places a unique burden on certain civil rights plaintiffs. It would slam the courthouse door in the face of those who want to challenge illegal quotas. This is both unconstitutional and unfair. It has no basis in prior Supreme Court law.

- With respect to the new compensatory and punitive damages provisions of the Danforth bill, such remedies have never been available under Title VII of Civil Rights Act of 1964. Congress itself made that decision over a quarter of a century ago, and no Supreme Court decision -- in 1989 or any other year -- has ever disturbed this settled principle.

- With regard to Price Waterhouse v. Hopkins, the Danforth bill would overturn a pro-plaintiff Supreme Court decision written by Justice Brennan, by creating a brand new rule designed primarily for the benefit of lawyers.

  - When Justice Brennan's opinion was issued, the decision was hailed by the NOW legal Defense Fund, National Women's Law Center, Women's Legal Defense Fund, and the New York Times as a victory for plaintiffs. Since that time, plaintiffs have prevailed over 70% of the time under this decision.

  - Only lawyers -- who are the true beneficiaries of the Danforth provision -- could have the nerve to suggest that going far beyond Justice Brennan has anything to do with "restoring" the law.

THE DANFORTH BILL IS A QUOTA BILL

The Danforth bill is a quota bill for the same reasons that last year's Kennedy-Hawkins bill and this year's H.R. 1 were quota bills. **First,** it stacks the deck against employers in disparate impact suits so that they have no choice but to adopt surreptitious quotas. **Second,** it slams the courthouse door in the faces of those who want to challenge illegal quotas.

Stacking the Deck

- By making it almost impossible for employers to defend "bad numbers," the Danforth bill creates enormous pressure for employers to avoid any selection criterion that has a disparate impact. This bill will drive employers to meet a quota for every racial, sexual, ethnic, and religious classification. "Demographic correctness," not qualifications or ability, will determine who gets a job.

- By eliminating the requirement that the plaintiff identify a particular employment practice that caused any disparate impact, the Danforth bill permits challenges to a group of practices that simply results in a bad "bottom line," and imposes on employers the expense of proving the "business necessity" of each practice, even though none of them caused a disparate impact.

- The Danforth bill will force employers to defend, on narrow "job performance" grounds, selection criteria that are perfectly legitimate but not necessarily related to how an individual performs the daily tasks of an entry level job.

- The Danforth bill would allow courts to hold an employer liable for refusing to use an alternative selection device with less disparate impact -- even though that device may be prohibitively expensive.

Slamming the Courthouse Door

- Like Kennedy-Hawkins and H.R. 1, the Danforth bill overturns Martin v. Wilks. In that case, the Supreme Court permitted a group of firefighters who were not parties to a consent decree to challenge the promotion quotas embedded in the decree. This decision simply reflects fundamental notions of fairness and due process that apply to all other civil litigants: everyone is entitled to his or her day in court.

- Moreover, the only consent decrees that will ever be successfully challenged are those that contain illegal preferences. Why should such decrees ever be insulated from challenge?

- The fact is, this provision is designed to disadvantage a specific class of civil rights plaintiffs: those who have been victimized by consent decrees implementing quotas and unfair preferences.

WHY THE DANFORTH BILL IS A QUOTA BILL

Situation	Danforth Bill	S. 611 President's Bill
At the mayor's request, a fast food chain rejects dropouts below age 18 for jobs during school hours.	NO DEFENSE	DEFENSIBLE POLICY
A trucking company promotes from within. Dock workers (the pool for future drivers) are not allowed to have drunk driving convictions.	NO DEFENSE	DEFENSIBLE POLICY
The American Cancer Society refuses to hire cigarette smokers for any job.	NO DEFENSE	DEFENSIBLE POLICY
A state police force denies employment to any applicant with a criminal conviction.	NO DEFENSE	DEFENSIBLE POLICY
To reduce health insurance costs, a mining company refuses to hire those who smoke on or off the job.	NO DEFENSE	DEFENSIBLE POLICY
A lawyer hires law students as interns so that she can choose new lawyers based on their performance as interns.	NO DEFENSE	DEFENSIBLE POLICY
None of these employers is biased against women or minorities. They want to keep their policies without being sued. How?	**USE QUOTAS**	**TREAT EVERYONE THE SAME**

THE DANFORTH BILL IS ANTI-EDUCATION

- o Under the Danforth bill, employers will risk ruinous lawsuits if they use educational criteria when making hiring decisions. In defending against such lawsuits, employers will have to prove their own innocence under a test that is much more difficult than anything the Supreme Court has ever imposed.

- o Secretary of Education Lamar Alexander has warned that the Danforth proposal threatens to undermine the educational reform efforts that are needed to salvage our failing schools.

    - o Our young people are not being prepared to meet the demands of the 21st century. Students will not stay in school and work hard at their studies unless they are rewarded for the effort.

    - o The Danforth bill <u>undermines</u> incentives to get a good education. The bill restricts employers' ability to require skills and knowledge beyond what they can prove in court is strictly needed for the initial job for which an individual is being hired. The Danforth bill tells employers not to ask for high school diplomas or transcripts for typical entry-level jobs.

    - o This sends the wrong message to students and teachers alike. It says to students that staying in school does not matter, because employers do not have the right to know how well you did or even whether you graduated. It tells teachers that their work is unimportant in the outside world.

- o Prominent union leader Albert Shanker agrees:

    > "[I]nstead of downplaying achievement, we should be letting students know that what they do in school will make a difference and that this will be true for <u>all</u> students. And we should be sure that the new civil rights act will permit employers to reward students who have done well. Anything else will teach students the wrong lesson." (New York Times, March 24, 1991).

- o The U.S. military (which is not covered by Title VII) requires high school diplomas and high test scores from all recruits. The military asks our young people to "Be All That You Can Be," and Operation Desert Storm demonstrated the results. The Danforth bill will encourage our kids to be the least they can be and still get away with it.

- o Foreign companies that compete with us economically routinely rely on the educational records of prospective employees. Like our military, these foreign companies think it is obvious why these records are so important. Under the Danforth bill, however, America's civilian employers will be threatened with lawsuits if they use these common sense criteria in hiring.

- o If employers want to use common sense educational standards, the Danforth bill does offer one surefire way to avoid legal liability: <u>Use Quotas</u>. If you hire by the numbers, you can use whatever other hiring criteria you want, and you will never have to fear a disparate impact lawsuit.

MARTIN v. WILKS SHOULD NOT BE OVERTURNED

- Martin v. Wilks, 490 U.S. 755 (1989), permitted firefighters who had not been parties to a consent decree to file a lawsuit alleging that they had been harmed by the racial quotas in that decree.

- The decision is a straightforward application of the fundamental rules of civil procedure that govern all civil cases in the federal courts. The Court simply said that civil rights cases are governed by the same rules that apply in other cases, and that individuals who were not parties to a lawsuit cannot be bound by the resolution of that lawsuit.

- In other words, Wilks merely reaffirmed the bedrock principle that all individuals are entitled to their day in court before they suffer harm at the hands of the court.

- Wilks involved white firefighters, but its underlying principle of procedural fairness applies to everyone. It would, for instance, apply to blacks who might be harmed by a decree favoring women, or women excluded by a decree setting quotas for Hispanics.

- Claims by some that Wilks threatens to upset legitimate expectations or induce needless new litigation will not withstand scrutiny. Indeed, the Danforth bill's use of vague and undefined new terminology (such as references to a person whose interests were "adequately represented" by another person) may lead to more unproductive litigation than would ever occur under the Wilks decision.

- Critics have contended that scores of decrees would be overturned as a result of Wilks. But two years after the decision not one reported decision has thrown out a Title VII decree.

- Adequate safeguards already exist to discourage frivolous or repetitive challenges, such as the doctrines of res judicata, stare decisis, and law of the case, as well as Rule 11 of the Federal Rules of Civil Procedure.

- In all events, a consent decree could be overturned because of Wilks only if it were found by a court to violate a person's constitutional or civil rights. Why should Congress seek to prevent challenges to such decrees? Why should quota decrees be protected?

THE DANFORTH BILL IS A LAWYERS' RELIEF ACT

Like H.R. 1 and last year's Kennedy-Hawkins bill, the Danforth bill is a dream-come-true for the plaintiffs' bar. It will radically rewrite Title VII of the Civil Rights Act of 1964, turning it into a tort-style litigation machine. And it contains a special provision designed so that plaintiffs' lawyers will get paid in cases in which the plaintiff herself does not get a cent.

Litigation Machine

o Like H.R. 1, the Danforth bill will, for the first time, authorize compensatory and punitive damages in Title VII cases. It specifically contemplates awards for "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses," as well as punitive damages.

o Like H.R. 1, the Danforth bill provides for these cases to be tried to a jury, which will determine both liability and the amount of damages.

o Moreover, as drafted the bill would even go beyond H.R. 1 and make these damages available in disparate impact cases, where discriminatory intent was not shown.

o All of this is radical and new. Damages have never before been awarded under Title VII, a statute that has worked well for over a quarter of a century.

o Yet the Danforth bill would toss it out, and substitute instead the same tort-style model that has made medical malpractice litigation a nightmare.

Lawyers' Gold Mine

o Like H.R. 1, the Danforth bill contains another provision included at the demand of the plaintiffs' bar. It overturns the Supreme Court's decision in Price Waterhouse v. Hopkins, a victory for plaintiffs that was written by Justice Brennan.

o The reason? To guarantee that the lawyer will receive his attorney fees, even if the employer's actions did not cause any harm to the plaintiff and the plaintiff receives no relief.

o Under the Danforth bill, incentives are created for a whole new class of litigation in which there is no prospect of relief for any plaintiff and in which the litigation is conducted solely to generate attorney fees for the lawyers.

* * * *

There is already too much litigation and too many lawyers. America doesn't need the Danforth "lawyers' relief bill."

DAMAGES

- In 1964, Congress carefully considered what remedies should be available for a violation of Title VII. The decision was that reinstatement and back pay would best serve to remedy discrimination quickly and efficiently.

- This "make whole" relief -- which restores victims of discrimination to their rightful places in the economy and minimizes conflicts between employers and employees -- was modeled after other labor statutes, particularly the National Labor Relations Act, none of which authorizes damage awards.

- The past 27 years have shown the wisdom of the choice Congress made. Title VII has proven tremendously effective in transforming the workplace and fighting discrimination.

- Like H.R. 1 and last year's Kennedy-Hawkins bill, the Danforth proposal radically alters the remedial focus of Title VII by authorizing awards of compensatory damages (including pain and suffering), punitive damages, and jury trials.

- The Danforth bill even goes <u>beyond</u> H.R. 1 and Kennedy-Hawkins by authorizing damages in disparate impact cases, where no discriminatory intent has been shown.

- Damage awards will encourage litigation and discourage conciliation as plaintiffs and their attorneys roll the dice in hopes of hitting a jackpot verdict. This process will distract the parties from the productive quest to get the victims of discrimination into their rightful places in the workforce.

- Litigation will bog down and become a source of new and costly uncertainties for plaintiffs and defendants alike. This is inevitable as claims for pain and suffering, as well as for punitive damages, become staples of Title VII litigation. Sadly, many plaintiffs who could have gotten a job and back pay quickly will wait years for their cases to be resolved and many will end up with nothing.

- As the Washington Post said: "Punitive damages are a form of Russian Roulette whose availability, not just in [civil rights] but other proceedings should be narrowed, not increased." (<u>Washington Post</u>, April 26, 1991, p. A22.)

- The model adopted by the Danforth bill, like that in Kennedy-Hawkins, is the medical malpractice system, which is widely acknowledged to be in a state of crisis because it is unpredictable, expensive, and slow.

- By increasing the unpredictability of disparate impact cases, as well as of disparate treatment cases in which statistics often play a significant evidentiary role, the Danforth damages provisions will increase the pressure on employers to adopt hiring and promotion <u>quotas</u>.

PRICE WATERHOUSE SHOULD NOT BE OVERTURNED

- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), held that when a Title VII plaintiff proves that a discriminatory motive was a substantial factor in an employment decision, the burden shifts to the employer to persuade the court that the same decision would have been made in the absence of any discriminatory motive.

- This decision, in which the plurality opinion was authored by Justice Brennan, is favorable to plaintiffs. It alters the traditional rule in civil litigation that the burden of proof rests with the plaintiff throughout a case. The decision places a substantial burden of proof on employers if they are to escape liability under Title VII.

- At the time it was issued, the Court's decision was hailed by liberal commentators and lobbyists as a major victory.

  -- Marcia Greenberger of the National Women's Law Center said that Price Waterhouse "has advanced the law and put employers on notice that they will have some explaining to do." (BNA, Daily Report for Executives, May 3, 1989.)

  -- Sarah Burns of NOW Legal Defense Fund called the decision an important victory for women's rights. (Associated Press, May 2, 1989, PM cycle, Byline: James H. Rubin.)

  -- Judith Winston of the Women's Legal Defense Fund put the decision "in the win category." (Associated Press, May 2, 1989, PM cycle, Byline: James H. Rubin.)

  -- The New York Times called Price Waterhouse "a balanced, sensible judgement" that made it easier for victims of employment discrimination to have their cases heard. (New York Times, May 6, 1989, p. 26.)

- The Department of Justice has found that plaintiffs have won over 70% of the reported Title VII decisions since 1989 in which Price Waterhouse played a significant role.

- Provisions in the Danforth bill that overrule Justice Brennan's decision are designed primarily to create new attorneys fee awards, even in cases where the plaintiff does not receive a cent.

- Under the Danforth bill, incentives are created for a whole new class of litigation in which there is no prospect of relief for any plaintiff and in which the litigation is conducted solely to generate attorney fees for the lawyers.

CS

ID # 283862 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

HU010

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

Name of Correspondent: SENATOR DANFORTH

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

Subject: Civil Rights -- July 10 letter

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/07/19		C	91/07/19 CS
	Referral Note:				CS
CUAT 10	A	91/07/19		C	91/07/19
	Referral Note:	Jul 19 91 CBG memo to POTUS			
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
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	Referral Note:				
		/ /			/ /
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ACTION CODES:
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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	Case Number 283862CU 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: 282591CU to 285920CU

Open on Expiration of PRA
(Document Follows)
By JL (NLGB) on 12·14·05

Date Closed: 1/12/2000	**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.

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

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

THE WHITE HOUSE

WASHINGTON

July 19, 1991

MEMORANDUM FOR THE PRESIDENT

Original signed by C. B. Gray

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 <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).

CS

ID # 203931 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: E. Stuart Broad

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

Subject: Compromise on Civil Rights

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Eufe	ORIGINATOR	91/11/04 WS		C	91/12/04 CS
Euatio	Referral Note: A	91/11/05 WS, NL		A	91/12/04
	Referral Note:				letter to Broad
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /

ACTION

DISPOSITION

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THE WHITE HOUSE

WASHINGTON

December 4, 1991

Dear Mr. Broad:

On behalf of the President, thank you for your letter of October 31, 1991 concerning the Civil Rights Act of 1991 and the appointment of Justice Clarence Thomas.

As you may know, the President signed this legislation into law on November 21. Because you expressed your concern about the proper administration of the new statute, I am enclosing for you information copies of the remarks delivered by the President at the signing ceremony and of the signing statement issued by the President on November 21. I hope you find that these documents address your concerns in a satisfactory manner.

Thank you again for writing.

Yours truly,

Nelson Lund
Associate Counsel to the President

Mr. C. Stuart Broad, Esq.
3709 Williams Lane
Chevy Chase, MD 20815-4951

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release November 21, 1991

REMARKS BY THE PRESIDENT
AT CIVIL RIGHTS BILL SIGNING CEREMONY

The Rose Garden

1:18 P.M. EST

Welcome to the White House. And may I salute the members of the Cabinet who are here today, members of the Congress -- many members of Congress, distinguished guests.

Today, we celebrate a law that will fight the evil of discrimination while also building bridges of harmony between Americans of all races, sexes, creeds and backgrounds.

For the past few years, the issue of civil rights legislation has divided Americans. No more. From day one, I told the American people that I wanted a civil rights bill that advances the cause of equal opportunity. And I wanted a bill that advances the cause of racial harmony. And I wanted a bill that encourages people to work together. And today I am signing that bill, the Civil Rights Act of 1991.

Discrimination, whether on the basis of race, national origin, sex, religion or disability, is worse than wrong. It's an evil that strikes at the very heart of the American ideal. This bill, building on current law, will help ensure that no American will discriminate against another.

For these reasons, this is a very good bill. Let me repeat: this is a very good bill. Last year -- back in May of 1990 in the Rose Garden, right here, with some of you present, I appealed for a bill I could sign. And I said that day that I cannot and will not sign a quota bill. Instead, I said that the American people deserved a civil rights bill that -- number one, insisted that employers focus on equal opportunity -- not on developing strategies to avoid litigation. Number two, they deserved a bill that was based upon fundamental principles of fairness -- that anyone who believes their rights have been violated is entitled to their day in court -- and that the accused are innocent until proved guilty. And number three, they deserved a bill that provided adequate deterrent against harassment based upon race, sex, religion, or disability.

I also said that day back in 1990 that "this administration is committed to action that is truly affirmative, positive action in every sense, to strike down all barriers to advancement of every kind for all people." And in that same spirit, I say again today: I support affirmative action. Nothing in this bill overturns the government's affirmative action programs.

And unlike last year's bill -- a bill I was forced to veto -- this bill will not encourage quotas or racial preferences because this bill will not create lawsuits on the basis of numbers alone. I oppose quotas because they incite tensions between the races, between the sexes, between people who get trapped in a numbers game.

This bill contains several important innovations. For example, it contains strong new remedies for the victims of

MORE

discrimination and harassment, along with provisions capping damages that are an important model to be followed in tort reform. And it encourages mediation and arbitration between parties before the last resort of litigation. Our goal and our promise is harmony -- a return to civility and brotherhood -- as we build a better America for ourselves and our children.

We had to work hard for this agreement. This bill passed both Houses of Congress overwhelmingly with broad support on both sides of the aisle. A tip of the hat goes to Senator Kennedy and former Congressman Hawkins, who, way back in February of 1990, got the ball rolling -- and I congratulate and thank particularly Senators Dole, Danforth and Hatch, Congressmen Michel, Goodling and Hyde for ensuring that today's legislation fulfills the principles that I outlined in the Rose Garden last year.

No one likes to oppose a bill containing the words "civil rights" -- especially me -- and no one in Congress likes to vote against one, either. I owe a debt of gratitude to those who stood with us against counterproductive legislation last year -- and again earlier this year -- as well as to those who led the way toward the important agreement we've reached today. I'm talking about Democrats, I'm talking about Republicans and those outside the Congress who played a constructive role. And to all of you, I am very, very grateful, because I believe this is in the best interest of the United States.

But to the Congress I also say this: The 1991 Civil Rights bill is only the first step. If we seek -- and I believe that every one of us does -- to build a new era of harmony and shared purpose, we must make it possible for all Americans to scale the ladder of opportunity. If we seek to ease racial tensions in America, civil rights legislation is, by itself, not enough. The elimination of discrimination in the workplace is a vital element of the American Dream, but it is simply not enough.

I believe in an America free from racism, free from bigotry.

I believe in an America where anyone who wants to work has a job.

I believe in an America where every child receives a first-rate education ... a place where our children have the same chance to achieve their goals as everyone else's kids do.

I believe in an America where all people enjoy equal protection under the law ... where everyone can live and work in a climate free from fear and despair ... where drugs and crime have been banished from our neighborhoods and schools.

And I believe in an America where everyone has a place to call his own -- a stake in the community, the comfort of a home.

I believe in an America where we measure success not in dollars and lawsuits -- but in opportunity, prosperity and harmony. I believe in the ideals we all share -- ideals that made America great: decency, fairness, faith, hard work, generosity, vigor, and vision.

The American Dream rests on the vision of life, liberty and the pursuit of happiness. In our workplaces, in our schools, or on our streets, this dream begins with equality and opportunity. Our agenda for the next American Century -- whether it be guaranteeing equal protection under the law, promoting excellence in education, or creating jobs -- will ensure for generations to come that America remains the beacon of opportunity in the world. Now, with great

pride, I will sign this good, sound legislation into law. Thank you very much.

(The bill is signed.) (Applause.)

Q Sir, are you concerned about the feeling of a sense of disarray because of the Counsel's memo?

THE PRESIDENT: The which?

Q Boyden Gray's idea on affirmative action.

THE PRESIDENT: Listen to what I say, and don't get off -- too caught up. It's all worked out and feels good. I think it's very sound legislation.

END 1:26 P.M. EST

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release November 21, 1991

STATEMENT BY THE PRESIDENT

Today I am pleased to sign into law S. 1745, the "Civil Rights Act of 1991." This historic legislation strengthens the barriers and sanctions against employment discrimination.

Employment discrimination law should seek to prevent improper conduct and foster the speedy resolution of conflicts. This Act promotes the goals of ridding the workplace of discrimination on the basis of race, color, sex, religion, national origin, and disability; ensuring that employers can hire on the basis of merit and ability without the fear of unwarranted litigation; and ensuring that aggrieved parties have effective remedies. This law will not lead to quotas, which are inconsistent with equal opportunity and merit-based hiring; nor does it create incentives for needless litigation.

Most of this Act's major provisions have been the subject of a bipartisan consensus. Along with most Members of the Congress, for example, I have favored expanding the right to challenge discriminatory seniority systems; expansion of the statutory prohibition against racial discrimination in connection with employment contracts; and the creation of meaningful monetary remedies for all forms of workplace harassment outlawed under Title VII of the Civil Rights Act of 1964. Similarly, my Administration has concurred in proposed changes to authorize expert witness fees in Title VII cases; to extend the statute of limitations and authorize the award of interest against the U.S. Government; and to cure technical defects with respect to providing notice of the statute of limitations under the Age Discrimination in Employment Act of 1967. I am happy to note that every one of these issues is addressed in the Act that becomes law today.

It is regrettable that enactment of these worthwhile measures has been substantially delayed by controversies over other proposals. S. 1745 resolves the most significant of these controversies, involving the law of "disparate impact," with provisions designed to avoid creating incentives for employers to adopt quotas or unfair preferences. It is extremely important that the statute be properly interpreted -- by executive branch officials, by the courts, and by America's employers -- so that no incentives to engage in such illegal conduct are created.

Until now, the law of disparate impact has been developed by the Supreme Court in a series of cases stretching from the Griggs decision in 1971 to the Watson and Wards Cove decisions in 1988 and 1989. Opinions by Justices Sandra Day O'Connor and Byron White have explained the safeguards against quotas and preferential treatment that have been included in the jurisprudence of disparate impact. S. 1745 codifies this theory of discrimination, while including a compromise provision that overturns Wards Cove by shifting to the employer the burden of persuasion on the "business necessity" defense. This change in the burden of proof means it is especially important to ensure that all the legislation's other safeguards against unfair application of disparate impact law are carefully observed.

more

These highly technical matters are addressed in detail in the analyses of S. 1745 introduced by Senator Dole on behalf of himself and several other Senators and of the Administration (137 Cong. Rec. S15472-S15478 (daily ed. Oct. 30, 1991); 137 Cong. Rec. S15953 (daily ed. Nov. 5, 1991)). These documents will be treated as authoritative interpretive guidance by all officials in the executive branch with respect to the law of disparate impact as well as the other matters covered in the documents.

Another important source of the controversy that delayed enactment of this legislation was a proposal to authorize jury trials and punitive damages in cases arising under Title VII. S. 1745 adopts a compromise under which "caps" have been placed on the amount that juries may award in such cases. The adoption of these limits on jury awards sets an important precedent, and I hope to see this model followed as part of an initiative to reform the Nation's tort system.

In addition to the protections provided by the "caps," section 118 of the Act encourages voluntary agreements between employers and employees to rely on alternative mechanisms such as mediation and arbitration. This provision is among the most valuable in the Act because of the important contribution that voluntary private arrangements can make in the effort to conserve the scarce resources of the Federal judiciary for those matters as to which no alternative forum would be possible or appropriate.

Finally, I note that certain provisions in Title III, involving particularly requirements that courts defer to the findings of fact of a congressional body, as well as some of the measures affecting individuals in the executive branch, raise serious constitutional questions.

Since the Civil Rights Act was enacted in 1964, our Nation has made great progress toward the elimination of employment discrimination. I hope and expect that this legislation will carry that progress further. Even if such discrimination were totally eliminated, however, we would not have done enough to advance the American dream of equal opportunity for all. Achieving that dream will require bold action to reform our educational system, reclaim our inner cities from violence and drugs, stimulate job creation and economic growth, and nurture the American genius for voluntary community service. My Administration is strongly committed to action in all these areas, and I look forward to continuing the effort we celebrate here today.

GEORGE BUSH

THE WHITE HOUSE,
November 21, 1991.

# # #

28393/CL

C. STUART BROAD

3709 WILLIAMS LANE
CHEVY CHASE, MARYLAND 20815-4951
(301) 657-4755

October 31, 1991

President George H.W. Bush
Office of the President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

Say it ain't so! Us conservatives have been compromised out on the alleged Civil Rights Act fo 1992 by a bunch on Capitol Hill that want to cover their private parts after the Anita Hill attack on Justice Clarence Thomas. Perhaps it was worth it to get our nominee on the court, but the David Dukes of this country were measurably strengthened by the "compromise". And Senator Edward Kennedy and his left-liberal allies are stronger this morning than they were last week !

Sad, but true. The Supreme Court of the United States showed us the way out of the morass of quotas, and politics made their wisdom a sacraficial goat on the altar of their own self interest. But term limitation is coming for Congress, and even their own interest will not be saved (our loss !).

It is very late, and you have to do what you must, I suppose. But try to save the honor of the Republican party from attacks sure to come. How about the working class people who are again thrown back into the quotas morass ? Who is going to speak for them ? Not only David Duke, one hopes.

Hopefully, you will alert EEOC and the Departments of Labor and Justice to administer this new Act with much caution and prudence. Since I am an attorney in employment relations, and spent much of my career shaping such laws, I know well the pitfalls of quotas and preferential treatment. These can rip apart civil peace, and threaten politics as we now know it in this country.

I beseech you at this late hour to save something from the "compromise". Congratulations on the Justice Thomas fight; you won a good one and beat down the black hats on Capitol Hill.

Sincerely,

C. Stuart Broad

C. Stuart Broad, Esq.

CS

ID # 283931 CU

R: 11-27
8. a.m.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: C. Stuart Broad

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

Subject: Civil Rights Policy - do not give Congress the power to control Administration policy

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cmofc	PD ORIGINATOR	91/11/25		C	91/12/10 CS
	Referral Note:	Cont cores			CS
CMAT '10	PDA	91/11/26		8	91/12/10
	Referral Note:	See comments			
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	Referral Note:				
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	Referral Note:				
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C. STUART BROAD

3709 WILLIAMS LANE
CHEVY CHASE, MARYLAND 20815-4951
(301) 657-4755

November 21, 1991

President George H.W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

With all respect, this Republican supporter of your Presidency must wonder what went on today in the matter of civil rights policy. Please refer to my letter of October 31, which is attached.

Although the Thomas confirmation and the pressure of Congress may have forced a compromise with Senator Edward Kennedy and his allies, we do not have to give them the power to control Administration policy. Surely we conservatives have already given on the matter, and may expect some forthright action against quotas by your White House !

This will not be without controversy and disagreement. No compromise is ever enoughto the Beltway lobbyists for more and more civil rights law pork barrel, and their many media allies (who have become protagonists on this issue). But lets draw the line ! Put quotas and preferential treatment by race, sex, religion or ethnicity out of our national policy. Otherwise we may surrender the ground to the David Dukes and Patricia Schroeders of this world. I was forcedto listen to the National Public Radio reportage of todays events; it was very revealing, and all your adversaries had much of their say. Remember, these are the same bunch that fought you earlier in 1991 on the Persian Gulf War, when they were content to stand and watch while Saddam Hussein played with genocide in Kuwait. Lets turn our backs on them!

We must go into the 1992 election year with a strong economy and firm policy standards. Don't let Congress fritter away our place in the world order by more and more pork barrel laws disguised as civil rights, and even non-discrimination. Think what damage this is doing to us in the world economy.

Please be assured that we will be behind you all the way in 1992. Remember the "quota" critics will be working hard for anyone on the ohher side !

Faithfully,

C. Stuart Broad

C. Stuart Broad, Esq.

P.S.
I am not a Pat Buchanan supporter; but they are out there...

C. STUART BROAD

3709 WILLIAMS LANE
CHEVY CHASE, MARYLAND 20815-4951
(301) 657-4755

October 31, 1991

President George H.W. Bush
Office of the President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

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Sad, but true. The Supreme Court of the United States showed us the way out of the morass of quotas, and politics made their wisdom a sacrificial goat on the altar of their own self interest. But term limitation is coming for Congress, and even their own interest will not be saved (our loss !).

It is very late, and you have to do what you must, I suppose. But try to save the honor of the Republican party from attacks sure to come. How about the working class people who are again thrown back into the quotas morass ? Who is going to speak for them ? Not only David Duke, one hopes.

Hopefully, you will alert EEOC and the Departments of Labor and Justice to administer this new Act with much caution and prudence. Since I am an attorney in employment relations, and spent much of my career shaping such laws, I know well the pitfalls of quotas and preferential treatment. These can rip apart civil peace, and threaten politics as we now know it in this country.

I beseech you at this late hour to save something from the "compromise". Congratulations on the Justice Thomas fight; you won a good one and beat down the black hats on Capitol Hill.

Sincerely,

C. Stuart Broad

C. Stuart Broad, Esq.

CS

ID# 283938

HU010

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: NOVEMBER 05, 1991

NAME OF CORRESPONDENT: MR. JERRY J. JASINOWSKI

SUBJECT: VIEWS REGARDING S. 1745, THE CIVIL RIGHTS LEGISLATION

COUNSEL'S OFFICE
RECEIVED
NOV 06 1991

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
~~C. BOYDEN GRAY~~ CMcF	ORG	91/11/05		C	91/12/10
REFERRAL NOTE: PD					
CMcF to CMGray	A	91/11/06		S	91/12/09
REFERRAL NOTE: 12/09/91 NC Memo to Gray					
CMGray	A	91/12/09	BG	A	91/12/10
REFERRAL NOTE: letter to Jasinowski					
		__/__/__			__/__/__
REFERRAL NOTE:					
		__/__/__			__/__/__
REFERRAL NOTE:					

CS CS CS

COMMENTS: _____

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

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

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*************************************************************************
*ACTION CODES:          *DISPOSITION             *OUTGOING               *
*                       *                        *CORRESPONDENCE:        *
*A-APPROPRIATE ACTION   *A-ANSWERED              *TYPE RESP=INITIALS     *
*C-COMMENT/RECOM        *B-NON-SPEC-REFERRAL     *          OF SIGNER    *
*D-DRAFT RESPONSE       *C-COMPLETED             *     CODE = A          *
*F-FURNISH FACT SHEET   *S-SUSPENDED             *COMPLETED = DATE OF    *
*I-INFO COPY/NO ACT NEC*                         *            OUTGOING   *
*R-DIRECT REPLY W/COPY  *                        *                       *
*S-FOR-SIGNATURE        *                        *                       *
*X-INTERIM REPLY        *                        *                       *
*************************************************************************
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REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

CBG:NL
CBGray
NLund
Chron.

THE WHITE HOUSE

WASHINGTON

December 10, 1991

Dear Jerry:

On behalf of the President, thank you for your letter of November 4, 1991, expressing your views on the adoption of the new Civil Rights Act, which the President signed into law on November 21.

The President and the Administration are very pleased that it was possible to reach a compromise on the delicate and potentially divisive issues addressed by this new statute. I am confident that the efforts of the employer community were absolutely vital in laying the groundwork for the Democrats' decision to make the key concessions that led to an agreement. However, I fully understand your dismay about the suddenness of the process by which the agreement was reached, and none of us here can feel happy about the fact that continuing consultations become difficult after serious negotiations begin. It's perhaps worth noting that, as we understand it, key negotiators for the civil rights groups were also precluded from any involvement during the final talks.

As desirable as it would have been to initiate further consultations with the employer community (and others) after the Democrats finally began to negotiate seriously, I must say that the Administration's representatives were familiar with the concerns that you would have expressed during those consultations. In particular, we knew that employers felt very strongly, and I believe we knew why they felt so strongly, about the new damages provisions that have now been introduced into Title VII. I hope that the effects of this innovation will prove less severe than you fear, but I cannot pretend that we were unaware of how strongly you felt.

If we could extend the caps on damages across the board through civil justice reform, as the President suggested in both the oral remarks and the written statement at the signing ceremony, it would be a major victory. Similarly, the President's remarks about arbitration and alternative dispute resolution will need to be pursued. These and other ameliorative steps are worth a significant effort, even if they would not allay your concerns about this legislation.

As you noted in your letter, many upcoming issues will demand close cooperation between the Administration and American

employers. I hope that the experience we have just been through will serve not to discourage that cooperation, but to spur us all to even greater efforts than we've made in the past.

Thank you again for writing.

Yours truly,

Original signed by CBG

C. Boyden Gray
Counsel to the President

Mr. Jerry J. Jasinowski
President
National Association of Manufacturers
1331 Pennsylvania Avenue, N.W.
Washington, DC 20004-1703

cc: Mike Baroody

THE WHITE HOUSE

WASHINGTON

December 9, 1991

MEMORANDUM FOR C. BOYDEN GRAY

FROM: NELSON LUND

SUBJECT: Revised Response to Incoming from Jerry Jasinowski Complaining About the Administration's Neglect of Employers' Concerns in Negotiating the Civil Rights Act

Attached is a new version of the response to the captioned letter. Your edits suggested some new thoughts to me, and I've incorporated those in this draft. Hope it looks OK to you.

Attachment

8/HD

C B. Gray

283938

National Association
of Manufacturers

JERRY J. JASINOWSKI
President

November 4, 1991

The President
The White House
Washington, DC 20500

Dear Mr. President:

Final Congressional disposition of an agreement between the White House and Senate on civil rights legislation, S. 1745, appears to be a fait accompli. On behalf of the National Association of Manufacturers member companies, I am obliged to convey our deep disappointment not only with the substance of the agreement but also the manner in which it was brought about.

For nearly two years, NAM and others in the employer community worked closely with your staff and allies on Capitol Hill to fashion civil rights legislation that advanced equal opportunity without inducing employers to adopt preferential hiring/promotion strategies or exposing them to costly, unwarranted litigation. Significant time, energy and resources were committed to this endeavor, including support of your proposals, S. 611 and H.R. 1375. But no single employer concern was so dominant and consistent throughout than our opposition to jury trials and punitive/compensatory damages. Regrettably, the agreement embraced by the White House failed to consider the employer community's most fundamental concern.

Many important issues remain that will require close cooperation between the employer community and Administration. We won't always agree but our differences can be aired, debated and resolved. NAM hopes, however, that when the Administration contemplates future changes in direction that we might learn of it directly and have an opportunity for meaningful input into the decisions.

Respectfully,

Jerry J. Jasinowski

1331 Pennsylvania Avenue, N.W.
Suite 1500 North Office Lobby
Washington, DC 20004-1703
(202) 637-3105 Fax: (202) 637-3182

CS

ID # 283938 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Jerry Jasniowski

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

Subject: Copy of letter to the President re the National Association of Manufacturers' disappointment in the Civil Rights legislation

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Suspense	PD ORIGINATOR	91.11.06		C	91.12.06 CS
Cndt D	PD	91.11.07		C	91.12.06 CS
	Referral Note: ATTN: FYI 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 CS

Comments: No further action required per N. Hemp 12-6-91

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

5/81

National Association
of Manufacturers

JERRY J. JASINOWSKI
President

November 4, 1991

The President
The White House
Washington, DC 20500

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Many important issues remain that will require close cooperation between the employer community and Administration. We won't always agree but our differences can be aired, debated and resolved. NAM hopes, however, that when the Administration contemplates future changes in direction that we might learn of it directly and have an opportunity for meaningful input into the decisions.

Respectfully,

Jerry J. Jasinowski

bc: C. Boyden Gray
Fred McClure
Roger Porter
John Sununu

1331 Pennsylvania Avenue, N.W.
Suite 1500 North Office Lobby
Washington, DC 20004-1703
(202) 637-3105 Fax: (202) 637-3182

CS

ID # 28400 8 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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

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

Name of Correspondent: Jail Employment Coalition

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

Subject: Disagree with the new 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
Info (Mat 10)	ORIGINATOR	9/11/04 WS		C	9/12/06 CS
	Referral Note:				CS
	H	9/11/05 WS		C	9/12/06
	Referral Note:	ATTN: FYI see comments			
	—	/ /		—	/ /
	Referral Note:				
	—	/ /		—	/ /
	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

CS

Comments: No further action required per N. Lucio 12-6-91

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28400858

COPY

FAIR
EMPLOYMENT
COALITION

DEDICATED

TO

EQUAL

OPPORTUNITY

FOR

ALL

AMERICANS

October 31, 1991

The President
The White House
Washington, DC 20500

Dear Mr. President:

The Fair Employment Coalition is extremely troubled by the agreement on civil rights legislation, S. 1745, that has been embraced by the White House and passed by the Senate. We believe it does not meet some conditions said by the Administration to be essential. In addition, we are anxious that this agreement may be an unfortunate precedent for similar accommodations on other issues in the future.

For nearly two years, the more than 250 companies, associations and professional societies that comprise the Fair Employment Coalition have worked hard in support of your efforts to arrive at an equitable resolution to the debate on civil rights. We supported alternatives in the last Congress and Coalition efforts in no small way contributed to sustaining your veto of the Kennedy-Hawkins bill. This year, we have worked hard to advance your legislative proposals, S. 611 and H.R. 1375. The Coalition has explicitly endorsed strong new remedies for harassment such as are contained in the Administration bill.

Throughout the lengthy debate on this legislation, no single issue has galvanized employer community opposition to the various civil rights proposals as jury trials for recovery of punitive and compensatory damages. This was clearly understood by the Congress and the Administration.

As recently as Tuesday, October 22, we were assured in meetings with your staff, by a letter from the Attorney General to Senate leadership and by the Statement of Administration Position on S. 1745 that the Administration's resolve to oppose legislation that constituted a "lawyers' bonanza" was unchanged. By sometime last Thursday, it evidently had changed as evidenced by Friday's headlines in the Washington Post.

Mr. President, neither the Fair Employment Coalition nor its individual members have enjoyed opposing any "civil rights" bill. We support equality of opportunity but could not ignore bad public policy. The Coalition and its members attempted on a number of occasions to

1331 Pennsylvania Avenue, NW
Suite 1500 - North Lobby
Washington, DC 20004
(202) 637-3057
Fax: (202) 637-3182

seek a resolution with proponents who refused to consider change concerning jury trials and damages. We felt then and feel now that introducing tort-like remedies into the relationship between employers and their employees is ill-advised policy and should be opposed. Additionally, it runs counter to the very positive thrust of tort reform efforts initiated by your Administration. How long will it be before similar proposals are offered to amend other employment statutes, a question we raised with White House and Administration representatives as early as February 1990?

All this is history, the final chapter of which will soon be written by the House and Senate. It is not a history from which we take any comfort. And based on the phone calls we have received, our disappointment in the administration's change of position is not confined to the "beltway" -- it is a reflection of the Nation's employer community. In that regard, this letter is expected to be followed by those from individual coalition members.

Many issues of importance lay ahead. We hope and need to work in concert with the Administration. We can be counted on to do so on many issues of inevitable agreement between us, but cannot be looked to for automatic support or quiet acquiescence to "eleventh hour" changes in course to which we are not a party.

Respectfully,

THE FAIR EMPLOYMENT COALITION

CS

ID # 284008 CU

HU010

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☑ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 91/11/

Name of Correspondent: Fair Employment Coalition

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

Subject: Troubled by the agreement on the Civil rights legislation

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuofc	PD ORIGINATOR	91/11/06		C	91/12/05 CS
Cuat10	PD Referral Note: A	91/11/07 cont comes		C	91/12/05 CS
	Referral Note: see comments	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /

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Comments: No further action required per N. Lund 12-5-91

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

5/81

(HD)

(no signature)

FAIR
EMPLOYMENT
COALITION

C. B. Gray

DEDICATED

TO

EQUAL

OPPORTUNITY

FOR

ALL

AMERICANS

1331 Pennsylvania Avenue, NW
Suite 1500 - North Lobby
Washington, DC 20004
(202) 637-3057
Fax: (202) 637-3182

October 31, 1991

The President
The White House
Washington, DC 20500

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and their employees is ill-advised policy and should be opposed. Additionally, it runs counter to the very positive thrust of tort reform efforts initiated by your Administration. How long will it be before similar proposals are offered to amend other employment statutes, a question we raised with White House and Administration representatives as early as February 1990?

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Respectfully,

THE FAIR EMPLOYMENT COALITION

ID# 284062

HU 010

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: NOVEMBER 05, 1991

NAME OF CORRESPONDENT: MR. LEMUEL KINNEY

SUBJECT: ALLEGES THAT SOME AIR FORCE PROCUREMENT CENTERS ARE GUILTY OF DISCRIMINATING AGAINST BLACK AND MINORITY BUSINESSES WHICH SEEK CONTRACTS AND AGAINST BLACK COLLEGES AND

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	91/11/05		C	91/11/15 LJ
99DOD REFERRAL NOTE:	R	91/11/20 LJ		A	91/12/03
REFERRAL NOTE:					DJ
REFERRAL NOTE:					
REFERRAL NOTE:					
REFERRAL NOTE:					

COMMENTS: _____

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

__ 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
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*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.

KINNEY, LEMUEL 32479 SAFLLI/Sponsler/cdw/73731/3Dec

Mr. Lemuel Kinney
President/CEO
Electronic Systems & Associates, Inc.
1004 118th Avenue, North
St. Petersburg, FL 33716

DEC 03 1991

Dear Mr. Kinney:

On behalf of the White House Chief of Staff, thank you for your letter concerning Air Force procurement centers discriminating against black and minority businesses.

Concerning ESA's solicitation protest to the General Accounting Office (GAO), the GAO considered each of the allegations and found them to be without merit. On November 13, 1991, the GAO denied ESA's protest in total. A copy of the GAO decision is attached.

Regarding your alleged mistreatment in your dealings with the Low Cost Terminal Program Office, you were treated with courtesy and respect on all occasions when you visited the Program Office. The purpose of your visits was to present ESA's capabilities as they related to your request for an 8(a) acquisition. The Program Office conducted a fair and impartial assessment of these capabilities and determined that ESA did not possess the necessary qualifications to perform the contract under an 8(a) Set-Aside. This was reviewed and supported by the GAO decision.

With regard to the allegation the Electronic Systems Division (ESD) has not awarded any contracts to historically black colleges and universities (HBCU) or minority institutions (MI), ESD obligated about $385.8 million to education institutions between January 1, 1990, and June 1, 1991. Of this amount, $334.3 million went to Carnegie Mellon University and MIT Lincoln Laboratory under Federal Contract Research Center contracts. Of the remaining $51.5 million, no awards were made to HBCU or MI despite several initiatives to do so. The ESD initiatives include the following:

1. Sending the Phillips Laboratory and Rome Laboratory Broad Agency Announcement to all HBCU and MI. Broad Agency Announcements describe the research and development (R&D) organizations field of scientific interest and invite discussions and proposals.

OSDWH 32933 SAF/AQCX

W32933

2. The ESD Small Business office participated in a HBCU/MI Day at Rome Laboratory to learn more about their capabilities and to inform the attendees of R&D contracting at ESD.

3. The ESD Deputy for Small Business visited several HBCU/MIs in an attempt to stimulate interest in participating in their procurements and to learn more about the nature of the research done at these institutions.

4. The ESD Small Business Office worked with two retired members of the Rome Laboratory and Phillips Laboratory/ Geophysics Division to stimulate interest in R&D at ESD and assist in any resulting proposal preparation.

5. The ESD Deputy for Small Business met with the commander of the then Air Force Geophysics Laboratory and obtained an agreement to reserve some funding for HBCU/MIs and make a special effort to promote minority contracting if a suitable match could be found.

Although not previously recorded as Minority Institutions, Wentworth Institute and New Mexico State University have recently be so designated. ESD currently has contracts with these institutions amounting to $17.7 million. ESD anticipates continued work with these minority institutions and will continue to be open to proposals from any other minority concern.

ESD has a reputation for strong support of Small and Small Disadvantaged Business (SDB) programs. Over the past three years, ESD has averaged 125 percent of its small business goal and 104 percent of its SDB goals. ESD awarded over $99 million to SDBs in Fiscal Year (FY) 1990. ESDs award to SDBs cover a broad spectrum of work. Examples include many professional engineering services, high tech manufacturing, and integration awards. Included among these is the five-year, $350 million requirement for the NETCAP program and the over $100 million requirement for the Caribbean Basin Radar Network Extension.

With respect to the allegations made about the Warner Robins Air Logistic Center (WR-ALC), the Center has made significant progress in their small business program, particularly in the award of Section 8(a) contracts. In FY 1989, WR-ALC awarded 8(a) contracts to 24 different firms, including eight which were black-owned. For each of the last two fiscal years, WR-ALC has awarded 8(a) contracts to 32 different firms nationwide. In FY 1990, 10 of the 32 firms awarded 8(a) contacts were black-owned; while in FY 1991, 13 of the 32 firms were black-owned. In fact, ESA was among the 13 black-owned firms which were awarded 8(a) contracts by WR-ALC. The contract with ESA is to provide documentation and operational support services at Robins AFB.

Dollars obligated by WR-ALC in the 8(a) program have increased over the past several years as follows: $5.2 million in FY 1989, $14.1 million in FY 1990, and $14.4 million in FY 1991. In FY 1990, WR-ALC awarded nine 8(a) contracts for engineering services while in FY 1991, the number of such contracts increased to 16. WR-ALC has been successful in establishing several 8(a) engineering services basic ordering agreements--one in FY 1990 and two in FY 1991. Two more are planned for FY 1992. Additionally, dollars awarded by WR-ALC through the use of small disadvantaged business set-asides have progressed as follows: $1.1 million in FY 1989, $2.2 million in FY 1990, and $3.3 million in FY 1991.

For its performance in FY 1990, WR-ALC was one of the recipients of the Secretary of the Air Force Small and Disadvantaged Business Award. This award recognized those organizations that demonstrate outstanding achievements in awarding contracts to small and disadvantaged businesses. WR-ALC has also been recognized by the 8(a) Contractors Association in Small Business Administration Region IV for superlative support given the 8(a) program for each of the last two fiscal years. Many of the 8(a) contracts awarded by WR-ALC have been to black-owned electronics firms for items such as power supplies, cable assemblies, circuit cards, module, and control indicators.

While WR-ALC has not yet awarded any contracts to HBCUs, part of the WR-ALC small business plan is to set-up capability briefings and visit contractor facilities whenever possible. For example, on December 11, 1990, the WR-ALC Small Business Office hosted a capabilities presentation by ISPA Incorporated, an Atlanta-based, 8(a) certified computer firm interested in forming a consortium with several HBCUs. A representative of Morris Brown College participated in that briefing. The approach advocated by ISPA was for them to provide software development and computer programming while the participating HBCUs would conduct studies, perform analyses, and collect data. WR-ALC continues to search its requirements to match with the capabilities of the consortium.

We appreciate your interest in this matter and trust this information is helpful.

Sincerely,

SIGNED

T. N. ALDOM
Colonel, USAF

Attachment

THE WHITE HOUSE OFFICE

REFERRAL

NOVEMBER 20, 1991

91 NOV 20 AM 9:37

TO: DEPARTMENT OF DEFENSE

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: 284062

MEDIA: LETTER, DATED NOVEMBER 4, 1991

TO:

FROM: MR. LEMUEL KINNEY
PRESIDENT AND CHIEF EXECUTIVE
OFFICER
ELECTRONIC SYSTEMS & ASSOCIATES INC
1004 118TH AVENUE NORTH
ST. PETERSBURG FL 33716

SUBJECT: ALLEGES THAT SOME AIR FORCE PROCUREMENT
CENTERS ARE GUILTY OF DISCRIMINATING AGAINST
BLACK AND MINORITY BUSINESSES WHICH SEEK
CONTRACTS AND AGAINST BLACK COLLEGES AND
UNIVERSITIES SEEKING CONTRACTS

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

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

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

W32933

ESA
ELECTRONIC
SYSTEMS &
ASSOCIATES, INC.

1004 118th AVENUE NORTH
ST. PETERSBURG, FLORIDA 33716
(813) 576-6565

284C 62

"Computer Systems Design & Implementation"

Governor John H. Sununu
Chief of Staff
Executive Office of The President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

November 4, 1991

Dear Governor Sununu,

I have enclosed a copy of a letter and supporting documentations, I recently forwarded to the Vice President. This information is being sent to you for your review as well.

I was hoping to have meet you at the PRESIDENT'S CLUB NATIONAL MEETING, It would have given me a chance to ask your advice in this matter, that however was not the case. Please take a look into this matter in conjunction with the Vice Presidents Office. A copy of this information has been forwarded to congressman Bill Youngs office as well.

Thank you in advance for your support in this matter, should you have any questions please feel free to contact me at (800) 237-7608 or (813) 576-6565. I look forward to hearing from you soon.

Sincerely,

Lemuel Kinney
President/CEO

ESA
ELECTRONIC
SYSTEMS &
ASSOCIATES, INC.

1004 118th AVENUE NORTH
ST. PETERSBURG, FLORIDA 33716
(813) 576-6565

"Computer Systems Design & Implementation"

Dan Quayle
Vice President
United States
Washington, DC 20510

October 28, 1991

Dear Vice President,

At the PRESIDENT'S CLUB NATIONAL MEETING dinner on October 23, 1991 you were handed my business card by Mr. Yeutter and we greeted one another, I am the black republican you waved at during the dinner. You were told by Mr. Yeutter you would be receiving a letter from me.

My RNC membership number is 90679474, this letter is being written as a concerned black republican party member, a small business owner, and as a concerned tax payer. Evidence has surfaced that indicates several of the top Air Force procurement centers are guilty of descriminating against black and minority business and Historically Black Colleges and Universities. (see enclosed information).

Of the two Air Force locations I have dealt with HQ ESD Hanscom, AFB and Warner Robbins AFB, I have been able to ascertain that the Air Force can verify contracts to five (5) black owned companies in the ares of computer system services, however no black owned firm has ever manufactured any electronic devices for either of these Air Force installations, nor is any black firm involved in any contract that requires SCI qualification.

The greatest discovery came when it was learned that neither of these procuring activities has ever awarded a contract to a Historically Black College or University, although billions of dollars in tax payer funds have been awarded to white colleges and universities.

This is a direct violation of the Civil Rights Act of 1866 (as amended) by The Civil Rights Act of 1964. Entitlements are constrained by the Constitution to only a limited extent. Government may not take them away without affording those who have them due process of law. Nor may government distribute entitlements in an unreasonably discriminatory manner.

Recently President Bush ordered Solicitor General Kenneth Starr to argue in a case going to the Supreme Court, the administration will argue that Mississippi has an obligation to correct funding disparities between historically black and white colleges, but yet our own DOD agencies are guilty of the same offence.

My personal belief is that this information represents an extremely volatile and sensitive situation, since the information is a matter of public record, and election year is close at hand. Armed with such information the opposition party would have an issue to exploit.

Unfortunately my company has been economically harmed by recent actions of HQ ESD Hanscom AFB. Under the advice of my attorney I have proceeded to protest a recent ESD procurement action to acquire a Low Cost Terminal (LCT) for satellite communications among combined tactical forces employing MILSTAR. This protest is currently being adjudicated by the General Accounting Office (GAO), the protest number is B-224878.

After a rigours review of the contract file my attorney is prompting me to file a Civil Rights lawsuit in Federal court against the USAF. My concern is evidence that would be introduced in such a proceeding could be used as a political weapon against the President's re-election by the opposition. My choices are very limited.

As President and CEO of Electronic Systems and Associates, Inc I must represent the best interest of the corporation. I object to USAF/ESD and Warner Robins unreasonable distribution of public funds in their routine and long-standing discriminatory manner. Since black owned firms have been systematically denied contracting opportunities at ESD and Warner Robins, I must use an appropriate forum to obtain economic relief. The wide visibility of the next available forum, Federal court, is a rather distasteful consequence.

The USAF/ESD has been a rather "bull headed" organization to deal with. Officers such as the LCT program manager LT COL Jim Young, and contracting officer Maj Leslie Deneault, of ESD have assailed myself and this company with degrading comments. Government officials have acted in concert with "pet" in-house ESD contractors to disclose sensitive ESA proprietary data to weaken this corporation's opportunity to win competitive Government contracts at ESD.

With deep respect and admiration to the republican party, I patiently await your response. I sincerely hope that your office in conjunction with Air Staff will find a solution to this problem that is excitable to all concerned. Should that not occur by December 1, 1991. It will be my understanding, that my obligation to my party would be fulfilled, therefore, I would have to seek a remedy elsewhere.

Respectfully Submitted,

Lemuel Kinney

THE WHITE HOUSE

WASHINGTON

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_____ Enclosure(s) not scanned.

_____ Proclamation not scanned.

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_____ Proposal not scanned.

_____ Statement not scanned.

_____ Duplicate letters attached - not scanned.

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Comments:

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USAF

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Electronic Systems and Associates, Inc.

File: B-244878

Date: November 13, 1991

Lemuel Kinney for the protester.
T.A. Grimshaw for Rockwell International Corporation, Joseph W. Young, Esq., for E-Systems, Inc. and J.H. Hartwell for Raytheon Company, interested party.
Millard F. Pippin, Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that specifications are unduly restrictive and favor a particular contractor is denied where protester falls to provide specifics to support its allegation and solicitation is based on functional specifications and is the result of extensive discussions with industry.

2. In light of agency's broad discretion to decide to contract or not contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), there is no legal basis to object to agency's decision not to award to the protester under the section 8(a) program absent a showing of fraud or bad faith or that laws or regulations were violated.

3. Agency's decision not to set aside a procurement for small disadvantaged business (SDB) concerns was proper where the contracting officer determined on the basis of information concerning interested SDB concerns that a reasonable expectation did not exist that offers would be received from at least two responsible SDB concerns and the agency's Small and Disadvantaged Business Utilization Specialist concurred in this decision.

DECISION

Electronic Systems and Associates, Inc. (ESA) protests the terms of request for proposals (RFP) No. F19628-91-R-0018, issued on an unrestricted basis by the U.S. Air Force

Electronic Systems Division, Hanscom, Air Force Base, Massachusetts for the design and development of a Low Cost Terminal (LCT) for the MILSTAR Program, a critical world wide, survivable anti-jam communications service for commanders-in-chiefs to command and control their military forces.

We deny the protest.

The LCT program is divided into two phases, a demonstration phase and an engineering and manufacturing development phase. This RFP is for the award of a contract for the demonstration phase and will be for a 24 month development (including design) and demonstration effort. The LCT provides a satellite communications system to support the MILSTAR program. Sources sought synopses were published in the Commerce Business Daily (CBD) on December 26, 1990 and March 7, 1991. Ten small businesses and four small disadvantaged businesses (SDB) responded to the synopses. The Air Force evaluated all qualification packages submitted in response to the sources sought synopses and determined that there were no small business sources capable of meeting the government's requirement. Consequently, a small business set-aside was considered inappropriate.

A draft RFP was issued to all firms responding to the sources sought synopses on April 19, 1991 and a bidders conference was held on April 29. Meetings with potential bidders were also held during the week of May 6 to discuss the draft RFP and to resolve questions concerning the solicitation.

By letter dated April 24, the Small Business Administration (SBA) requested that a section 8(a) set-aside of the LCT be considered for ESA.[1] ESA provided the Air Force material to demonstrate its capability and presented a qualification briefing to the Air Force on April 30. In addition, in its briefing with the Air Force on May 10 to provide comments to the draft RFP, ESA addressed its technical and management solutions to the requirements of the draft RFP. By letter dated May 21, the Air Force denied the SBA request and concluded that ESA did not have the technical and management skills necessary to act as a prime contractor for the LCT program. The SBA decided not to appeal the Air Force determination.

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[1]Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

The RFP was issued on June 26 with a closing date for receipt of proposals of July 26. The RFP contains functional specifications and provides for multiple awards for the demonstration phase of the LCT program. During this phase, contractors are to design and, where appropriate, demonstrate various functional requirements of their design, including limited fabrication of hardware and software brassboards. Prior to completion of the demonstration contract, the Air Force will issue an RFP to demonstration phase contractors and conduct a down-select source selection for the engineering and manufacturing development phase contract award. The winner of this contract will also be the production contractor.

Prior to the date for receipt of proposals, by letter dated July 9, ESA protested to the contracting officer. In that protest, ESA alleged that the specifications contained in the solicitation were unduly restrictive, solicitation requirements were in excess of the government's minimum requirements, and the government improperly disclosed proprietary information of one prospective offeror to another prospective offeror concerning the procurement of the LCT demonstration requirements. ESA also made several allegations relating to racial bias. That protest was denied by letter dated July 18. ESA then filed a protest with our Office on July 22, raising the same issues.[2]

With respect to ESA's allegation that the specifications are unduly restrictive and improperly favor a single contractor, neither in its agency-level protest nor in the one filed with our Office did ESA assert that any specific requirement was restrictive. ESA simply stated that a particular contractor, by virtue of its participation in government funded prior procurements, possessed unique knowledge, experience and information for the supplies and services being procured under this solicitation. In this regard, the record shows that any advantage the contractor may have had resulted from its prior experience under related contracts. It is not unusual for a contractor to enjoy an advantage in competing for a government contract by reason of incumbency,

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[2]ESA, in its initial protest filed with our Office, argued that the solicitation requirements were in excess of the government's minimum needs and that the Air Force did not allow enough time to properly submit responses to the solicitation. The agency in its report responded to these issues, and ESA in its comments did not rebut the agency's response. We consider these issues to be abandoned by the protester and will not consider them. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

and such an advantage, so long as it is not the result of preferential treatment or other unfair action by the government need not be discounted or equalized. Nationwide Health Search, Inc., B-237029, Feb. 1, 1990, 90-1 CPD ¶ 134. Here, although the contractor in question has been involved in terminal developments for MILSTAR in the past, as ESA appears to acknowledge, the current solicitation contains functional specifications and is not design specific. All potential offerors were given the opportunity to comment on the draft RFP and comments were received from several firms including ESA. Portions of previous government sponsored study and development work relevant to this solicitation was disclosed in the RFP for all potential offerors. Further, although this new terminal must be interoperable with the existing satellite and multi-service terminals, there is no requirement for this terminal to be architecturally similar to the core terminal. We therefore deny ESA's challenge to the specifications.

ESA also alleges that the agency improperly disclosed to a prospective offeror information it submitted to the Air Force to establish its qualifications for award under the 8(a) program. The agency denies that it disclosed any information ESA submitted. In any event, generally, in considering protests involving allegations of wrongful disclosure of proprietary data, the protester must show that the material submitted was marked proprietary or that the material was disclosed in confidence, that the preparation of the material involved significant time and expense, and that the material contained data or concepts that could not be independently obtained from publicly available literature or from common knowledge. See Kitco, Inc., B-241133; B-241133, Jan. 25, 1991, 91-1 CPD ¶ 73. Here, ESA has failed to state what allegedly proprietary material was actually disclosed to a competitor.

ESA maintains that the Air Force improperly determined that ESA was not qualified for award under the 8(a) program. Under section 8(a) of the Small Business Act, a government contracting officer is authorized "in his discretion" to let the contract to SBA upon terms and conditions to which the agency and SBA agree. 15 U.S.C. § 637(a)(1). Therefore, no firm has a right to have the government satisfy a specific procurement need through the 8(a) program or award a contract to that firm. Lee Assocs., B-232411, Dec. 22, 1988, 88-2 CPD ¶ 618. Consequently, we will object to an agency's actions under the section 8(a) program only where it is shown that agency officials engaged in bad faith or fraud or violated regulations. Kinross Mfg. Corp., B-234465, June 15, 1989, 89-1 CPD ¶ 564.

Although ESA alleges that the agency's decision not to make this procurement an 8(a) set-aside was racially motivated, ESA has provided no evidence of fraud or bad faith on the part of agency official. To the contrary, the record shows the agency's decision not to place this contract under the 8(a) program was reasonable. The record shows that the agency evaluated the qualification package from ESA describing its capabilities, the composition of its proposed team, and its approach to managing the effort and concluded that ESA did not possess the technical and management skills necessary to perform the demonstration program which requires experienced system concept design, terminal concept design, rapid prototyping and demonstration, and mature state-of-the-art, very high speed integrated circuit chip development and technology. ESA simply failed to persuade the Air Force that it could manage and perform a contract of this complexity and importance. The Air Force's determination was concurred in by the local SDB representative and the SBA representative, who are charged with representing SDB and small business interests. Moreover, the SBA accepted the Air Force's determination and did not appeal the decision. Given the agency's broad discretion in determining whether to place a contract under the a section 8(a) program and the nature and complexity of the requirement, we do not find the agency's decision objectionable.

ESA also protests the Air Force's determination not to issue this solicitation as a set-aside for SDBs. The decision whether to set aside a procurement for SDB concerns is governed by Department of Defense Federal Acquisition Regulation Supplements (DFARS) § 219.502-72 (DAC 88-13), which provides that a procurement shall be set aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that: (1) offers will be obtained from at least two responsible SDB concerns, and (2) award will be made at a price not exceeding the fair market price by more than 10 percent. Since the decision to set aside a procurement is a matter of business judgment within the contracting officer's broad discretion, we will not disturb his determination absent a showing that it was unreasonable. Transtar Aerospace, Inc., B-239467, Aug. 16, 1990, 90-2 CPD ¶ 134.

Here, as previously stated, the contracting officer synopsized this requirement several times to solicit responses from industry on its ability to meet the Air Force's specifications, and the results showed that there was no reasonable basis to conclude that offers would be forthcoming from at least two responsible small businesses or SDB concerns. None of the SDB's, including ESA, met the minimum screening criteria published in the CBD. ESA has not shown why the agency's screening determination was unreasonable. The Electronic Systems Division Small

Business Office, the SBA's representative at Hanscom Air Force Base concurred in this judgment.[3] MVM, Inc. et al., B-237620, Mar. 13, 1990, 90-1 CPD ¶ 270. In light of these circumstances, we find that the contracting officer had a reasonable basis for not setting aside the procurement.

Finally, ESA argues that procurement decisions at the Electronic Systems Division are racially biased. We cannot in the abstract consider ESA's objection to the Electronic Systems Division's general practices concerning section 8(a) set-asides and SDB set-asides, since our bid protest function encompasses only objections which relate to particular procurements. 31 U.S.C. § 3551(1) (1988); see Cajar Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286.

The protest is denied.

James F. Hinchman
General Counsel

[3]ESA questions when the Small and Disadvantaged Utilization Office concurred with the decision not to restrict this procurement because of its receipt of an unexecuted record of coordination form. However, notwithstanding any procedural defect concerning the execution of the coordination form, the record is clear that the local SBA representative agreed with the decision not to set aside the procurement.

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS ELECTRONIC SYSTEMS DIVISION (AFSC)
HANSCOM AIR FORCE BASE, MASSACHUSETTS 01731-5260

REPLY TO ATTN OF: IMDF (617-377-4691) 9 Oct 1991

SUBJECT: Freedom of Information Request (I-ES-91-00151)

TO Electronic Systems & Associates Inc
Attn: Mr Lemuel Kinney
1004 118th Avenue North
St Petersburg FL 33716

1. This is in response to your Freedom of Information Request dated 8 Jul 91. The response coincides with your item numbers 1 thru 8.

a. Item 1: Fully releasable. Attachment 1 lists the new contract awards to Educational Institutions for the period 10/01/87 to 06/24/91.

b. Item 2: ESD has not yet made any awards to Historically Black Colleges and Universities / Minority Institutions (HBCU/MI'S); therefore, no records exist.

c. Item 3: Fully releasable. Attachment 2 lists the set-asides and 8(a) reservations for the specified period. In order to get the forms cited in item 3 for these procurements, all of the procurement organizations on base would have to be polled. Dollar costs to pole the procurement offices would be considerably more than the $2500 authorized.

d. Item 4: Fully releasable. However, because the request involves approximately 293 contracts with at least 16 responsibility offices and unknown number of storage locations, not all documents could be located and provided under the $2500.00 authorized limit. However, each contract has at least a cover info sheet which indicates which documents are attached or were unavailable during the first search. (See attachment 3) It is conjectured that these represent the "easy" documents to locate. Additional search and retrieval of documents will be more time consuming since they are probably in storage at off site locations. A dollar cost to obtain the balance would be considerable.

e. Item 5: Public Law 100-656 does not disqualify small, small-disadvantaged or 8(a) contractors from construction procurements (SIC 17XX). It prohibits us from making such procurements small business set-asides. Attachment 4 is the Federal Acquistion Regulation (FAR) Subpart that implements this aspect of P.L. 100-656, the Competitive Demonstration Program. Small businesses, small-disadvantaged businesses and 8(a) firms are encouraged to compete in any resulting unrestricted competions.

f. Item 6: This document does not exist as no award resulted from this solicitation.

g. Item 7: Fully releasable. Attachment 5 is a copy of the Justification Review Document and the Justification and Approval for the MILSTAR Air Force Terminal Low Volume Force Element.

h. Item 8: Fully releasable. Attachment 6 is a copy of the Commerce Business Daily announcements for solicitation number F19628-90-R-0058.

2. The cost for providing the attached records, which includes search, review and duplication charges is $1811.24. Please make check payable to AFO and mail to:

3245 ABG/IMDF
Hanscom AFB, MA 01731-5000

3. The government is not obligated to create a record to satisfy a Freedom of Information request. However, if you interpret the no record responses in b and f above as adverse actions to your Freedom of Information Request, you may appeal to the Secretary of the Air Force within 60 calendar days from the date of this notification. Include in the appeal your reasons for reconsideration, and attach a copy of this letter. Address your letter as follows:

Secretary of the Air Force
THRU: HQ AFSC/IMQDI
Andrews AFB, DC 20334, 5000

IRENE P. JARACZ
Freedom of Information Officer

6 Atch
1. Contract Awards List
2. List of Set-Asides & 8(a) Reservations
3. Contract cover sheets
4. Federal Acquistion Reg Subpart
5. Justification Review, Justification and Approval Documents
6. Commerce Business Daily announcements

NEW CONTRACT AWARDS TO EDUCATIONAL INSTITUTIONS FOR THE PERIOD 10/01/87 TO 06/24/91

* CONTRACT NO.	CONTRACTOR NAME	FACE VALUE	ACTION DATE	SIC
* F1962888K0009	AZ BOARD REGENTS UNIV AZ	$220,000.	02/05/1988	9661
* F1962888K0028	AZ BOARD REGENTS UNIV AZ	$786,346.	08/30/1988	8732
* F1962889K0005	AZ BOARD REGENTS UNIV AZ	$149,912.	01/04/1989	8731
* F1962889K0023	AZ BOARD REGENTS UNIV AZ	$92,460.	02/13/1989	8731
* F1962890K0038	AZ BOARD REGENTS UNIV AZ	$91,924.	07/23/1990	8731
* F1962891K0001	BOSTON COLLEGE	$3,722,081.	12/19/1990	8731
* F1962888K0008	BOSTON COLLEGE TRUSTEES OF	$764,156.	07/06/1988	3669
* F1962888K0045	BOSTON COLLEGE TRUSTEES OF	$1,971,260.	09/30/1988	8731
* F1962889K0001	BOSTON COLLEGE TRUSTEES OF	$356,104.	11/07/1988	8731
* F1962889K0043	BOSTON COLLEGE TRUSTEES OF		08/31/1989	8731
* F1962890K0007	BOSTON COLLEGE TRUSTEES OF	$2,670,051.	11/28/1989	8731
* F1962890K0006	BOSTON COLLEGE TRUSTEES OF	$2,038,063.	12/13/1989	8731
* F1962890K0019	BOSTON COLLEGE TRUSTEES OF	$3,413,774.	03/15/1990	8731
* F1962890K0028	BOSTON COLLEGE TRUSTEES OF	$887,665.	04/26/1990	8731
* F1962890K0032	BOSTON COLLEGE TRUSTEES OF		05/11/1990	8731
* F1962890K0035	BOSTON COLLEGE TRUSTEES OF	$614,601.	07/31/1990	8731
* F1962891K0009	BOSTON COLLEGE TRUSTEES OF	$166,389.	03/22/1991	8731
* F1962888K0017	BOSTON UNIVERSITY	$203,045.	04/07/1988	8731
* F1962890K0003	BOSTON UNIVERSITY	$3,540,608.	01/03/1990	8731
* F1962890K0014	BOSTON UNIVERSITY	$590,909.	02/26/1990	8731
* F1962891K0015	BROWN UNIVERSITY, DEPT OF ENGR		05/02/1991	8732
* F1962888K0034	CALIFORNIA INST	$462,289.	09/30/1988	8731
* F1962889K0028	CALIFORNIA INST	$253,032.	05/24/1989	8731
* F1962890K0049	CALIFORNIA INST	$180,862.	09/26/1990	8733
* F1962888K0025	CALIFORNIA URB IN HLTH CNCL	$245,860.	03/30/1988	8731
* F1962888K0018	CARNEGIE MELLON UNIVERSITY	$31,763.	04/12/1988	8731
* F1962889K0032	CARNEGIE MELLON UNIVERSITY	$85,396.	05/19/1989	8732
* F1962890C0003	CARNEGIE MELLON UNIVERSITY	$156,350,120.	12/20/1989	8731
* F1962890K0054	CLEMSON UNIVERSITY	$261,920.	09/20/1990	8731
* F1962889K0033	COLORADO SEMINARY	$753,650.	06/20/1989	8731
* F1962888K0006	COLORADO STATE UNIVERSITY	$197,221.	12/01/1987	
* F1962888K0035	CORNELL UNIVERSITY	$310,355.	07/20/1988	8731
* F1962890K0009	DARTMOUTH COLLEGE	$330,177.	01/19/1990	8731
* F1962891K0014	DAYTON UNIVERSITY OF	$110,478.	04/26/1991	8731
* F1962888K0012	DUKE UNIVERSITY	$217,820.	03/14/1988	8731
* F1962891K0018	DUKE UNIVERSITY	$168,653.	06/10/1991	8731
* F1962888K0023	GEORGIA TECH RESEARCH INS	$669,000.	05/09/1988	8731
* F1962888K0024	HARVARD COLLEGE	$108,071.	03/28/1988	8731
* F1962891K0020	HARVARD COLLEGE	$99,962.	05/03/1991	8731
* F1962890K0026	LOUISIANA STATE UNIVERSITY	$743,605.	06/29/1990	8731
* F1962888K0027	LOWELL OBSERVATORY	$148,858.	07/05/1988	8731
* F1962888K0013	MASS INSTITUTE OF TECHNOLOGY	$124,829.	03/14/1988	8731
* F1962888K0036	MASS INSTITUTE OF TECHNOLOGY	$106,792.	07/28/1988	8731
* F1962889K0030	MASS INSTITUTE OF TECHNOLOGY	$65,745.	04/03/1989	
* F1962889K0020	MASS INSTITUTE OF TECHNOLOGY	$329,840.	05/15/1989	8731
* F1962890K0021	MASS INSTITUTE OF TECHNOLOGY	$267,772.	03/16/1990	8731
* F1962890K0024	MASS INSTITUTE OF TECHNOLOGY	$120,000.	03/28/1990	8731
* F1962890K0057	MASS INSTITUTE OF TECHNOLOGY	$171,920.	09/27/1990	8731
* F1962891K0005	MASS INSTITUTE OF TECHNOLOGY	$157,625.	02/27/1991	8731
* F1962890K0034	MASSACHUSETTS UNIVERSITY OF	$66,400.	04/16/1990	8732
* F1962891K0011	MASSACHUSETTS UNIVERSITY OF	$67,613.	03/14/1991	8732

* F1962889K0041	MIT LINCOLN LABORATORY	$448,255	08/02/1989	8731
* F1962890C0002	MIT LINCOLN LABORATORY	$2,325,529,132.	10/11/1989	8731
* F1962890K0022	NORTH CAROLINA STATE UNIV	$116,778.	03/08/1990	8732
* F1962891C0012	NORTHEASTERN UNIVERSITY	$9,526,212.	01/30/1991	8731
* F1962891K0019	NORTHEASTERN UNIVERSITY	$203,250.	05/24/1991	8732
* F1962889K0014	NORTHEASTERN UNVSTY CORP	$743,291.	03/06/1989	8731
* F1962891K0017	NORTHEASTERN UNVSTY CORP		06/10/1991	8732
* F1962889K0016	NOVA UNIVERSITY INC	$197,609.	03/06/1989	8731
* F1962889K0003	OKLAHOMA STATE UNIV AP SC	$239,338.	01/12/1989	8732
* F1962888K0001	OREGON STATE UNIVERSITY	$345,814.	10/27/1987	
* F1962891K0002	OREGON STATE UNIVERSITY	$331,433.	02/12/1991	8731
* F1962889K0013	PENNSYLVANIA STATE UNIVERSITY	$186,052.	01/10/1989	8732
* F1962890K0044	PENNSYLVANIA STATE UNIVERSITY	$171,754.	07/31/1990	8731
* F1962889K0044	PSL, NEW MEXICO STATE UNIV	$176,450.	08/25/1989	9661
* F1962890K0010	PURDUE RESEARCH FOUNDATION	$58,222.	10/26/1989	8731
* F1962888K0021	QUEENS COLLEGE RES FOUND OF CUNY	$285,421.	04/26/1988	8731
* F1962888K0050	REGENTS OF UNIVERSITY OF CALIFORNIA	$789,466.	09/30/1988	8732
* F1962889K0012	REGENTS OF UNIVERSITY OF CALIFORNIA	$138,501.	01/10/1989	8731
* F1962889K0042	REGENTS OF UNIVERSITY OF CALIFORNIA	$918,689.	09/26/1989	8731
* F1962889K0045	RENSSELAER POLYTECHNIC INST	$297,066.	09/22/1989	8731
* F1962888K0037	RESEARCH FOUNDATN ST UNIVER NY	$97,603.	07/22/1988	8731
* F1962890K0033	RESEARCH FOUNDATN ST UNIVER NY	$447,412.	05/31/1990	8731
* F1962890K0042	RESEARCH FOUNDATN ST UNIVER NY	$186,331.	08/01/1990	8731
* F1962890K0012	RICE WILLIAMS MARSH UNIV INC	$1,015,457.	03/05/1990	8731
* F1962889K0021	SAINT LOUIS UNIVERSITY	$198,016.	02/16/1989	8732
* F1962890K0040	SAINT LOUIS UNIVERSITY	$163,038.	07/31/1990	8731
* F1962890K0008	SOUTHEASTERN MASS UNIVERSITY		10/23/1989	8731
* F1962889K0029	SOUTHEASTERN MASSACHUSETTS UNIV		03/14/1989	
* F1962888K0042	SOUTHERN METHODIST UNIV	$239,998.	08/08/1988	8732
* F1962888K0038	SOUTHERN METHODIST UNIV	$145,166.	08/09/1988	8732
* F1962889K0025	SOUTHERN METHODIST UNIV	$176,543.	02/17/1989	8731
* F1962891K0016	SOUTHERN METHODIST UNIV	$230,608.	05/03/1991	8732
* F1962889K0015	STANFORD LED JR UN INC	$299,000.	04/05/1989	8731
* F1962889K0040	STANFORD LED JR UN INC		07/06/1989	8731
* F1962888K0053	TEXAS A&M RESEARCH FOUNDATION	$300,000.	09/29/1988	8731
* F1962889K0024	TEXAS A&M RESEARCH FOUNDATION	$124,219.	02/14/1989	8731
* F1962888K0041	TRUSTEES OF COLUMBIA UNIVERSIT	$304,593.	08/01/1988	8732
* F1962889K0007	TRUSTEES OF COLUMBIA UNIVERSIT	$761,242.	04/17/1989	8731
* F1962890K0017	TRUSTEES OF COLUMBIA UNIVERSIT	$181,392.	03/16/1990	8731
* F1962890K0048	TRUSTEES OF COLUMBIA UNIVERSIT	$222,679.	08/22/1990	8731
* F1962890K0059	TRUSTEES OF COLUMBIA UNIVERSIT	$139,498.	10/31/1990	8731
* F1962888K0043	TUFTS UNIVERSITY	$140,008.	07/29/1988	8732
* F1962888C0154	U OF CA SCRIPPS IN OF OCEANOGRAPHY	$499,992.	09/30/1988	8731
* F1962889K0027	U. CALIFORNIA, SANTA CRUZ	$221,970.	06/09/1989	8731
* F1962889K0048	U. CALIFORNIA, SANTA CRUZ	$60,000.	09/14/1989	8731
* F1962890K0041	U. CALIFORNIA, SANTA CRUZ	$144,346.	07/31/1990	8731
* F1962888K0005	UNIV OF CALIFORNIA/SAN DIEGO	$1,825,000.	12/31/1987	8732
* F1962888K0010	UNIV OF CONN	$50,635.	03/08/1988	8731
* F1962889K0035	UNIV OF CONN	$90,929.	06/16/1989	8731
* F1962888K0047	UNIV OF FLORIDA, DIV OF SPONS RES	$150,000.	12/28/1988	8731
* F1962890K0020	UNIV OF FLORIDA, DIV OF SPONS RES	$120,000.	03/12/1990	8731
* F1962888K0030	UNIV OF LOWELL		07/01/1988	
* F1962889K0037	UNIV OF NEW MEXICO		08/17/1989	8731
* F1962890K0056	UNIV OF NEW MEXICO	$217,983.	09/11/1990	8731
* F1962888K0052	UNIV OF SOUTHERN CALIF	$768,000.	09/23/1988	8731
* F1962889K0038	UNIV OF SOUTHERN CALIFORNIA	$250,000.	09/05/1989	8731
* F1962891K0013	UNIV OF TEXAS AT ARLINGTON	$116,506.	06/10/1991	8731

* F1962888C0046	UNIV OF TEXAS AT DALLAS	$229,200.	01/15/1988	
* F1962889K0006	UNIV OF TEXAS AT DALLAS	$84,634.	02/21/1989	8731
* F1962890K0002	UNIV OF TEXAS AT DALLAS	$389,369.	10/16/1989	8732
* F1962890K0001	UNIV OF TEXAS AT DALLAS	$361,691.	10/17/1989	8732
* F1962891K0033	UNIV. OD CALIFORNIA/DAVIS	$179,741.	06/17/1991	8731
* F1962888K0014	UNIV. OF CALIFORNIA/SANTA CRUZ	$95,433.	02/18/1988	8731
* F1962889K0036	UNIVER OF MARYLAND	$252,678.	06/22/1989	8731
* F1962888K0011	UNIVERISTY OF CALIFORNIA	$1,017,199.	02/18/1988	8732
* F1962888K0022	UNIVERISTY OF CALIFORNIA	$425,100.	03/30/1988	8731
* F1962889K0004	UNIVERISTY OF CALIFORNIA	$89,925.	11/25/1988	8732
* F1962891K0012	UNIVERISTY OF CALIFORNIA	$484,002.	04/18/1991	8731
* F1962888K0044	UNIVERSITY CA SN DG	$259,560.	10/17/1988	8731
* F1962888K0039	UNIVERSITY CA SN DG	$810,254.	11/03/1988	8731
* F1962889K0018	UNIVERSITY CA SN DG	$181,248.	04/06/1989	8731
* F1962890K0053	UNIVERSITY CA SN DG	$161,372.	09/13/1990	8731
* F1962890K0045	UNIVERSITY CA SN DG	$183,305.	09/27/1990	8731
* F1962888K0003	UNIVERSITY OF ALASKA	$158,392.	11/20/1987	
* F1962889K0039	UNIVERSITY OF ARIZONA	$906,138.	08/25/1989	8731
* F1962888K0026	UNIVERSITY OF CALIFORNIA	$129,949.	04/29/1988	8731
* F1962889K0017	UNIVERSITY OF CALIFORNIA, BERKELY	$255,708.	03/24/1989	8731
* F1962890K0013	UNIVERSITY OF CALIFORNIA, BERKELY	$644,354.	01/19/1990	8731
* F1962890K0037	UNIVERSITY OF CALIFORNIA, BERKELY	$1,279,478.	08/15/1990	8731
* F1962890K0055	UNIVERSITY OF CALIFORNIA, BERKELY	$229,000.	09/12/1990	8731
* F1962891K0006	UNIVERSITY OF CALIFORNIA, BERKELY	$544,847.	12/31/1990	8732
* F1962890K0025	UNIVERSITY OF CHICAGO	$845,880.	05/25/1990	8731
* F1962888K0033	UNIVERSITY OF COLORADO	$166,324.	07/21/1988	8731
* F1962890K0023	UNIVERSITY OF COLORADO	$43,242.	02/28/1990	8731
* F1962890K0050	UNIVERSITY OF COLORADO	$159,795.	08/07/1990	8732
* F1962890K0051	UNIVERSITY OF COLORADO	$385,398.	09/13/1990	8732
* F1962888M0015	UNIVERSITY OF ILLINOIS	$7,598.	08/04/1988	
* F1962888K0040	UNIVERSITY OF ILLINOIS	$263,105.	09/16/1988	8731
* F1962890K0031	UNIVERSITY OF IOWA	$899,842.	04/27/1990	8731
* F1962888K0004	UNIVERSITY OF LOWELL ASSOC INC	$629,028.	12/15/1987	
* F1962888K0016	UNIVERSITY OF LOWELL ASSOC INC	$133,828.	05/17/1988	8732
* F1962888K0020	UNIVERSITY OF LOWELL ASSOC INC	$370,000.	07/05/1988	8731
* F1962888K0029	UNIVERSITY OF LOWELL ASSOC INC	$239,759.	08/09/1988	8732
* F1962888K0048	UNIVERSITY OF LOWELL ASSOC INC	$224,425.	09/22/1988	8732
* F1962890K0005	UNIVERSITY OF LOWELL ASSOC INC	$1,064,411.	10/31/1989	8731
* F1962890K0029	UNIVERSITY OF LOWELL ASSOC INC	$3,488,645.	04/19/1990	8731
* F1962890K0039	UNIVERSITY OF LOWELL ASSOC INC	$1,043,241.	09/12/1990	8731
* F1962888K0015	UNIVERSITY OF MARYLAND	$157,073.	03/08/1988	8731
* F1962888K0032	UNIVERSITY OF MICHIGAN	$727,526.	07/19/1988	8731
* F1962888C0194	UNIVERSITY OF MICHIGAN	$117,679.	09/09/1988	8732
* F1962889K0011	UNIVERSITY OF MICHIGAN	$92,000.	12/20/1988	8731
* F1962889K0026	UNIVERSITY OF MICHIGAN	$980,000.	03/29/1989	8731
* F1962889K0047	UNIVERSITY OF MICHIGAN	$160,314.	10/20/1989	8731
* F1962890K0015	UNIVERSITY OF MICHIGAN	$339,754.	04/10/1990	8731
* F1962888K0007	UNIVERSITY OF MINNESOTA	$177,384.	02/16/1988	8731
* F1962891K0010	UNIVERSITY OF MISSISSIPPI	$267,444.	04/23/1991	8731
* F1962889K0022	UNIVERSITY OF NEVADA	$166,177.	06/13/1989	8731
* F1962890K0046	UNIVERSITY OF NEVADA	$94,208.	08/10/1990	8731
* F1962889K0008	UNIVERSITY OF SOUTHERN CAL	$136,373.	12/23/1988	8731
* F1962888K0049	UNIVERSITY OF UTAH	$100,000.	09/10/1988	8732
* F1962890K0004	UNIVERSITY OF UTAH	$164,243.	10/13/1989	8732
* F1962888K0019	UNIVERSITY OF VIRGINIA	$338,457.	05/13/1988	8731
* F1962887K0056	UNIVERSITY OF WISCONSIN	$298,863.	04/21/1988	8731
* F1962889K0031	UNIVERSITY OF WISCONSIN	$116,430.	03/14/1989	8731
* F1962890K0047	UNIVERSITY OF WISCONSIN	$203,716.	08/21/1990	8713

* F1962891K0007	UNIVERSITY OF WISCONSIN	$500,298.	04/02/1991	8732
* F1962890K0011	UNIVERSITY OF WYOMING	$119,030.	11/28/1989	8732
* F1962890K0016	UTAH STATE UNIVERSITY	$908,779.	03/01/1990	8731
* F1962891C0030	UTAH STATE UNIVERSITY	$4,810,000.	06/14/1991	8731
* F1962889K0010	VIRGINIA POLTECH INST & STATE UNIV	$89,115.	12/21/1988	8732
* F1962890K0052	VIRGINIA POLTECH INST & STATE UNIV	$86,000.	09/12/1990	8731
* F1962888C0031	WENTWORTH INSTITUTE OF TECHNOLOGY	$4,697,000.	03/25/1988	8731

10-28 USA Today

BLACK COLLEGES: President Bush has ordered a change of position in a legal battle over funding of historically black colleges. Bush ordered Solicitor General Kenneth Starr to argue in a case going to the Supreme Court next month that Mississippi has an obligation to correct funding disparities between historically white and black colleges. The administration position had been that Mississippi had no obligation. Alvin Chambliss Jr., who filed the suit, applauded: "There is no way you can talk about educating America unless you educate black folk." Bush and Republicans are stepping up efforts to attract minority voters.

284201
Hu010

October 30, 1991

Dear Don:

I strongly support your efforts to amend the Mitchell-Grassley amendment to S. 1745 so that Congressional employees receive the full benefit of the new civil rights bill. Your amendment, and your amendment alone, would make available to Congressional employees the same remedial scheme being made available to all other employees under the bill: the right to have a court decide charges of discrimination and the right to trial by jury and capped compensatory and punitive damages in cases where the bill will make those remedies available to other employees.

I agree with you that Congressional employees should not be confined to an internal Congressional forum such as the Ethics Committee for redress of violations of their civil rights. That approach, which was incorporated into the Americans with Disabilities Act, allows the Congress, unlike any other employer in this country, to be the judge of its own compliance with the civil rights laws. Thus, Congress effectively preserves its exempt status while purporting to eliminate it. Allowing limited review of Ethics Committee decisions by the courts, as Mitchell-Grassley proposes, likewise does not correct the problem. That approach also does not give Congressional employees the same protection of their civil rights as other employees. Instead, Congress should take the opportunity offered by the Civil Rights Act of 1991 to adopt your amendment and thus set an important precedent by imposing on itself <u>in full</u> the <u>same</u> remedial regime that it is imposing on the rest of the country.

I also support your inclusion in your amendment of language eliminating the recently inserted exemption of the Executive branch from punitive damages. That exemption was not added with the agreement of the Administration or at the Administration's request, and we oppose it. Finally, I would like to make clear for the record that, contrary to what some have said, I have absolutely no objection to providing White House employees the identical protections, remedies and procedural rights the bill would give private sector employees.

Let me know if there is anything further I can do to assist you in this important matter.

Sincerely,

GB

Senator Don Nickles
Senate Office Building
Washington, D.C. 20510

October 30, 1991

Dear ~~Chuck~~ Don:

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approach

as Mitchell-Grassley proposes

adopt your amendment & thus

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with the agreement of the Administration

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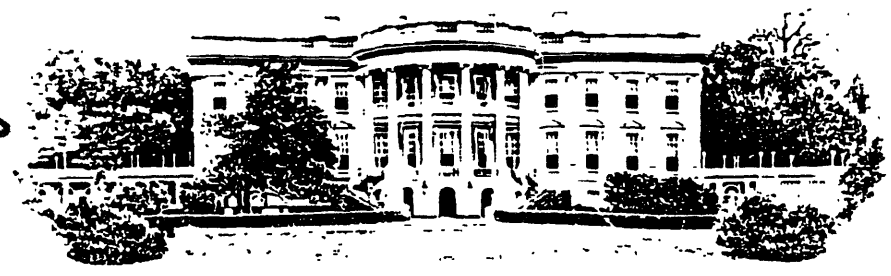
GB

and procedural rights

providing

would give private sector employees.

Don Nickles
Senator ~~Charles Grassley~~
Senate Office Building
Washington, D.C. 20510



THE SITUATION ROOM

PRECEDENCE: ~~IMMEDIATE~~ Urgent
~~PRIORITY~~
ROUTINE

RELEASER: _____

DTG: _____

MESSAGE NO. _____ **CLASSIFICATION** UNCL **PAGES** 2

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

MESSAGE DESCRIPTION
PROPOSED
PREST'L LETTER TO SENATOR DON NICKLES

TO (Agency)	DELIVER TO:	DEPT/ROOM NO.	PHONE NUMBER
SHARON WAGNER (FOR PHIL BRADY)/AIR FORCE ONE			

REMARKS

Phil: Boyden Gray would like for you to call him re the attached. It is basically the same type of letter that was signed for Grassley on 10/28, but has been edited. Incidentally, Lee Leiberman said the letter to Grassley was never given to him. This bill goes on the floor at 12:30PM (E.D.T.)
--Fran
(JG has not seen yet. I will show to him, still in his mtg.)

GR

284201
HU010

THE WHITE HOUSE

WASHINGTON

October 30, 1991

Dear Don:

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Let me know if there is anything further I can do to assist you in this important matter.

Sincerely,

George Bush

911080

The Honorable Don Nickles
United States Senate
Washington, D.C. 20510

21 OCT 30 All:30

THE SITUATION ROOM

PRECEDENCE: ~~IMMEDIATE~~ Urgent **RELEASER:** _____
~~PRIORITY~~
ROUTINE **DTG:** _____

MESSAGE NO. _____ **CLASSIFICATION** UNCL **PAGES** 2

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

MESSAGE DESCRIPTION PROPOSED PREST'l LETTER TO SENATOR DON NICKLES

TO (Agency)	DELIVER TO:	DEPT/ROOM NO.	PHONE NUMBER
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October 30, 1991

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Let me know if there is anything further I can do to assist you in this important matter.

Sincerely,

GB

Senator Don Nickles
Senate Office Building
Washington, D.C. 20510

1:00
Hold until
We hear from
McClure's
Per
Steve
Hart

Pls. send to Fred + Jim Mann (for Dennis)
for comment/clearance ASAP

31 OCT 30 P12:22

October 30, 1991

Dear ~~Chuck~~ Don:

I strongly support your efforts to ~~see to it that~~ amend the Mitchell-Grassley amendment to S. 1745 so that Congressional employees receive the full benefit of the new civil rights bill. ~~That should include~~ making available to Congressional employees the same remedial scheme being made available to all other employees under the bill: the right to have a court decide charges of discrimination and the right to trial by jury and capped compensatory and punitive damages in cases where the bill will make those remedies available to other employees.

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approach

as Mitchell-Grassley proposes

adopt your amendment & thus

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Administration

with the agreement of the Administration

~~the same identical procedures, remedies~~

Let me know if there is anything further I can do to assist you in this important matter.

Sincerely,

GB

and procedural rights

would give private sector employees

providing

Don Nickles
Senator ~~Charles Grassley~~
Senate Office Building
Washington, D.C. 20510

CS

ID# 285061

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

R: 12-10
9:50A
HU010

INCOMING

DATE RECEIVED: NOVEMBER 07, 1991

NAME OF CORRESPONDENT: MR. HUBERT BEATTY

SUBJECT: EXPRESSES VIEWS OPPOSING S. 1745

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	DISPOSITION TYPE RESP	C D	COMPLETED YY/MM/DD
JEFF VOGT		ORG	91/11/07			
Counsel/Lwd	REFERRAL NOTE:	R	91/12/	C		91/12/12
	REFERRAL NOTE:		12/12/91 NL Memo to Schall			
	REFERRAL NOTE:					
	REFERRAL NOTE:					
	REFERRAL NOTE:					

CS

COMMENTS: _____

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

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

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

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

THE WHITE HOUSE

WASHINGTON

December 12, 1991

MEMORANDUM FOR TONY SCHALL

FROM: NELSON LUND

SUBJECT: Response to Incoming from Hubert Beatty (AGC)

Ordinarily, I would have been happy to respond directly to this letter, which was recently staffed to me. In this case, however, I'm reluctant to have a response coming from our office because the last paragraph in Mr. Beatty's letter could be interpreted as recommending or calling for comment on issues of enforcement policy.

Out of an abundance of caution, would you mind responding to the letter? Attached is some draft language that I would have been comfortable with had Beatty's letter not included the last paragraph. Naturally, I offer this language only in an effort to save you some trouble.

Thanks for your help.

December --, 1991

Dear Mr. Beatty:

On behalf of the President, thank you for your letter of November 5.

The President and the Administration are pleased that a compromise was reached on the difficult issues addressed by this new statute. As you know, the bill signed by the President is far different from any of the Democrat proposals, and is also much more reasonable than S. 1745 as originally introduced. The employer community deserves much of the credit for improvements that were made during the legislative process, and AGC played a particularly important role.

Thank you again for your help, and for your support of the President.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • FAX (202) 347-4004

MARVIN M. BLACK, *President* ROBINS H. JACKSON, *Senior Vice President* BYRON L. FARRELL, *Vice President*
LAWRENCE J. McGOUGH, *Treasurer* HUBERT BEATTY, *Executive Vice President*

November 5, 1991

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

Dear Mr. President:

AGC was a member of the Fair Employment Coalition. We disassociate ourselves from its unsigned October 31 letter to you on S.1745 because we do not like its tone.

However, we believe that S.1745 is unnecessary and flawed legislation, and we have urged Congress to reject it.

While we respectfully disagree with your decision, we thank you again for your demonstrated courage in already vetoing 23 bills that were also deserving of such action.

As to S.1745, and paraphrasing an author we do not recall, the best prospects for its repeal will be its stringent execution.

Sincerely,

Hubert Beatty
Executive Vice President

CS

ID # 285126 CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

HU010

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

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

Name of Correspondent: Evan Kemp

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

Subject: Copy of Statement by Sen. Orrin Hatch U.S. Senate Civil Rights Before the Compromise

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuofc	ORIGINATOR	91/11/06		C	91/12/06 CS
Cuat 10	Referral Note:				
	A	91/11/07		S	91/12/07 CS
Cuat07	Referral Note: ATTN: Fyi-see comments				
	I	91/11/07		C	91/11/07 CS
Cuguay	Referral Note:				
	I	91/11/07		C	91/11/07
	Referral Note:				
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	Referral Note:				

ACTION CODES:

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

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

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

CS

Comments: No further action required per N. Luna 12-6-91

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DAILY LABOR REPORT

FULL TEXT SECTION

STATEMENT BY SEN. ORRIN HATCH (R-UTAH) ON CIVIL RIGHTS ACT OF 1991 (S 1745) DELIVERED ON OCT. 29, 1991

STATEMENT OF SEN. ORRIN HATCH BEFORE THE U.S. SENATE CIVIL RIGHTS COMPROMISE

Mr. President, I want to address some of the elements of the compromise civil rights bill now before us. As the Ranking Republican on the Labor and Human Resources Committee, the Republican Floor Manager on this legislation last year and this year, the principal opponent of prior versions of the bill, and original cosponsor of the pending compromise, I have followed this legislation very closely.

I want to turn to the disparate impact provisions of the bill. They have been significantly modified to remove the inducements to quotas represented by earlier versions of the bill.

Many of my colleagues have asked me, with respect to these provisions, what do we tell the business owners of our states—how do we explain this bill to them?

The short answer, Mr. President, is this: Under the disparate impact theory, basically the same business practices and employment standards lawful today under Supreme Court precedents will be lawful after this bill is enacted. The only difference in the law will be that an employer, instead of having a burden of producing evidence to justify the particular practice identified as causing a disparity in a job, must meet a burden of persuasion. This change addresses Section 2 (2) of the congressional findings. In theory, more in practice, this change is an important one. But because an employer's counsel presumably puts the employer's best case forward anyway, regardless of the nature of the employer's burden, this constitutes the most minor practical change in current law that we could make. Indeed, President Bush had agreed to this change in his own bill, S. 611. It is highly unlikely that employers will need to make *any* adjustments in their practices as a result of these provisions. The burden of proof issue is the only part of *Wards Cove* overruled by this bill. I note that the proponents of this bill's predecessors, many of whom now support the pending measure, hold the view that employers had a burden of persuasion under Supreme Court precedents from 1971 to 1989. Under this view, the compromise's disparate impact provisions should not cause any dislocation whatsoever in employer practices.

Now, both on the Floor Friday and in news accounts over the weekend, if accurate, I have heard and read extraordinary accounts of what happened with respect to the disparate impact provisions of this bill. Some of my friends on the other side of the aisle are still playing politics, claiming the President has caved in. Some have asserted that the claim that this bill's predecessors would lead to quotas was untrue. They now assert that virtually no change was made in the disparate impact provisions and the President just decided to stop playing politics and accept the bill. I responded to this, in part, on Friday. Our distinguished majority leader was quoted on Saturday as saying, "If these few [changed] words provide the President with a fig leaf to cover his retreat, that's fine." [*Washington Post*, October 26, 1991, p.7]. A lawyer with a prominent civil rights litigation group was quoted as saying, "If you look at this language and compare it to the numerous other proposals that they labeled a quota bill, you won't be able to find any basis for why this one is different." [*Washington Post*, October 26, 1991, p.6] And, Mr. President, if anyone believes that comment, he or she can believe anything.

It is unfortunate that some of my friends on the other side of the aisle have decided to use this compromise to criticize the President. In so doing, they would have us disregard the major changes in the bill resulting from the President's strong stand against quotas. They would have us treat these changes as if they never occurred. They would ignore the significance of these changes.

Let us take a look at the very significant changes in the bill that some would have us believe never took place.

Purpose Clause

In its "Purposes" clause, S. 1745 said in pertinent part that the "purposes of this Act are . . . to overrule the proof burdens and meaning of business necessity in *Wards Cove Packing Co. v. Atonio* and to codify the proof burdens and the meaning of business necessity used in *Griggs v. Duke Power Co.* . . . ."

What does the new "Purposes" clause say? "The purposes of this Act are — . . . to codify the concept of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs v. Duke Power Co.*, and in the other Supreme Court decisions prior to *Ward Cove Packing Co. v. Atonio*." No longer is the bill overruling the meaning of business necessity in *Ward Cove*. Instead, the bill seeks to codify the meaning of that phrase in *Griggs* and subsequent Supreme Court decisions prior to *Wards Cove*. This will become very significant when we look for the definition of job-related and business necessity in the pending measure. Why? Because there are no definitions of these terms in the pending measure.

This is what makes so ironic the civil rights lawyer's invitation, quoted earlier, to compare the current language to earlier versions.

Business Necessity

Here are some of the prior definitions of business necessity:

From S. 2104, the original bill from 1990: "essential to effective job performance." Gone.

From the very first Danforth-Kennedy proposal in the Spring of 1990: "substantial and demonstrable relationship to effective job performance." Gone.

From the bill passed by the Senate last July: a two-tier definition whose key phrase was: "significant relationship to successful performance of the job." Gone.

The bill vetoed by the President contained yet different language in the two tiers. Gone.

S. 1208, the first Danforth bill this year, had a two-tier definition whose key phrase was "manifest relationship to requirements for effective job performance." It then includ-

ed a subdefinition of a term wholly created by the bill: "requirements for effective job performance." This subdefinition contained two tiers. These are completely eliminated.

S. 1408, the second Danforth bill this year, also bifurcated the definition of "business necessity" and further subdefined that term. These definitions are gone.

S. 1745, the pending bill's immediate predecessor, contained a two-tier definition of business necessity. It also contained a subdefinition of a key phrase from *Griggs* and its progeny which had never been defined before: "the employment in question." That subdefinition itself contained two tiers. All of this is gone.

I ask unanimous consent that the Dear Colleague letters I sent on this year's versions of the bill, explaining my concerns about them, concerns shared by the President, be included in the Record following my remarks.

In the place of these countless definitions of business necessity, what does the compromise say? It says the challenged practice must be "job-related for the position in question and consistent with business necessity." Neither term is defined in the bill.

So, we return to the Purposes section I read earlier. One of the purposes of the Act is "to codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs v. Duke Power* (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio*."

It is important to note that this formulation refers to Supreme Court decisions—not the narrower notion of Supreme Court holdings. The choice of the broader reference to "decisions" was a deliberate one. Nor are lower court decisions to be the Supreme Court's future guide.

Now, what do these Supreme Court decisions say about business necessity?

Griggs said: "... any given requirement must have a manifest relationship to the employment in question." 401 U.S. at 432. There is no two-tier definition, no subdefinition of the term "employment in question." The Court also said in *Griggs*: "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins." *Id.* at 436.

This manifest relationship to the employment standard is the consistent standard applied by the Supreme Court. The Court has used this phrase in *Albemarle Paper Co. v. Moody*, 422 U.S. at 425 (1975); *Dothard v. Rawlinson*, 433 U.S. at 329 (1977); *New York Transit Authority v. Beazer*, 440 U.S. at 587 n.31 (1979); *Connecticut v. Teal*, 457 U.S. at 446 (1982) (a Justice Brennan opinion); and *Watson v. Ft. Worth Bank and Trust*, 108 S.Ct. at 2790 (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in *Wards Cove*, joined by Justices Brennan, Marshall, and Blackmun, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

This is a flexible concept that encompasses more than actual performance of actual work activities or behavior important to the job. See *Washington v. Davis*, 426 U.S. 229, 249-251 (1976).

Indeed, the Supreme Court's 1979 decision in *New York Transit Authority v. Beazer* 440 U.S. 568 (1979) is highly significant. This decision was well known to all sides in these negotiations and debates. The *Beazer* case involved a challenge to the New York Transit Authority's blanket no-drug rule, as it applied to methadone users seeking non-safety sensitive jobs. A lower court had found a Title VII disparate impact violation. The Supreme Court, however, reversed:

"At best, [the plaintiffs'] statistical showing is weak; even if it is capable of establishing a prima facie case of discrimination, it is assuredly rebutted by [the employer's] demonstration that its narcotics rule (and the rule's application to methadone users) is 'job related ....'" [440 U.S. at 587] The Court noted that the parties agreed "that [the employer's] legitimate employment goals of safety and efficiency require the exclusion of all users of illegal narcotics. * * * Finally, the District court noted that those goals are significantly served by—even if they do not require—[the employer's] rule as it applies to all methadone users, including those who are seeking employment in non-safety-sensitive positions. The record thus demonstrates that [the employer's] rule bears a 'manifest relationship to the employment in question.' *Griggs v. Duke Power Co.*, 401 U.S. 424, 432." [*Id.* at 587, n.31.]

If the language from the 1979 *Beazer* decision sounds familiar, it should. The Supreme Court's formulation in *Wards Cove* is not only based upon it, it is nearly identical. By removing the language in the purposes clause stating the bill overruled *Wards Cove* with respect "to the meaning of business necessity," by substituting the language in the compromise purposes section referring to Supreme Court decisions prior to *Wards Cove*, and by removing the definitions of business necessity or job-related and any definition of "employment in question," the compromise leaves the Supreme Court free to reach the same formulation of "business necessity" and "job-related" as it did in *Wards Cove* and *Beazer*. Indeed, *Beazer* is unquestionably reaffirmed by the compromise's purposes clause and the *Wards Cove* formulation of business necessity is not overruled.

I note that in *Watson v. Fort Worth Bank and Trust*, 108 S.Ct. 2777, decided in 1988, Justice O'Connor warned us about the real risk of imposing quotas on the American people if the Title VII disparate impact theory is misused. In that case, the Supreme Court actually extended the application of the disparate impact theory to subjective employment practices, a great victory for civil rights plaintiffs. She then went on to say in her plurality opinion:

> "We agree that the inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate phrophylactic measures. It is completely unrealistic to assume that unlawful discrimination is the sole cause of people failing to gravitate to jobs and employers in accord with the laws of chance.... It would be equally unrealistic to suppose that employers can eliminate, or discover and explain, the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces. Congress has specifically provided that employers are not required to avoid 'disparate impact' as such; [citing a specific provision of Title VII (Section 703(j)]. Preferential treatment and the use of quotas by public employers subject to Title VII can violate the Constitution, ... and it has long been recognized that legal rules leaving any class of employers with "little choice" but to adopt such measures would be "far from the intent of Title VII ...." *Watson*, 108 S.Ct. at 2787-88 (quoting Justice Blackmun in *Albermarle Paper Co. v. Moody*, 422 U.S. at 449) [citations omitted, emphasis in original]. Thus, Justice O'Connor acknowledged that:
>
> > "Extending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially cata-

strophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met. Allowing the evolution of disparate impact analysis to lead to this result would be contrary to Congress' clearly expressed intent, and it should not be the effect of our decision today." Id. at 2788.

"We recognize, however, that today's extension of [the disparate impact] theory into the context of subjective selection practices could increase the risk that employers will be given incentives to adopt quotas or to engage in preferential treatment. Because Congress has so clearly and emphatically expressed its intent that Title VII not lead to this result, 42 U.S.C. Section 2000e-2(j), we think it imperative to explain in some detail why the evidentiary standards that apply in these cases should serve as adequate safeguards against the danger that Congress recognized." Id. at 2788.

And then Justice O'Connor, in her plurality opinion, laid out the standards for proving a disparate impact case: 1) a plaintiff must identify the specific practice it is challenging that is causing the imbalance; 2) the plaintiff retains the ultimate burden of persuasion, i.e., to prove that discrimination has occurred; and 3) citing *Griggs* and the Court's 1979 *Beazer* decision, business necessity means "manifest relationship to the employment in question" or significantly serving legitimate employment goals of the employer, terms which she treated as interchangeable. This was the way quotas could be avoided under the disparate impact theory. This position obtained a fifth vote, that of Justice Kennedy, in *Wards Cove*.

As I mentioned earlier, previous versions of this bill overturned all three safeguards against quotas. This bill overturns the *Wards Cove* decision *only* with respect to the burden of proof issue. The other two safeguards are preserved by the compromise measure.

Justice O'Connor went on to say:

"Some qualities—for example, common sense, good judgment, originality, ambition, loyalty, and tact—cannot be measured accurately through standardized testing techniques. Moreover, success at many jobs in which such qualities are crucial cannot be measured directly. Opinions often differ when managers and supervisors are evaluated, and the same can be said for many jobs that involve close cooperation with one's coworkers or complex and subtle tasks like the provision of professional services or personal counseling." 108 S.Ct. at 2787.

She said that subjective or discretionary employment decisions and criteria should still be readily defensible under Title VII's disparate impact theory *as the Supreme Court developed it, with the safeguards she delineated and I mentioned earlier,* only the least important of which is overturned by this compromise bill. She noted that "courts are generally less competent than employers to restructure business practices ...." 108 S.Ct. at 2791.

By way of further explication of the significance of the changes in the bill which enabled me to cosponsor it and President Bush to support it, let me cite one more newspaper quote from the civil rights lawyer I quoted earlier: "Now all practices must meet the job performance standard, which is what we said from the beginning." [Washington Post, p.6, Oct. 26, 1991]. Wrong.

Let me stress that the Supreme Court, in *Griggs* and its subsequent disparate impact cases, treated the concept of employment and job-relatedness flexibly. These terms did not mean a requirement had to be tied to performance of actual work activities or behavior important to the job. In a case decided under Title VII standards, the Supreme Court made this clear. This is a case decided after *Griggs* in 1976: *Washington v. Davis*, 426 U.S. 229 (1976). There, the Court considered a test used by the District of Columbia to screen applicants for a 17-week training program at the Police Academy. The test had a disparate impact on minorities. The District Court had found the test acceptable. The Court of Appeals struck down the test because it could not say there was "a direct relationship between performance on [the test] and performance on the policeman's job." [426 U.S. at 250]

Significantly, the Supreme Court reversed. Here is what the Supreme Court said:

"The advisability of the police recruit training course informing the recruit about his upcoming job, acquainting him with its demands, and attempting to impart a modicum of required skills seems conceded. It is also apparent to us, as it was to the District Judge, that some minimum verbal and communicative skill would be very useful, if not essential, to satisfactory progress in the training regimen ... [The] District Court concluded that [the test] was directly related to the requirements of the police training program and that a positive relationship between the test and training-course performance was sufficient to validate the former, wholly aside from its possible relationship to actual performance as a police officer."

The Supreme Court tellingly added: "Nor is [this] conclusion foreclosed by either *Griggs* or *Albemarle Paper v. Moody* [another Supreme Court disparate impact case], and it seems to use the much more sensible construction of the job-relatedness requirement." [426 U.S. at 250-251].

Thus, the Supreme Court made clear that job-relatedness goes beyond performance of the job itself or behavior important to the job. This is one more very important case overturned by the earlier versions of this bill, but preserved by the pending measure.

Mr. President, I note that the *Washington v. Davis* case has been cited by the Supreme Court in *Dothard v. Rawlinson* (1977), *Watson v. Ft. Worth Bank & Trust*, and in the *Wards Cove* decision itself. I referred to it in my Dear Colleague of September 24, 1991. It was referred to during last year's debate on the bill.

Indeed, in the *Watson* case, Justice O'Connor presented an excellent summary of the Supreme Court's position that an employer can justify its selection and other employment practices on grounds other than how they relate to job performance, and that the term job-related encompasses more than job performance. This is what Justice O'Connor said in *Watson*:

"Our cases make it clear that employers are not required, even when defending standardized or objective tests, to introduce formal 'validation studies' showing that particular criteria predict actual on-the-job performance. In *Beazer*, for example, the Court considered it obvious that 'legitimate employment goals of safety and efficiency' permitted the exclusion of methadone users from employment with the New York City Transit Authority; the Court indicated that the 'manifest relationship' test was satisfied even with respect to non-safety-sensitive jobs because those legitimate goals were 'significantly served by' the exclusionary rule at issue in that case even though the rule was not required by those goals. [440 U.S, at 587, n. 31]. Similarly, in *Washington v. Davis*, the Court held that the 'job relatedness' requirement was satisfied when the employer demonstrated that a written test was related to success at a police training academy '*wholly aside from [the test's] possible relation-*

ship to actual performance as a police officer.' [426 U.S., at 250]. See also *id*, at 256, (STEVENS, J., concurring) ("[A]s a matter of law, it is permissible for the police department to use a test for the purpose of predicting ability to master a training program even if the test does not otherwise predict ability to perform on the job"). 108 S. Ct. at 2790-2791.

Any suggestion that the Supreme Court has interpreted job-relatedness or manifest relationship to the employment in question as narrowly tied to performance of actual work behaviors, or behavior important to the job, is belied by a simple review of the pre-*Wards Cove* Supreme Court decisions themselves. And, as mentioned earlier, those decisions are implicitly reaffirmed by this bill.

Particularity

The President's position in requiring a plaintiff to identify the particular practice causing a disparity in a disparate impact case has been preserved. The law on particularity will be the same after enactment of this bill as it is today. Let us compare the language of the pending compromise measure with earlier, unacceptable versions.

In S. 2104 as introduced, a plaintiff could challenge an entire "group of employment practices," defined as "a combination of employment practices or an overall employment process." That language is gone.

From the bill that emerged last year from the Senate Labor Committee: "The term 'group of employment practices' means a combination of employment practices that produce one or more employment decisions." Gone.

The bill that passed the Senate had yet another formulation "a combination of employment practices that produces one or more decisions with respect to employment, employment referral, or admission to a labor organization." It is gone.

The bill vetoed by the President had yet a further twist to the definition. It is gone.

S. 1408, the next Danforth bill, and S. 1475, the immediate predecessor of the compromise, refer in pertinent part, to "a particular employment practice or particular employment practices [causing] ... in whole or significant part, the disparate impact ..." This formulation is gone.

For a long time, proponents of this bill's predecessors refused to use the word "cause," that is, the employment practice in question causes the disparity. The term "results in" was used, a much looser concept, inconsistent with Supreme Court case law.

Significantly, the bill now reads that an unlawful employment is established if, in pertinent part, "a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact ..."

Further, it states that "with respect to demonstrating that a particular employment practice causes a disparate impact ... the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice."

Thus, particularity is preserved and causation is required. The "exception" for a decisionmaking process not capable of separation for analysis is fully consistent with the *Wards Cove* particularity requirement. It covers the narrow circumstance typified by the height and weight requirement in *Dothard*, where the employer clearly and deliberately treats closely related requirements as inseparable components of a single measuring device.

Moreover, language from the bill vetoed by the President, excusing the plaintiff from the particularity requirement due to a lack of records, is dropped. This bill contains no requirement regarding record retention — existing rules of civil procedure govern. If an employer's records discoverable under the rules of civil procedure are insufficient to aid a plaintiff's effort to identify a particular practice causing a disparity where the elements of a decisionmaking process are capable of separation for analysis, then, obviously, the plaintiff must make recourse to the disparate treatment theory under Title VII.

Alternative Practices

Once an employer meets its burden of persuasion that its challenged practice is justifiable, a plaintiff may still prevail. Here is how Justice O'Connor described the plaintiff's responsibility in *Watson*:

> "The plaintiff must 'show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in efficient and trustworthy workmanship,' " citing the *Albemarle Paper Co. v. Moody*, the Supreme Court case from 1975. She added: "Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the employer's legitimate business goals ...." 108 S.Ct. 2790.

President Bush did not retreat one inch on the quota-inducing elements of the disparate impact provisions of this bill. He gained ground for American people and the principle of equal opportunity for individuals. This bill also outlaws race-norming, the alteration of test results to adjust scores on racial, ethnic, and gender bases. Where the President compromised was on the damages issue, going beyond the relief for harassment he had been willing to establish in his own bill, S. 611. He also compromised somewhat on *Martin v. Wilks* and the right to a day in court.

Moreover, a number of pro-lawyer provisions of last year's versions of the bill have been completely dropped by Senator Danforth. This is a further vindication of the President's resistance to legislation creating a bonanza for lawyers. For example, earlier versions extended the statute of limitations for filing claims, overturning at least three Supreme Court decisions: *United Airlines v. Evans*, 431 U.S. 553 (1971); *Delaware State College v. Ricks*, 449 U.S. 250 (1980); and *Chardon v. Fernandez*, 454 U.S. 6 (1981). Earlier versions prohibited attorneys fee waivers in class action settlements overturning *Evans v. Jeff D.*, 475 U.S. 717 (1986). Finally, earlier versions overturned the Supreme Court's decision in *Independent Federation of Flight Attendants v. Zipes*, 109 S. Ct. 2732 (1989), permitting the recovery of plaintiff's attorneys fees from the original defendant in actions by intervenors.

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End of Section

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Evan J. Kemp, Jr., Chairman

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

Subject: Shocked and angered by President's support for Sen. Kennedy's racial quota bill

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/11/08 WS		C	91/12/12 CS
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CUAT 10	A	91/11/12		C	91/12/12 CS
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ACTION

DISPOSITION

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285761/CU Oct 26, 1991

cbGray

Dear Mr President:

I am shocked and Angered at your support for Senator Kennedy's racial quota bill.

Since you are exempt from this law you do not care about those who are not.

THE LAW PUTS EVERY US MANAGER AND SUPERVISOR AT RISK THAT HIS REPUTATION FOR FAIRNESS WILL BE RUINED AND ALL HIS FAMILIES BELONGINGS TAKEN FROM THEM IN A TRIAL THAT:

1. PROVIDES NO RIGHT TO A JURY;
2. REQUIRES NO ACTUAL DISCRIMINATION;
3. ALLOWS LIMITLESS DAMAGES IN RACIAL CLAIMS;
4. CAN BE FILED AGAINST A MANAGER PERSONALLY (NOT AS AN AGENT OF THE FIRM) UNDER BIVENS;
5. REQUIRES THE MANAGER TO DISPROVE THE CHARGE -- THE DISGRUNTLED EMPLOYEE HAS NOTHING TO DO, NOTHING TO LOSE;
6. PROVIDES NO GOVERNMENT APPOINTED COUNSEL. MANAGERS CAN BE DESTROYED BY LEGAL FEES ALONE; AND
7. CANNOT BE RELIABLY AVOIDED BY ANY STEPS MANAGEMENT TAKES TO BALANCE THE WORKFORCE SINCE EVERY SEGMENT OF THE FIRM MUST BE STATISTICALLY BALANCED -- A VIRTUAL IMPOSSIBILITY.

FORM OBD-183
MAR 83

YOU WILL REGRET SIGNING THIS BILL. YOU ASSUME CONSERVATIVES MUST VOTE FOR YOU, BUT YOU ARE WRONG. IF YOU AND KENNEDY ARE ALIKE, WE WILL VOTE FOR NEITHER.

BEYOND THAT, WE WILL NO LONGER DEFEND YOU ON THE ECONOMY, TAXES, ETC. WHERE YOU ARE VULNERABLE TO GENERAL CRITICISM.

YOU MAY NOT UNDERSTAND THE SMOLDERING ANGER THIS LAW GENERATES. BUT YOU, YOUR STAFF, AND ALL YOUR ADMINISTRATION WILL AT ELECTION TIME.

THIS BILL UNDERMINES RACIAL HARMONY BECAUSE OF THE FEAR AND DISTRUST IT CAUSES. RACIAL FAVORITISM WILL NEVER UNITE THE NATION.

SINCERELY

R. H. BLACK

P.S. LOOK WHAT THE MEDIA SAYS ABOUT THIS FLIP-FLOP!

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MAR 83

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Name of Correspondent: CONGRESSMAN JOHN LaFALCE

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

Subject: Compromise on Civil Rights Act looks close to what he discussed with CBG in the past; hopes to get to work together in future

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

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CBoyden Gray
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Chron.

THE WHITE HOUSE

WASHINGTON

December 12, 1991

Dear John:

Thanks for your letter of November 6, and please accept my apologies for the delay in responding.

I agree that the compromise civil rights bill the President signed into law is remarkably close to the bill that you and Mr. Michel introduced last year, especially on the disparate impact issues. Your leadership last year, I am convinced, was helpful in laying the necessary groundwork for the compromise that eventually emerged. For that, we are all in your debt.

I, too, look forward to working together on other, less contentious issues. Thanks again for writing.

Yours truly,

Original signed by

C. Boyden Gray
Counsel to the President

The Honorable John J. LaFalce
United States House of Representatives
Washington, DC 20515

THE WHITE HOUSE

WASHINGTON

December 11, 1991

MEMORANDUM FOR C. BOYDEN GRAY

FROM: NELSON LUND

SUBJECT: Incoming from Cong. LaFalce on Civil Rights Bill

Attached, for your signature, is a draft response to the captioned letter.

Attachment

285899cw

JOHN J. LaFALCE
32ND DISTRICT NEW YORK

2367 RAYBURN BUILDING
WASHINGTON, DC 20515
(202) 225-3231

FEDERAL BUILDING
BUFFALO, NY 14202
(716) 846-4056

MAIN POST OFFICE BUILDING
NIAGARA FALLS, NY 14302
(716) 284-9976

FEDERAL BUILDING
ROCHESTER, NY 14614
(716) 263-6424

Congress of the United States
House of Representatives
Washington, DC 20515

November 6, 1991

C. Boyden Gray, Esquire
Counsel to the President
The White House
Washington, DC 20500

Dear Boyden:

I am sure you are pleased that a compromise has finally been worked out which will enable the passage of the Civil Rights Act. As I look at the compromise it looks damn close to what we discussed over a year ago. In fact, the compromise on the definitions of "business necessity" - referring the matter to Griggs and the other cases prior to Wards Cove, was precisely what Charlie Fried suggested when he testified before my Committee at that time.

I hope we get to work together again on other - less controversial - matters in the future.

With best regards,

Sincerely,

JOHN J. LaFALCE
Member of Congress

JJL:jmj

ID # 285920 CU

CS

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET 142010 CMH

11.15.91
9:30am

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

Name of Correspondent: BOBBIE KILBERG

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

Subject: Forwards copy of letter from U.S. Commission on Civil Rights, asking each federal department and agency for documents

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
CUOFC	ORIGINATOR	91/11/12 TC		C	91/11/26 CS
CUAT 10	Referral Note: I	91/11/13 TC		C	91/11/14 CS
CUGray	Referral Note: I	Restaff Cuat 30 91/11/13		C	91/11/13 TC
CUAT 02	Referral Note: I	91/11/13		C	91/11/13 CS TC
Cuat 30	Referral Note: A	91/11/14		C	9/11/26
	Referral Note:				see comments

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 action required 11.26.91 GCS 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

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

To: Boyden Gray
From: Bobbie Kilberg
FYI. Civil Rights Commission has asked each federal dept & agency for these documents.

October 25, 1991

Honorable Paul D. Coverdell, Director
U.S. Peace Corps
Esplande Building
1990 K. Street, N. W.
Room 8114
Washington, D. C. 20526

COUNSEL'S OFFICE
RECEIVED
NOV 08 1991

Dear Honorable Coverdell:

Pursuant to the Civil Rights Act of 1983, specifically, Section 5 (a) 3 of Public Law 98-183, the U.S. Commission on Civil Rights is responsible for monitoring and evaluating all Federal agencies enforcement of civil rights laws and policies with respect to discrimination or denials of equal protection of the laws under the constitution because of race, color, religion, sex, age, handicap, national origin or in the administration of justice.

The Commission's monitoring activities will be conducted in four phases. These phases will include a desk audit, an on-site review, off-site research and analysis, and where appropriate, a report with findings and recommendations to Congress and the Administration.

The Agency will be given an opportunity to review and comment on all draft reports prior to submission to appropriate officials.

In order to expedite the monitoring process the Commission request that you appoint a liaison person to work with the Commission's staff. This individual should be at the executive staff level and have authority to immediately respond to any Commission request for information or documents.

In addition, the Commission request that you **provide the information indicated in the enclosed itemized listing within (90) days of receipt of this correspondence.** The information requested is designed to assist us in preparing for the on-site review and to reduce the amount of time and level of effort required by the Commission and your representatives during this phase of the monitoring process. Our enabling legislation requires that Federal agencies "cooperate fully" in the fulfilling of the above responsibilities (42 U.S.C. 1975c sec. 5 (a) and 6 (e) respectively).

I will contact you prior to the on-site review, to establish an appointment to briefly discuss the desk audit findings and respond to any specific questions. Please have your liaison person contact Mr. J. Terry Carney at (202) 376-8073 or 376-8512, if there are any questions concerning the enclosed itemized list.

Sincerely,

Frederick D. Isler

FREDERICK D. ISLER
Director
Office for Federal Civil Rights Evaluation

cc:
Commissioners
Staff Director

THE WHITE HOUSE

WASHINGTON

ORM OPTICAL DISK NETWORK

ID# 285920cu

____ 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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ITEMIZED LISTING

These documents are essential to our conducting the desk audit phase of this evaluation. Please provide all of the requested information on or before February 4, 1992 to:

U.S. Commission on Civil Rights
Office for Federal Civil Rights Evaluation
1121 Vermont Avenue, N.W., Room 700
Washington, D.C. 20425

1. Primary agency contacts with regard to the enforcement of equal employment opportunity laws, specifically the person responsible for managing the agency Affirmative Employment Programs and Federal Equal Opportunity Recruitment Program. Also, include the name and telephone number of the agency liaison person for all information.

2. Current fiscal year (1992) and prior fiscal years (1988 through 1991) EEO Office Organizational charts(s) with names and titles of key persons (names to the extent possible for previous years).

3. EEO Office request and agency-approved appropriations, as well as money obligated for fiscal years (1988 through 1991). If the 1992 budget has not been appropriated by the Agency, give explanation of its current status. Also provide projected EEO Office budget for fiscal year 1993. Include a table showing EEO Office budget totals, FTEs for fiscal years 1988, 1989, 1990, 1991, and requests for fiscal years 1992, (unless already appropriated) and 1993.

4. Current fiscal year (1992) and prior fiscal years (1988 through 1991) EEO staff by position, title, series, grade, geographical location and work unit. Include a table showing full-time permanent staff positions for fiscal years 1992 and 1993. Include collateral duty personnel in a separate break-out with identical information.

5. Current fiscal year (1992) and prior fiscal years (1988 through 1991) training received by EEO Office Staff, include a table showing the name of the courses and EEO Office staff training budget expenditures for fiscal years 1988, 1989, 1990, 1991 and proposed budget expenditures for fiscal years 1992 and 1993,

6. Prior fiscal years (1988 through 1991) congressional testimonies related to the agency's Equal Employment Opportunity Programs presented to congressional budget and oversight committees.

7. Current copy of manuals, handbooks, etc., containing policy and guidance

to internal EEO staff, including any interpretative memorandum issued with regard to implementing EEO laws, regulations and policies at your agency.

8. Copies of all EEO policy memorandums, directives, orders and bulletins issued externally to agency employees and supervisors during fiscal years 1988 through 1991 and the first quarter of fiscal year 1992.

9. Copies of all new policy development documents (i.e., disparate impact, mixed motive cases, finality of consent decrees, terms and conditions of the contractual employment relationship, challenges to seniority systems, test scores, numerical goals, pay equity, glass ceiling and alternative dispute resolution) issued internally during fiscal years 1988 through 1991 and the first quarter of fiscal year 1992.

10. Current fiscal year (1992) and prior fiscal years (1988 through 1991) EEO Office's "strategic management plans" (alternative names for such plans may be operating plan or work plan, or any document that identifies the EEO office specific goals, objectives, action steps and time frames for accomplishment).

11. Description of the EEO office's current "quality assurance" program along with any reports, or memorandum showing the EEO office internal analysis of strengths and weaknesses with regard to quality, and the actions taken as a result of the findings.

12. Identify any legislation enacted during and after fiscal year 1987 that has affected or will affect your EEO operational structure, and provide agency analysis of its impact on current and future operations. Such analysis is usually required by OMB, or may have been prepared for testimony before a Congressional Subcommittee.

13. Identify any proposed regulation, revisions by the U.S. Equal Employment Opportunity Commission (i.e. 29 CFR 1614) that will affect your EEO operational process, and provide a copy of the agency analysis of its impact if enacted.

14. Copy of your agency Federal Affirmative Employment Multi-Year Program Plans, Annual Accomplishment Reports and Annual Plan Updates for fiscal years 1988 through 1992.

15. Prior fiscal years (1988 through 1991) EEO barrier analysis of the following, including a summary of findings:

- o Supervisor /Employee EEO surveys
- o EEO complaint data
- o Hiring/selection/promotion adverse impact/disparate treatment analysis
- o Flow of applicants through employment process

- o Applicant source
- o Recruitment source
- o Transaction (i.e. awards, training, performance ratings, special assignments, disciplinary actions) data
- o Separation patterns.

If your agency did not conduct an EEO barrier analysis on the specific areas identified above, please submit the EEO barrier analysis report that was conducted during each fiscal year (1988 through 1991)

16. Copy of your agency Federal Equal Opportunity Recruitment Program Plans (FEORP), Annual Accomplishment Reports and Annual Plan Update for fiscal years 1988 through 1992.

17. **Submit prior fiscal years (1988 through 1991) recruitment, selection and staffing analysis of the following, including a summary of findings. (Please identify the fiscal years the analysis was conducted):**

- o Assessment of FEORP target occupations to be filled (projected opportunities) for the next fiscal year
- o Identification of FEORP target occupations suitable for external recruitment
- o Assessment of internal minority/female candidates qualifications
- o Allocation for FEORP staffing budget each fiscal year
- o Descriptions of special efforts to locate and recruit minority and female candidates.

If your agency did not conduct an analysis in the above areas, please explain.

18. Number of on-site EEO program evaluations conducted and completed in each fiscal year (1988 through 1991), a summary of findings from each review, including a description of the actions taken by the agency to correct the identified problem areas, deficiencies or barriers.

19. Provide an analysis of trends, showing the nature and type of problem areas, deficiencies or barriers identified during fiscal years 1988 through 1991.

20. Provide copies for fiscal years 1988, 1989, 1990 and 1991 the agency's comprehensive plan of action to prevent sexual harassment in the workplace.

21. Current copy of the agency's internal procedures for handling EEO complaints in the informal and formal stage.

22. Current copy of the agency's internal procedures for handling sexual harassment complaints in the informal and formal stage.

23. Current copies of any Alternative means of dispute resolution handbook, manual, brochure or procedures.

24. Current and prior fiscal years (1988 through 1991) informal complaint processing statistical data. The informal complaint processing statistical data if possible should be broken out in the following manner:

Informal Complaints by statute, basis and issue, separate tables for each fiscal year

- o Number of informal complaints received
- o Number of persons counseled
- o Average days in the counselling stage
- o Average informal complaint processing time
- o Number of informal complaint (counselling reports) issued
- o Number of resolutions - please show this information in a table(s) by statute, basis and issue
- o Number and percentage of written settlement agreements
- o Number and percentage of informal complaints closed due to written withdrawal request by complainant
- o Number and percentage of informal complaints closed for lack of jurisdiction, and failure to proceed
- o Number and percentage of settlement agreements that include full relief, reinstatement, promotion, back pay
- o Identify the specific resolution obtain (i.e. leave restored, reassignment, promotion
- o Monetary benefits - including total dollars, and number of people benefitting, please show this information in a table(s) by statute, basis and issue.

Request that all informal complaints with sexual harassment as one of the basis or "implications" be broken out separately.

Formal EEO Complaints by statute, basis and issue, separate tables for each fiscal year

- o Number of complaints filed

- o Average complaint processing time by jurisdiction, basis, and issue
- o Investigator productivity - Number of completed reports of investigation (ROIs) received in each fiscal year, number of ROIs returned for supplement investigations, average number of formal complaints filed per assigned investigator, average number complaints investigated per assigned investigator, average number of days complaint is in the investigative process
- o Number of Proposed Disposition issued each fiscal year
- o Average number of days to write and issue a Proposed Disposition
- o Average complaint processing time from filing to closure of complaints with "cause" findings
- o Average complaint processing time from filing to closure of complaints with "no cause" findings
- o Number and percentage of cause findings
- o Number and percentage of no cause findings
- o Number of cases resolved each fiscal year
- o Number and percentage of settlement agreements
- o Number and percentage of settlement agreements that included full relief, reinstatement, backpay, selection, promotion, etc.
- o Type of relief received by victims of discrimination (i.e. backpay, reinstatement, promotion)
- o Monetary Benefits - including total dollars, and number of people benefitting during fiscal years 1987 through 1991 (please show this information in table(s) by statute, basis, and issue)
- o Total attorney fees
- o Number and percentage of settlement agreements obtain through the informal administrative adjudication process
- o Monetary benefits obtained in informal administrative adjudication process
- o Number and percentage of settlement agreements obtain in the EEOC Hearing stage
- o Monetary benefits obtained in the EEOC Hearing stage
- o Number and percentage of cases in the Hearing process over 90 days, over 180 days and over 360 days

- o **Number and percentage of cases in which the Administrative Law Judge issued a "no cause" finding, indicate jurisdiction, basis, issue**

- o Number and percentage of cases in which the Administrative Law Judge issued a finding of discrimination, indicate jurisdiction, basis, issue

- o Complaints awaiting processing (pending or backlogged)

- o **Pending Inventory** - broken out into tables by period of time in inventory in increments of 90-day periods, 90, 180, 270, 360, and longer and cross-referenced by statute, basis, and issue if possible, during fiscal years 1987 through 1991.

Request that all formal complaints with sexual harassment as the basis be broken out separately.

25. **Current copy of the agency's EEO training modules for supervisors and employees.**

26. The most current copy of the self-evaluation report of programs and activities conducted by the agency in compliance with Section 504, Part 85 of the Rehabilitation Act of 1973, as amended.

27. A description of the EEO Office's priorities requiring attention in fiscal year 1992 (examples may include: policy reforms in a given area, a new data system, quality assurance program, staff training in a particular area, etc.).

28. A description of management reforms, or significant changes from fiscal years 1987 through 1991.

29. Copies of all Equal Employment Opportunity laws, statutes, regulations, directives, manual issuances and policies issued and enforced by the EEO Office.

30. Current EEO Office telephone directory(s).

If you are unable to provide any of the items listed, please provide a written explanation.