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2025-0373-S

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the George Bush Presidential
Library Staff.**

Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Chief of Staff, White House Office of
Series: Card, Andrew, Files
Subseries:

OA/ID Number: 08373
Folder ID Number: 08373-009a

Folder Title:
Counsel's Office Materials [1]

Stack:	Row:	Section:	Shelf:	Position:
G	15	22	2	

Withdrawal/Redaction Sheet (George Bush Library)

Doc. No. / Type	Subject/Title	Date	Restriction	Classification
01. Resume	Re: Janis M. (Sordillo) Berry; birthdate redacted. (1 pp.)	n.d.	(b)(6)	
02. Resume	Re: Janis M. (Sordillo) Berry; birthdate redacted. (1 pp.)	n.d.	(b)(6)	
03. Memo	C. Boyden Gray to President Bush, Re: Fifth Circuit Vacancy. (1 pp.)	06/22/90	(b)(6)	

Page 1 of 1

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Card, Andrew H., Jr., Files
Subseries:
WHORM Cat.:
File Location: Counsel's Office Materials [1]

Pinksheet Number: RML16185
OA/ID Number: 08373-009a
Date Closed: 5/16/2025
FOIA/Sys Case #: 2025-0373-S
Re-review Case #:
P-2/P-5 Review Case #:

THE WHITE HOUSE
WASHINGTON

Date: 12-22-91

AC HAS SEEN

TO: *Boyd Gray*

FROM: ANDY CARD *Andy*

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

December 20, 1991

JTTER

*Would it be appropriate to
share this with Bill Barr?*

1 to preclear the Texas congressional map is
ating factors -- (1) alternative plans
olated the Voting Rights Act were never
introduced in the Legislature for normal votes, and (2) there was only minimal
opposition from voting rights groups to the plan.

Despite these shortcomings, an independent analysis by Justice could have and should
have shown that the State failed to meet its burden under Section 5 of the Voting Rights
Act that its plans were free of a racially discriminatory purpose or retrogressive effect.
Indeed, it appears that Justice's reasons for rejecting the North Carolina maps on
Wednesday should have led to the rejection of the Texas map.

Specifically, the Texas map should have been rejected because:

- * Since the burden is on the state and since the Attorney General should
object if he has any doubt about a plan's discriminatory purpose or effect,
the extraordinarily convoluted nature of the Democrats' districts in Dallas
would seem reason enough. This is especially true since a far less
convoluted district with the same black percentage was submitted to the
Attorney General.
- * The districts are so odd-shaped in order to protect Democrats Martin
Frost and John Bryant. Basically, the 30th district was drawn for black state
Senator Eddie Bernice Johnson, who was willing to trade blacks for liberal,
monied whites. Frost and Bryant need the blacks as reliable Democrat votes
in their increasingly Republican area. In other words, the failure to include
all blacks in the Johnson district in order to aid white incumbents is
sufficient evidence of discriminatory purpose and effect since, while Johnson

AC HAS SEEN

1/b
A-
fyi

ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624

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Writer's Direct Dial Number: (617) 951-7569

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WASHINGTON, D. C. 20004
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December 16, 1991

FEDERAL EXPRESS

The Honorable Andrew H. Card, Jr.
Assistant to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Attention: Ms. Linda Casey

Re: United States District Court - District of
Massachusetts at Boston

Dear Ms. Casey:

Thank you for trying to schedule an appointment with Andy. I know that the times are extraordinarily hectic and, as I explained, I would not have called amidst all of the ongoing events, except that I understand that a decision may be reached on the Boston Federal Judgeship by the end of this year, so time appeared of the essence. Again, thank you very much for your efforts.

It occurs to me that I have not forwarded my resume and certain of the supporting letters of recommendation, of which I am exceedingly proud. I do so herewith, and would appreciate your forwarding these to Andy.

Simply stated, I would be honored to be, and to serve as, a United States District Judge for the District of Massachusetts.

Very truly yours,

Janis M. Berry

JMB/gb: JMBANDYC.XO

Enclosures

THE WHITE HOUSE

WASHINGTON

November 30, 1989

Dear Mrs. Berry:

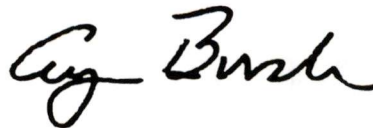
I am delighted to add my warmest congratulations to the many you have already received for the honor bestowed on you by the Italian American Association. You are most deserving of their Achievement Award.

Your work as a Supervising Attorney of the Narcotics Unit of the United States Attorney's Office in Boston and as Chief of the United States Department of Justice New England Organized Crime Drug Enforcement Task Force serves as a shining example of the determined effort that is needed if we are to remove drug dealers from our communities.

You are not only a credit to your Italian-American heritage but also a wonderful role model for women seeking careers in public office. For your service to the people of Massachusetts and New England and for the example you set for our Nation, I thank you and commend you for a job well done.

Barbara joins me in sending best wishes for every future success. God bless you.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Bush", written in a cursive style.

Mrs. Janis M. Berry
49 Vine Street
Saugus, Massachusetts 01906



The Commonwealth of Massachusetts
Treasury Department
State House, Boston 02133

Joseph D. Malone
Treasurer and Receiver General

November 26, 1991

The Honorable Andrew H. Card, Jr.
Assistant to the President and
Deputy to the Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Andy:

Enclosed is a recommendation letter that I sent to the Justice Department on behalf of Janis Berry. Janis has applied to be a federal district court judge in Boston.

Andy, I think Janis is an outstanding candidate. I would very much appreciate it if you could meet with Janis at your convenience.

Very truly yours,

Joe Malone
Joseph D. Malone
Treasurer and Receiver General

JDM/lw

Enclosure

*P. S. My very best wishes for
a happy holiday season for
you and your family.*

DECAS, MURRAY & DECAS

132 NORTH MAIN STREET • MIDDLEBORO • MASSACHUSETTS 02346 • (508) 947-4433

ATTORNEYS AT LAW

GEORGE C. DECAS
DANIEL F. MURRAY
WILLIAM C. DECAS

REPLY TO POST OFFICE BOX 201
MIDDLEBORO, MA 02346

FAX (508) 947-7147

WAREHAM OFFICE:
219 MAIN STREET
(508) 295-2115

November 29, 1991

Honorable Andrew H. Card, Jr.
The White House
Washington, D.C. 20007

RE: Appointment of United States District
Court Judge of Massachusetts

Dear Andy:

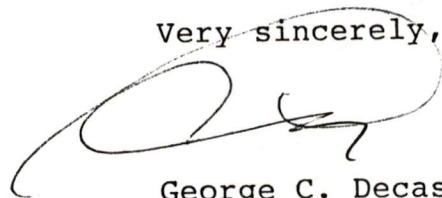
I am very enthusiastic about Janis M. Berry, who
is a candidate for one of the above judicial vacancies.

I serve with Janis on the Governor's Judicial
Nominating Council. She is a highly respected member of that
committee. I base this on my observations of her and her
relationship with the other committee members, during numerous
meetings since last spring.

I do not need to tell you that Janis has been a loyal
and positive force within the Massachusetts Republican Party
for a long time. The combination of her political background
and professional qualifications is not easily found in Massachusetts.
I know you understand that and hope that you will recommend her
candidacy.

I do know some of the other candidates, who have
excellent credentials. Janis stands out, even in this strong field.

Very sincerely,



George C. Decas

GCD/cap
91-104



JUSTINIAN LAW SOCIETY of Massachusetts, Inc.

December 9, 1991

President

Elizabeth A. DiLoreto

Vice President

Anthony R. Pelusi, Jr.

Secretary

Joseph J. Machera
(617) 289-8646

Assistant Secretary

Maria C. Moynihan
(508) 356-2699

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Peter J. Carrozza
(508) 685-0666

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Leonard S. Vadala

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Hon. Anthony J. Randazzo
Hon. Lillian D'Ambrosio-
Millgroom
Hon. Joseph V. Ferrino

Mr. Andrew H. Card, Jr.
Assistant to the President and
Deputy to the Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Mr. Ronald C. Kaufman
Deputy Assistant to the
President
The White House
Old Executive Office Building
17th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20500

RE: Janis Sordillo Berry
Candidate for the United States
District Judge for Massachusetts

Gentlemen:

The Justinian Law Society writes to endorse the appointment of one of our members, Janis Sordillo Berry, who is a candidate for the United States District Court Judge for the District of Massachusetts. The Justinian Law Society, founded in 1943, is composed of lawyers and judges of Italian Descent. Recently, the Society was honored to have United States Supreme Court Justice Antonin Scalia address our annual meeting and to have Justice Scalia sit "en banc" at this celebration with our Justinian Law Society Judges, Federal and State, of the Massachusetts Courts.

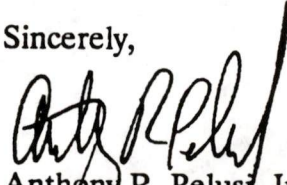
We believe it is important that lawyers of Italian background serve as Judges to ensure ethnic diversity in our bench. The Society strongly supports Janis, the first Italian woman who would sit as a Federal Judge in our District. Therefore, on behalf of the Justinian Law Society, we are extremely proud to urge her appointment to the Federal Court in the District of Massachusetts.

On a more personal level, I wish to make note of Janis' strong commitment to the Massachusetts Bar Association (MBA). As former Vice

Messrs. Andrew H. Card, Jr. and Ronald C. Kaufman
December 9, 1991
Page 2

Chair of the Criminal Justice Section Counsel of the MBA, it was a pleasurable and enlightening experience to serve with Janis on the counsel and at our continuing education programs.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Anthony R. Pelusi, Jr.', written over the typed name.

Anthony R. Pelusi, Jr.
Vice President/President-elect
Justinian Law Society

ARP/mlm

cc Barbara Drake, Esquire
Department of Justice

bcc Janis M. (Sordillo) Berry

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(617) 951-7000

TELECOPIER: (617) 951-7050

Thomas L. P. O'Donnell's Direct Dial Number: (617) 951-7455

1001 PENNSYLVANIA AVENUE, N. W.
SUITE 1200 SOUTH
WASHINGTON, D. C. 20004
(202) 626-3900
TELECOPIER: (202) 626-3961

December 13, 1991

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

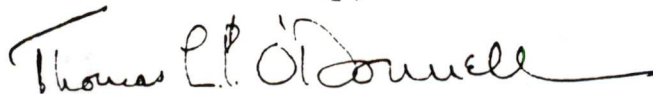
Dear Mr. Gray:

I write to support the application of our partner, Janis M. Berry, for appointment as judge of the United States District Court for the District of Massachusetts.

Janis came to Ropes & Gray in 1986 as a senior associate following distinguished service with the Department of Justice, including service as Chief of the New England Organized Crime Drug Enforcement Task Force. Bringing in an associate at her level of experience was, and is, unusual for us as we are less inclined to hire laterally than most large law firms. However, Janis presented unusually strong credentials and her performance after joining us fulfilled our high expectations. As a result, she became a member of the firm in 1989.

I have followed Janis's career with more than ordinary interest, as I was chairman of the Policy Committee of the firm when she was hired and when she became a partner. She is an excellent lawyer who has made an extraordinary contribution to important public and professional endeavors. Although I would regret her leaving Ropes & Gray, Janis would be an exemplary judge and I recommend her with enthusiasm.

Yours sincerely,



Thomas L. P. O'Donnell

TLPO'D: jaw

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P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

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

Deed of Gift Restrictions

C(1) Closed by Executive Order 13526, governing access to national security information
C(2) Closed by statute or by the agency which originated the information
C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
PRM. Removed as a personal record misfile

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

P-2 Relating to the appointment to Federal office [(a)(2) 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]

JANIS M. (SORDILLO) BERRY
Ropes & Gray
One International Place
Boston, Massachusetts 02110
(617) 951-7569

(Resume Summary)

Partner: ROPES & GRAY; Boston, MA (1986 - Present)

Chief: NEW ENGLAND ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE;
U.S. Department of Justice (1984 - 1986)

Special Trial Attorney: NEW ENGLAND ORGANIZED CRIME STRIKE FORCE;
U.S. Department of Justice (1981 - 1984)

Assistant U.S. Attorney: DISTRICT OF MASSACHUSETTS (1980 - 1981)

Associate: BINGHAM, DANA & GOULD; Boston, MA (1975 - 1980)

Law Clerk to Chief Justice Edward F. Hennessey: MASSACHUSETTS SUPREME
JUDICIAL COURT (1974 - 1975)

Selected Pro Bono Activities, Bar Related Activities and Honors

GOVERNOR WELD APPOINTMENT:
JUDICIAL NOMINATING COUNCIL

APPOINTMENTS BY JUSTICES OF THE
MASSACHUSETTS SUPREME JUDICIAL
COURT:

STATE TREASURER MALONE APPOINTMENT:
GENERAL COUNSEL AND TRUSTEE, A
HERO'S WELCOME CHARITABLE FOUNDATION

- BOARD OF BAR OVERSEERS
- SPECIAL INVESTIGATIVE COUNSEL TO
THE COURT

SECRETARY OF PUBLIC SAFETY
APPOINTMENT: CO-CHAIR STATE POLICE
REORGANIZATION COMMITTEE

- COMMITTEE FOR PUBLIC COUNSEL
SERVICES FOR THE INDIGENT

SECRETARY OF CONSUMER AFFAIRS
APPOINTMENT: TASK FORCE IN RE BOARD
OF REGISTRATION IN MEDICINE

APPOINTMENT BY JUDGES OF THE U.S.
DISTRICT COURT: CHAIR, MAGISTRATE
MERIT SELECTION PANEL

BOARD OF TRUSTEES
ATLANTICARE HOSPITAL

COUNSEL AND VICE PRESIDENT
FEDERAL INN OF COURT

BOARD OF ADVISORS
NATIONAL TRIAL COMPETITION

BOSTON BAR ASSOCIATION TASK FORCE ON
DRUGS AND COURTS

RECIPIENT ITALIAN WOMAN OF THE YEAR
AWARD

RECIPIENT DEPARTMENT OF JUSTICE
SPECIAL COMMENDATION AWARD

Lectures, Teaching and Publications

Conference Chair or Lecturer for: Massachusetts Annual Advocacy Institute;
Massachusetts Continuing Legal Education; Massachusetts Bar Association;
Boston Bar Association; Harvard Law School; Advanced Trial Advocacy Institute;
U.S. Department of Justice Advocacy Institute. See publication citations.

Personal Information

Married to Richard G. Berry in 1970. DOB: (b)(6) (age 42).
Daughters: Alexis (13); twins Ashley (8) and Lindsey (8). B.A. magna cum
laude, Phi Beta Kappa; J.D. cum laude, Executive Board of Law Review: Boston
University.

JANIS M. (SORDILLO) BERRY

Ropes & Gray
One International Place
Boston, Massachusetts 02110
(617) 951-7569

LAW PRACTICE

Partner
ROPES & GRAY
One International Place
Boston, Massachusetts

September, 1986 - Present

Principally engaged in civil and criminal litigation in federal and state trial and appellate courts.

In civil matters, this has included jury trials representing both plaintiffs and defendants in tort litigation in complex product liability cases, wrongful death actions and personal injury cases involving expert medical evidence, the biomechanics of injury mechanism, state-of-the-art and standard-of-care issues in liability determinations, and accident reconstruction expert analysis. In corporate matters, this has included complicated business litigation in multi-million dollar asset cases, with multiple parties and in inter-district litigation.

(Descriptions of, and citations to, major cases and trials are set forth in the summary of CIVIL AND CRIMINAL TRIAL AND APPELLATE PRACTICE attached to this resume.)

Other general civil practice includes representation in "independent counsel" internal corporate reviews; advice and representation in business matters, including contracting disputes; litigation in computer cases; real estate work-out litigation; general representation in insurance-related matters; construction and coverage under directors and officers insurance; representation in health-related matters, primarily as counsel to hospitals and health care providers; and environmental litigation.

In criminal matters, practice has included representation involving corporate and executive criminal

liability, both federal and state, especially in the area of tax investigations and litigation; government contract procurement matters; "white collar" defense representation; and advices to and representation of attorneys.

In addition, criminal defense practice has included pro bono representation in felony cases in the Massachusetts Federal District Court and the Massachusetts Superior Trial Court and in appeals by appointment of the First Circuit Court of Appeals and in state court appeals to the Massachusetts Supreme Judicial Court and the Massachusetts Appeals Court. Certification pursuant to standards of practice for special list of private counsel who are qualified for court appointment to provide pro bono representation to indigent individuals charged in first degree murder cases in the Massachusetts courts.

Chief
NEW ENGLAND ORGANIZED CRIME
DRUG ENFORCEMENT TASK FORCE
U. S. Department of Justice
Boston, Massachusetts

October, 1984 - September, 1986

Chief Prosecuting Attorney
NARCOTICS UNIT
U.S. ATTORNEY'S OFFICE
District of Massachusetts
Boston, Massachusetts

October, 1984 - September, 1986

Inter-district supervisor of major federal narcotics and related tax and money laundering cases brought in the New England states. One of 12 special Department of Justice appointees for designated regions in the United States. Responsible for review and oversight of multi-district investigations and prosecutions under the United States Code, Title 21 - narcotics laws; Title 26 - criminal tax laws; and Title 31 - bank currency transaction reporting and money laundering laws; administration of Federal/State budget for New England based cases, and the Narcotics Unit operating budget.

Lead prosecutor in grand jury investigations and jury trials in a series of significant narcotics, criminal tax and official corruption cases indicted in the District of Massachusetts. See summary of prosecutions and case citations attached hereto.

Special Trial Attorney
NEW ENGLAND ORGANIZED
CRIME STRIKE FORCE
U. S. Department of Justice
Boston, Massachusetts

August, 1981 - October, 1984

Assistant U. S. Attorney
U. S. ATTORNEY'S OFFICE
District of Massachusetts
Boston, Massachusetts

February, 1980 - August, 1981

Associate
Trial Department
BINGHAM, DANA & GOULD
Boston, Massachusetts

September, 1975 - February, 1980

GREATER BOSTON LEGAL SERVICES
April, 1976 - September 1976

Summer Associate
PIERCE, ATWOOD, SCRIBNER,
ALLEN & McKUSICK
Portland, Maine 01401

June - August, 1973

Honors: Recipient of Department of Justice Special Commendation Award, the highest award given by the Criminal Division for superior performance.

Responsible for conduct of grand jury investigations and trial of cases involving corporate tax fraud and personal tax evasion, securities violations and fraudulent business practices by mail and wire fraud; investigation and prosecution of criminal cases brought under the complex of laws known as the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Continuing Criminal Enterprise Act (CCE) and the predicate crimes thereunder; supervising attorney for cases utilizing Title III electronic surveillance and undercover operations.

Responsible for investigation and prosecution of cases involving bank fraud and embezzlement, narcotics violations, and general federal crimes, including interstate offenses and mail fraud in fraudulent business schemes.

Principally engaged in civil litigation involving business contracts, general corporate matters, securities laws, administrative law. Pro bono criminal appointments.

Full time civil pro bono work in association with Bingham, Dana & Gould.

General legal research and writing.

JUDICIAL CLERKSHIP

MASSACHUSETTS SUPREME
JUDICIAL COURT
Boston, Massachusetts

Law Clerk to Chief Justice Edward F.
Hennessey.

September, 1974 - September, 1975

PRO BONO ACTIVITIES AND BAR RELATED ACTIVITIES

JUDICIAL NOMINATING COUNCIL
(1991 - Present)

Appointed by Governor William F. Weld to serve on Council that evaluates candidates for judgeships in the Massachusetts Courts and submits recommendations to the Governor for his nomination of judges.

MASSACHUSETTS BOARD OF BAR
OVERSEERS
(1990 - 1996)

Appointed by the Justices of the Supreme Judicial Court to governing 12-member Board of Bar Overseers, which is responsible for enforcement of Code of Ethics for all attorneys practicing law in Massachusetts. The BBO sits as an Appeals Board from Disciplinary Hearing Committees, and also holds hearings in disciplinary proceedings against attorneys pursuant to BBO and Court Ethical Rules.

CHAIR, DISTRICT OF MASSACHUSETTS
UNITED STATES MAGISTRATE MERIT
SELECTION PANEL (1989-1990)

Appointed by the Judges of the United States District Court to serve as Chair of committee to interview and recommend candidate to be Federal Magistrate.

SPECIAL INVESTIGATIVE COUNSEL TO
SUPREME JUDICIAL COURT
(1991 to present)

Appointed by the Justices of the Supreme Judicial Court to conduct investigation of confidential matter involving the administration of justice by a judicial officer.

MAGISTRATE, MASSACHUSETTS
SUPERIOR COURT (1987-1988)

Appointed by State Superior Court to serve as Special Magistrate to conduct independent counsel review, make findings, and file full report concerning compliance with court ordered pre-trial attorney access conditions at maximum security cell block in state prison.

CHAIR, STATE TREASURER'S HYNES
CONVENTION CENTER PRIVATIZATION
ADVISORY COMMITTEE (1991)

Appointed by Massachusetts Treasurer Joseph D. Malone to chair committee for study and issuance of report concerning privatization alternatives for the Boston Hynes Convention Center and related parking authority.

CO-CHAIR, WITH GOVERNOR'S CABINET
SECRETARY FOR PUBLIC SAFETY, OF
STATE POLICE REORGANIZATION
COMMITTEE (1991)

Appointed by Massachusetts Secretary of Public Safety to serve with him as co-chair of committee to draft initial legislation and plan of implementation for reorganization of four statewide police organizations into one, united State Police Department.

COUNSELOR - VICE PRESIDENT
FEDERAL INN OF COURT
Boston, MA
(1990 - Present)

Elected executive officer of Frank J. Murray Inn of Court, an advocacy-teaching group composed of Federal and Massachusetts State Judges and senior attorneys, all of whom convene monthly to teach young attorneys advocacy, effective representation and the ethics of practice.

BOARD OF ADVISORS
NATIONAL TRIAL COMPETITION
Northeast Region
(1990 - Present)

The Board of Advisors is composed of thirteen trial attorneys and judges for the northeast law school advocacy competition sponsored by the American College of Trial Lawyers and the American Bar Association Litigation Section. The northeast region law schools are among over 110 accredited law schools which participate nationwide.

A HERO'S WELCOME INC. CHARITABLE
FOUNDATION
(1991 - Present)

Appointed by Massachusetts State Treasurer Malone as General Counsel and Trustee of charitable foundation established to provide assistance to soldiers called to duty in Operations Desert Shield and Storm in the Persian Gulf.

CHAIR, STATE TREASURER'S
TRANSITION COMMITTEE, RETIREMENT
BOARD (1990)

Requested by then Treasurer-elect Malone to chair committee to review procedures of Massachusetts Retirement Board in connection with transition by the Treasurer's new administration.

BOARD OF TRUSTEES
ATLANTICARE HOSPITAL
(1990 - Present)

Director of one of the North Shore's major health care facilities.

TASK FORCE IN RE BOARD OF
REGISTRATION IN MEDICINE
(1991 - Present)

Appointed by Massachusetts Secretary
of Consumer Affairs to serve on
Special Task Force to review policies,
procedures and operations of the Board
of Registration in Medicine.

MASSACHUSETTS COMMITTEE
FOR PUBLIC COUNSEL SERVICES
80 Boylston Street
Boston, MA 02116
(1987 - 1991)

Appointed by the Justices of the
Massachusetts Supreme Judicial Court
to serve pro bono on governing board
responsible for administration of
statewide court program for
appointment of counsel to represent
indigent litigants.

FELLOW
MASSACHUSETTS BAR FOUNDATION
(1989 - Present)

Fellow of Massachusetts Bar
Foundation, the membership of which is
limited to attorneys who "have
demonstrated outstanding dedication to
the welfare of the community," and the
purpose of which is to award grants to
further the administration of justice.

BOSTON BAR ASSOCIATION TASK FORCE
ON DRUGS AND THE COURTS
(1989 - 1990)

Appointed by Boston Bar Association
President to serve on special eight
person task force organized at the
request of Boston Mayor to undertake
major study of drug related crimes and
court proceedings and to state
recommendations and consider reforms
to the Massachusetts Criminal Justice
System.

Supervising Attorney
MASSACHUSETTS DISTRICT COURT
CRIMINAL PROJECT
(1989 - 1990)

Administrator and supervising attorney
for twenty attorneys in pro bono
project at Ropes & Gray providing
representation to indigent defendants
in criminal cases in the Massachusetts
District Courts. This was a prototype
project developed in coordination with
the Committee for Public Counsel
Services with a view to engaging the
services of large private law firms
throughout Massachusetts.

MASSACHUSETTS BAR ASSOCIATION
CRIMINAL JUSTICE COUNCIL
(1989)

Appointed by Massachusetts Bar
Association President to serve on
overseeing Council of the MBA Criminal
Justice Section.

TEACHING IN CONTINUING LEGAL EDUCATION PROGRAMS

MASSACHUSETTS ANNUAL ADVOCACY
INSTITUTE
(1990)

Faculty in trial technique seminar to
demonstrate advanced litigation
practice in tort case.

MASSACHUSETTS CONTINUING LEGAL
EDUCATION

Chair, Conference (with article):
Hidden Ethical Issues in Civil
Litigation and Criminal Practice
(1991)

Conference Lecturer (with article):
Advanced Trial Tactics in Criminal
Cases (1991)

Conference Lecturer (with article):
Development of Expert Testimony at
Trial (1990)

Conference Lecturer: Fundamentals of
Opening Statements and Closing
Arguments. (1989)

Chair, Seminar (with article):
Prosecution and Defense of Criminal
Tax Cases. (1989)

Chair, Conference (with article):
Defending Businesses in an Age of
White Collar Prosecutions. (1989)

MASSACHUSETTS BAR ASSOCIATION

Conference Lecturer (with article):
Recent Developments in the Law: White
Collar Crime. (1988)

Conference Lecturer (with article):
Suppression & Discovery Pre-Trial
Motions in Criminal Cases. (1988)

Conference Lecturer: Representing
Criminal Defendants in Federal
Criminal Court: Comparison with State
Criminal Proceedings.

BOSTON BAR ASSOCIATION

Lecturer (with outline): Federal
Banking Crimes under FIRREA and the
1990 Crime Act (1991)

HARVARD LAW SCHOOL
Cambridge, Massachusetts
(1983 - 1986)

Instructor in course entitled "The Government Lawyer".

Trial instructor at two-week intensive advocacy courses.

ADVANCED TRIAL ADVOCACY INSTITUTE
Boston, Massachusetts
(1987-1990)

Served on faculty by invitation of and with judges conducting Advocacy Institute courses for practicing attorneys

ADVOCACY INSTITUTE
U. S. DEPARTMENT OF JUSTICE
Washington, D.C.
(1986)

Trial instructor for advocacy course, teaching trial practice and procedure to government lawyers.

PUBLICATIONS

Author: Defense of Businesses, Individual Officers and Employees in Corporate Criminal Investigations, Vol. 27A Federal Procurement Book, Chap. at 1467 (1990)

Author, BBA Law Journal: The 1990 Supreme Judicial Court Term of Court: Developments in the Criminal World, 35 Boston Bar L.J. 25 (1991)

Co-Author Treatise: Federal Criminal Practice: Chapter Federal Plea Negotiation Standards and Sentencing (1987 ed. and 1988 Supp.)

Author: General Principles of Federal Criminal Conspiracy Law. (1987)
Massachusetts Bar Association

Editorial Board of the Massachusetts
Law Review (1982-1983)

Massachusetts Continuing Legal Education:
Appellate Practice - Bail Review (1980)

Co-author with Chief Justice Hennessey,
Constitutional Rights of the Accused,
60 Mass. L.Q. 19-53 (1975)

The Constitutionality of Prison Regulations Limiting Press Access to Prisoners,
54 Boston Univ. L.Rev. 670 (1974)

EDUCATION

BOSTON UNIVERSITY
School of Law
J.D. cum laude 1974

Case and Note Editor, Executive Board,
Boston University Law Review

BOSTON UNIVERSITY
College of Liberal Arts
B.A. magna cum laude 1971

English language and literature

Phi Beta Kappa. Degree awarded
Distinction

BAR ADMISSIONS AND ASSOCIATIONS

Member of Bar:

Commonwealth of Massachusetts

United States District Court,
District of Massachusetts

United States Court of Appeals,
First Circuit

Supreme Court of the United States

Member:

American Law Institute
Massachusetts Bar Association
Boston Bar Association
Women's Bar Association
American Bar Association
Justinian Law Society

PERSONAL BACKGROUND

Martindale Hubbell Legal
Directory Rating: "av"

("av" is defined as "very high" and is the highest level ability
rating "embrac[ing] faithful adherence to ethical standards,
professional reliability and diligence.")

Listing in Who's Who in America Law
(1990 and 1991 ed.)

Listing in Who's Who in Emerging Leaders in America
(1991 ed.)

Recipient Special Award, Italian American Association,
Everett, MA. See President Bush's letter of commendation (attached hereto).

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Resume	Re: Janis M. (Sordillo) Berry; birthdate redacted. (1 pp.)	n.d.	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Card, Andrew H., Jr., Files
Subseries:
WHORM Cat.:
File Location: Counsel's Office Materials [1]

Date Closed: 5/16/2025	OA/ID Number: 08373-009a
FOIA/SYS Case #: 2025-0373-S	Appeal Case #:
Re-review Case #:	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

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

Deed of Gift Restrictions

C(1) Closed by Executive Order 13526, governing access to national security information
C(2) Closed by statute or by the agency which originated the information
C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
PRM. Removed as a personal record misfile

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

P-2 Relating to the appointment to Federal office [(a)(2) 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]

Personal: Married: Richard G. Berry - 1970

Daughters: Alexis - 13

Ashley - 8

Lindsey - 8

Date of Birth: (b)(6) (age 42)

Residence: 49 Vine Street
Saugus, Massachusetts 01906
(617) 233-8625

October, 1991

CRIMINAL AND CIVIL
TRIAL AND APPELLATE PRACTICE

CRIMINAL AND CIVIL
TRIAL AND APPELLATE PRACTICE

Major Civil Litigation Cases

Charlotte D. Walsh,
Administratrix v. Volkswagen of
America, Inc., et al., Mass.
Middlesex Superior Court, Civil
No. 83-6777 (Trial November,
1990)

Trial counsel for defense in State Superior Court jury trial in lawsuit brought against automobile manufacturer for products liability and wrongful death actions based on breach of warranty and negligent design. The case was tried over a one month period and involved expert neurosurgeon medical testimony, expert biomechanic evidence on the mechanism of injury and expert accident reconstruction testimony, including computer simulation. The claimed damages were approximately \$4 million; the jury returned a defendant's verdict for client.

Access America, Inc. v. La Jolla
University, et al., Mass.
Worcester Superior Court, Civil
No. 91-2041 (1991)

Counsel in complex insolvency receivership to conserve assets arising out of approximately 15 million dollars in loans and involving multi-corporate entities.

Bank of New England (FDIC) v.
Cape Cod Broadcasting, et al.,
Mass. Suffolk Superior Court,
Civil No. 90-5673-C (1991)

Counsel in insolvency proceedings relating to sale of three radio stations.

Gail F. Lubanski, Administratrix
of the Estate of James S.
Lubanski, et al. v. Coleco
Industries, Inc., U.S.D.C., Civil
No. 87-2742-Z (Trial June, 1990),
aff'd., 929 F.2d 42 (1st Cir.
1991)

Trial counsel for plaintiff in jury case tried in Federal Court in products liability action for wrongful death involving design defect in child's toy. The expert evidence included the testimony of expert safety engineer and accident reconstruction witnesses.

Shepard v. Bennett, Mass. Suffolk
Superior Court, Civil No. 88-0578
(Trial March, 1991)

Trial counsel for plaintiff in jury case for personal injury, involving soft tissue, muscular-skeletal injuries and medical expert evidence in proof thereof.

Bruner Cott & Associates, Inc. v.
Mark C. Sullivan, Trustee and
Jack W. Rizika, Mass. Middlesex

Trial counsel in defense of civil jury trial in State Superior Court involving complex real estate

Superior Court, Civil No. 86-1338
(Trial 1988)

Clark & Reid Co. v. ASA, Mass.
Middlesex Superior Court, Civil
No. 84-3151 (1991)

Occient Corporation v. Reebok,
Mass. Middlesex Superior Court,
Civil No. 89-6061 (1989)

Monarch Capital Corp., by
Middlesex Development Company v.
Blank, S.D.N.Y. , Civil Action
No. 4260 (CLB) (1989-1990)

Forge Development Corp. v.
Blackstone Valley Partners, La
Plante, et al., Mass. Hampden
Superior Court, Civil No. 88-1013
and related actions in Norfolk
Superior Court, Civil Nos. 87-
2508 and 89-1109. (1987-1991)

IYH v. Merchants Corp., Mass.
Middlesex Superior Court, Civil
No. 86-1867 (1986-1987)

In re Jane Doe (I) and (II) Mass.
Essex and Middlesex Probate
Courts (1986, 1988)

Howmet Corporation v. Stephen W.
Kidder, Commissioner of Revenue
and Department of Revenue, Mass.
SJC, Civil No. 89-549 (1989);
Superior Court Civil No. 90-5109
(1990)

transactions with commercial leases
and option to purchase, resulting in
defendants' verdict for client; in
subsequent appeal, briefing to the
Appeals Court.

Trial counsel for defense in case
involving alleged computer defects in
development of software applications,
with damages under the Uniform
Commercial Code.

Counsel in contemporaneous arbitration
and civil lawsuit involving alleged
breach of multi-million dollar agency
production and marketing agreements.

Counsel in litigation involving joint
venture real estate development work-
out of \$25 million project, and breach
of partnership agreements.

Counsel in multi-county lawsuits
commenced in Norfolk and Hampden
Superior Courts in connection with
\$17 million real estate development
and pro-golf course, with investments
by insurance company subsidiary
therein.

Counsel in litigation involving
environmental damage claims for
release of pollutants.

Trial counsel in contested proceedings
to adduce expert medical evidence of
psychiatric opinions relative to
treatment for mentally ill ward.

Counsel in proceedings before a Single
Justice of the Supreme Judicial Court
and the Superior Court in respect to
corporate taxing jurisdiction under
Federal and State law.

New England Insulation Co. v. General Dynamics Corporation, et al., Mass. Norfolk Superior Court, Civil No. 85-3283 (1988-1991); appeal reported at, 26 Mass. App. Ct. 28 (1988)

Appellate counsel for brief and argument before Massachusetts Appeals Court concerning issue of corporate civil liability for executive's criminal acts; trial counsel in pending litigation.

Globe Newspaper Co. v. Boston Retirement Board, Mass. Suffolk Superior Court (1980)

Trial attorney in litigation before Superior Court to determine evidence for adjudication of First Amendment and FOIA declaratory judgment action.

See also, Grocery Manufacturers of America, Inc. v. Department of Public Health, 379 Mass. 70 (1979); (litigation involving regulations promulgated by the Massachusetts Department of Public Health); Cambridge Trust Co. v. National Academy of Sciences, 370 Mass. 303 (1976) (fiduciary corporate trust litigation relating to investment practices and trust administration); Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) rev'g on rehearing, Globe Newspaper Co. v. Superior Court (Globe I) 379 Mass. 846 (1980) (trial and appellate First Amendment litigation; and also FOIA litigation).

Major Criminal Defense Cases

In the Matter of a Grand Jury Subpoena, 30 Mass. App. Ct. 462 (1991), further app. review granted, 410 Mass. 1102 (1991).

Appellate counsel in full appeal to Massachusetts Supreme Judicial Court and Appeals Court in connection with corporate criminal tax investigation.

In Re Doe Corp.

Independent counsel review of corporate actions in connection with compliance with statutes and governmental agency regulations.

In re Doe Hospital

Independent counsel review of procedures.

In re John Doe

Counsel in tax investigation.

United States v. Northrop Corp., (S.D. Cal. 1989)

Representation of corporate officers named as target of grand jury investigation in government contracting and procurement case.

United States v. Young, U.S.D.C. Crim. No. 89-245-MA (1990), appeal pending, Nos. 90-1581, 90-1619 (1st Cir. 1991)

Trial attorney in Federal Court jury trial for the defense of an attorney in white collar criminal case involving investment transactions and indictment for federal embezzlement and mail fraud offenses.

Commonwealth v. Dance, Mass.
Roxbury District Court, Crim. No.
9102 CR 5667 (1991)

Trial counsel pro bono in successful
defense of poor woman erroneously
charged in narcotics trafficking case
in public housing project.

Commonwealth v. Norman, 406 Mass.
1001 (1989), aff'g, 27 Mass. App.
Ct. 82 (1989)

Appellate counsel pro bono in two full
appeals to the Massachusetts Supreme
Judicial Court and the Appeals Court,
achieving reversal of conviction.

United States v. Bramble (I), 871
F.2d 188 (1st Cir.), cert.
denied, 110 U.S. 369 (1989);
United States v. Bramble (II),
925 F.2d 532 (1st Cir. 1991),
cert. denied, 111 S.Ct. 2837
(1991)

Appellate counsel pro bono by
appointment of the First Circuit Court
of Appeals in two appeals.

United States v. Ingraham, 832
F.2d 229 (1st Cir. 1987), cert.
denied, 108 S. Ct. 1738 (1988)

Appellate counsel pro bono by
appointment of the First Circuit Court
of Appeals.

Commonwealth v. Martien, Mass.
Suffolk Superior Court, Crim. No.
221795 (1988)

Appointment pro bono by Massachusetts
Trial Court to represent indigent
defendant charged with double
homicide.

Commonwealth v. Jenkins, Mass.
Suffolk Superior Court, Crim. No.
072415 (1989)

Appointment pro bono by Massachusetts
Trial Court to represent indigent
defendant in murder case, including
conduct of pretrial evidentiary
hearings.

Major Criminal Prosecution Cases

This casework encompasses a series of significant criminal jury trials and appeals litigated and grand jury investigations conducted during the six years I served as a Federal Prosecutor in the District of Massachusetts with responsibilities in various areas of criminal law, e.g., official corruption and bribery; bank fraud; false statements; personal and corporate tax evasion; RICO; narcotics offenses; CCE offenses; forfeiture actions -- civil and criminal -- and money laundering offenses, including the following major cases in which I was principal counsel:

United States v. Twomey, Crim.
No. 85-397-C (D. Mass. 1986),
aff'd, 806 F.2d 1136 (1st Cir.
1986).

Trial attorney for the government in
this month-long criminal case against
an Assistant United States Attorney
who had sold confidential law

enforcement information to targets of criminal investigations; the defendant was convicted of obstruction of justice and defrauding the government; appellate counsel in First Circuit Court of Appeals. (According to the Public Integrity Division of the Department of Justice, there had been at the time only two other cases in which a Federal prosecutor had been convicted for corruption of that public office).

United States v. Vara,
Crim. No. 84-250-G
(D.Mass., 1985).

Trial attorney in this corporate tax fraud jury case involving Massachusetts and Georgia corporations and two corporate officers charged individually as principals in a complex tax evasion scheme.

United States v. Lepere and Dailey, Crim. No. 83-308-T (D.Mass. 1983), aff'd sub nom., United States v. Dailey, 759 F.2d 192 (1st Cir. 1985); rev'g, 599 F.Supp. 1322 (D. Mass. 1984); 580 F.Supp. 561 (D.Mass. 1984)

Conducted prosecution involving two indictments charging 33 defendants. The cases encompassed three interlocking continuing criminal enterprises that had grossed 25 million dollars by importing 500,000 pounds of marijuana in eleven separate ventures. The case work included the preparation of rebuttal evidence based on expert psychiatric testimony to overcome one defendant's defense of insanity by reason of Post-Traumatic Stress Disorder, also known as Vietnam Syndrome.

Briefed and argued interlocutory appeal to the First Circuit with respect to the constitutionality of cooperation agreements with government witnesses.

United States v. Zullo, et al.,
Crim. No. 83-309-Z
(D.Mass. 1984), aff'd,
790 F.2d 186 (1st Cir. 1986).

Trial attorney for the government in this jury trial involving eight defendants, involving proof by historical evidence of a conspiracy that had been perpetrated five years earlier.

United States v. Drougas,
Crim. No. 82-62-K (D.Mass.
1983), aff'd., 748 F.2d 8 (1st
Cir. 1984).

Trial attorney for the government in
this seven defendant conspiracy case
before Judge Keeton -- at the time the
longest (6 months) criminal case to
have been tried in the District of
Massachusetts.

Briefed and argued the appeal to the
First Circuit based on a trial record
of 12,000 pages.

In re Globe Newspaper Co.,
729 F.2d 47 (1st Cir. 1984).

Briefed and argued government's
position opposing closure of bail
proceedings relating to United States
v. Angiulo.

See also United States v. Chagra, 653 F.2d 26 (1st Cir. 1981); United States
v. Guerro, 693 F.2d 10 (1st Cir. 1982); United States v. St. Germain, 680
F.2d 874 (1st Cir. 1982); United States v. Pimental, 645 F.2d 85 (1st Cir.
1981); United States v. Mastrangelo, Crim No. 85-95-MA (D. Mass. 1985).

THE WHITE HOUSE
WASHINGTON

DATE: 12/21/91

TO: Lee Liberman

FROM: ANDY CARDY *Andy*

Please check out
Peter Velis for a
District Judgeship
in Massachusetts.

(Peter is a former
State Representative and
'79/'80 Bush supporter
from Westfield, MA.)

Westfield, MA

Andrew Velis

1966
1963

1957-1960

1960-1961

1961-1965

Associations
1965

Of Law
1965-1968

...degree, Juris Doctor
Honors, Co-Authored "The Grand
Jury System Of Massachusetts, A
Study" for the Suffolk Univer-
sity Law Review in conjunction
with the Massachusetts General
Court, Graduated, Dean's List 1968

THE WHITE HOUSE
WASHINGTON

May 16, 1991

1-6
~~NOTED~~
AC HAS SEEN 9/20

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: JOHN P. SCHMITZ *JPS*
SUBJECT: Summary of Meeting with Congressman McCollum

I had a good 45-minute meeting with Congressman McCollum yesterday regarding legal services. I took along Mark Paoletta of my staff, and Jack Howard from Legislative Affairs. Jim Wootton (who has been hired by the Donnelly firm to lobby on legal services reform on behalf of the business community), and a McCollum staff member also attended. McCollum did most of the talking. He briefed us on the status of Legal Services reauthorization in the House, which is now out of Barney Frank's subcommittee and pending before the full Judiciary Committee. He summarized the provisions of his substitute reauthorization bill (McCollum-Stenholm) and organized his major issues into the three categories described below. He also touched on some non-substantive issues, such as his view of the performance of our appointees to the Legal Services Board.

Reauthorization Issues

-- "Litmus test" issues McCollum expects to win in the House:

- complete ban on abortion activities
- complete ban on redistricting activities
- virtual ban on lobbying and rulemaking activities (we are not as optimistic as McCollum that he has the votes in the House for this provision).

-- Priority "Fighting" Issues:

- competition - McCollum believes that competition is the single most important structural reform, that it must be implemented for any meaningful reform to occur, and that it has the full support of the business community. McCollum spoke to Rudman last year about competition and believes that he has an agreement in principle with him on this issue. Tom Polgar, Rudman's key staffer, confirmed that this week, but emphasized that such an agreement is only in the abstract, not on any specific proposal or language that McCollum has floated. (Reading between the lines, there will be lots of fireworks on this one because the ABA is locked in stone opposing competition and McCollum believes he is in a very strong position politically).
- coverage of non-LSC funds - McCollum conceded to us that coverage of non-LSC funds is an issue where he and

Rudman have staked out unyielding opposing positions. Although the Justice Department has not yet taken a final position, we believe that it will be constitutionally difficult to support the McCollum proposal. Neither McCollum nor Rudman know this yet, and we should consider how and when we might announce our view to aid in forging a compromise here.

-- Other issues:

- restrictions on class actions, attorneys fees, solicitation, procedural reforms in litigation, timekeeping, application of waste, fraud and abuse provisions, and authority of local boards.

Board-related and Other Non-Substantive Issues

- Congressman McCollum warned us that former Congressman Molinari will be contacting the President and wants to complain about Board members Dana, Uddo, and Wittgraf. No surprise that Molinari is criticizing Dana and Wittgraf. Similarly, we did not expect Uddo to be popular among conservatives, but that he would be credible to Rudman and would be someone with whom we could work. I state this because I still believe Uddo will be very useful to us, not to deflect Molinari's expected criticism.
- McCollum is very pleased with the appointment of Bud Kirk, his former law partner. I concur with this view and believe he may be our most effective advocate of reform, given the time constraints of Molinari and Luis Guinot. Kirk is very smart, willing to stand his ground, and has offered to help us.
- McCollum also told us about his meeting yesterday with a broad coalition of business leaders who will publicly support the reform effort, including NAM and NFIB (attached is a list of members of the coalition). This is very encouraging because last year's reform lobby was easily criticized as "inside-the-beltway" and grower-oriented. Especially encouraging is that NFIB plans to make legal services reform one of their voting issues this year. Relatedly, McCollum has approached Senators Byrd and Bentsen to introduce a reform package in the Senate.
- McCollum expressed displeasure over the developments of the two recent LSC field hearings, which were intended to build a record for the Board to make recommendations on reauthorization. The record is currently very one-sided, with virtually all of the witnesses opposing the McCollum-Stenholm bill. McCollum believes that a balanced record needs to be developed and I will have an opportunity tomorrow at lunch to communicate that to George Wittgraf.

-- Finally, per our conversation, I had called both McCollum and Rudman last week to encourage them to contact each other to initiate discussions. McCollum reported that he did call Rudman this week but has not yet been called back. Ultimately much of our success depends on their willingness to talk to each other.

cc: Andy Card

**Attendees for Legal Services Reform Meeting
with Congressmen McCollum and Stenholm**

May 15, 1991

John Motley
Vice President
Federal Government Relations
National Federation of Independent Business

Alan Kranowitz
Senior Vice President
Government Relations
National Association of Wholesaler Distributors

Edward L. Yingling
Director
Government Relations
American Bankers Association

Mike Baroody
Executive Vice President
National Association of Manufacturers

Phil Mink
General Counsel
Citizens for a Sound Economy

James Davidson
Chairman of the Board
National Taxpayers Union

Richard Leshner
President
U.S. Chamber of Commerce

Cem Martin
President
West Virginia Bar Association

Tom Donnelly
Pagonis and Donnelly

Jim Wootton
Pagonis and Donnelly

THE WHITE HOUSE
WASHINGTON

AC HAS SEEN

December 18, 1980

MEMORANDUM FOR ANDY CARD

FROM: C. BOYDEN GRAY *cm*
SUBJECT: Role of the Staff Secretary in National Security
Legal Matters

Both NSDD 268 and common sense dictate that the Counsel to the President review and concur in documents of potential legal significance prepared by the NSC staff for action or review by the President. I believe that there are three categories of such documents. The first is internal decision memoranda in which the President directs some action by the government (e.g., National Security Directives, National Security Reviews, intelligence findings, and other presidential decision memoranda and directives). The second is documents that have been prepared for public release (e.g., presidential speeches, statements, reports, determinations, certifications, waivers, and delegations). The third is information memoranda that contain advice to the President on legal matters (e.g., memoranda on war powers questions, or questions of statutory or treaty interpretation).

I understand that some documents (especially certain NSDs and intelligence findings) are of such sensitivity that they must be handled outside of normal channels. As demonstrated by the Iran-Contra affair, however, the sensitivity of such documents means that they require heightened scrutiny at a senior level, not less scrutiny. I therefore recommend that, with respect to documents too sensitive for routine staffing, a procedure be established for collective review by the Chief of Staff, his deputies, and the Counsel to the President. All other NSC-originated documents can be staffed routinely to my office.

THE WHITE HOUSE
WASHINGTON

Date: September 14, 1990

FOR: Ede Holiday

FROM: **ANDY CARD**

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

*Send copy to
Ede - let's talk.
Andy*

THE WHITE HOUSE
WASHINGTON

September 11, 1990

MEMORANDUM FOR ANDY CARD

FROM: C. BOYDEN GRAY *cmh*

SUBJECT: Revising NSDs

At your request, I have looked into the process for revising NSDs. The process is quite simple and, with NSC cooperation, can be accomplished quickly.

Almost all Presidents have used NSDs under one name or another. NSDs memorialize presidential decisions on national security issues and convey the President's instructions on implementation of such decisions to Executive branch officials. NSDs are not issued pursuant to any statute or Executive Order. Rather, they are based on the President's inherent constitutional authority as Chief Executive. The practice of the Bush Administration has been for the President to sign NSDs, but in some previous administrations documents analogous to NSDs were signed on behalf of the President by the National Security Advisor.

Proposed NSDs are submitted to the President by the National Security Advisor. Typically they emerge either from within the NSC staff or from one or more of the national security agencies. Pursuant to NSDD 266 (which was continued in force by NSDs 1 and 2), proposed NSDs must be coordinated by the NSC Legal Adviser with the Counsel to the President. General Scowcroft has also directed the NSC staff not to send forward to him proposed NSDs without first obtaining the concurrence of the State Department. There are no other procedural requirements applicable to proposed NSDs.

As presidential directives, NSDs may be revised by subsequent presidential directive. The most appropriate mechanism for revising an NSD is by another NSD, signed by the President. The President could also revise NSDs by other presidential directives, such as Executive Orders or memoranda addressed to agency heads, but such practice is deprecated as tending to undermine the formality of these documents as well as the coherence and completeness of the NSD series. There has been at least one instance in this Administration in which the President gave his verbal approval to the revision of an NSD and the revision was memorialized by an addendum to the original NSD signed by the National Security Advisor. It follows, therefore, that the President could revise an NSD by a verbal directive memorialized in any form, but once again, doing this outside of the NSD series is inadvisable.

THE WHITE HOUSE

WASHINGTON

July 12, 1990

MEMORANDUM FOR LINDA GAMBATESA
SPECIAL ASSISTANT TO THE CHIEF OF STAFF

FROM: AMY L. SCHWARTZ *ALS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Attached Response to the MacDougall Letter

Thank you for sending over the MacDougall letter. As you recognized, it is not appropriate for Andy to become involved in the matter.

My recommendation would be that we answer the letter with the attached response. Please let me know if you have any questions. (Also please let me know if for some reason the letter should be prepared for Boyden's signature rather than mine.)

I will wait to hear from you.

Attachment

THE WHITE HOUSE
WASHINGTON

July 12, 1990

Dear Mr. MacDougall:

I am writing in response to your letter to Andrew H. Card on behalf of your client, TDS Healthcare Systems Corporation, expressing that company's concern about the Defense Department's handling of a procurement determination. Your letter requests that the White House inquire into the matter to ensure its proper handling.

Your letter was referred to me in order to comply with long-standing White House policy against involvement with procurements and similar matters at executive agencies and departments. This policy not only precludes White House involvement in agency decision-making on a matter of this type, but also precludes even an inquiry into the status of the matter. I can only suggest that you continue to work through Defense Department channels.

I hope that you can understand why we are unable to be of further assistance.

Sincerely,



Amy L. Schwartz
Associate Counsel to the President

Mr. Gordon P. MacDougall
Vice President for Government Affairs
Capital Associates Inc.
426 C St. N.E.
Washington D.C. 20002

DRAFT

July 12, 1990

Dear Mr. MacDougal:

I am writing in response to your letter to Andrew H. Card on behalf of your client, TDS Healthcare Systems Corporation, expressing that company's concern about the Defense Department's handling of a procurement determination. Your letter requests that the White House inquire into the matter to ensure its proper handling.

Your letter was referred to me in order to comply with long-standing White House policy against involvement with procurements and similar matters at executive agencies and departments. This policy not only precludes White House involvement in agency decision-making on a matter of this type, but also precludes even an inquiry into the status of the matter. I can only suggest that you continue to work through Defense Department channels.

I hope that you can understand why we are unable to be of further assistance.

Sincerely,

Amy L. Schwartz
Associate Counsel to the President

Mr. Gordon P. MacDougall
Vice President for Government Affairs
Capital Associates Inc.
426 C St. N.E.
Washington D.C. 20002

6/7/90

Per Diana Kendrick -- it's in clearance; not likely to be finished before 1st part of July.

Barring any particular problems, it's possible it could be expedited in time for the June 15 Commission meeting.

If you want this done, please let her know ASAP.

makes sense if only ~~that~~ Will accelerate

Document Originally
Attached to
Following Page

THE WHITE HOUSE

WASHINGTON

June 4, 1990

MEMORANDUM FOR ANDREW H. CARD, JR.

FROM: JEFFREY R. HOLMSTEAD *JRH*
ASSISTANT COUNSEL TO THE PRESIDENT

SUBJECT: Bicentennial Commission's
Four Presidents' Program

As you know from our lunch with Chief Justice Burger, the Bicentennial Commission is planning to sponsor a series of television shows featuring discussions with the four living past Presidents. The purpose of the program is not to examine their policies and programs, but to interview each of them separately about their views on the Presidency as an institution.

As currently planned, this series would not include President Bush. Apparently, there are some at the Commission who believe that his participation would overly politicize the program. It is my understanding, however, that others at the Commission would like the President to participate, and believe that, if approached by the White House, Chief Justice Burger would expand the Program to include President Bush.

The program itself would certainly benefit from the President's views on the Presidency -- especially his firmly held beliefs about separation of powers. I also think that the President might benefit from a sort of "Mount Rushmore effect" by appearing along with the four past Presidents (each of whom seems to be more revered now than when he was in office).

In a related matter, the Chief Justice is currently quite concerned about filling the vacancy on the Commission left by the departure of Bill Lucas. He has suggested that the President appoint Damon Keith, a black Circuit Court Judge from Detroit, and is very eager to have him appointed in time for the Commission's next quarterly meeting on June 15-16. Presidential Personnel does not expect any problem with his appointment, but I understand from Diana Kendrick that, although we do not need to do a full background check on Judge Keith, the appointment process is not likely to be finished until the first part of July.

I have talked with Chief Justice Burger several times, and have explained that the appointment process is very time consuming, but he wanted me to see what I could do to expedite things. If I call him back and tell him that we simply cannot complete the necessary background check in time for his next meeting, he is likely to call you (or perhaps Chase) personally.

Rather than call him myself (and then have him call you), I thought that you might want to talk to him about both the Damon Keith appointment and President Bush's participation in the Commission's television program.

Please let me know if you want me to do anything further.

(I have also attached a copy of the Constitution that Chief Justice Burger signed and asked me to pass along to you.)

THE WHITE HOUSE
WASHINGTON

DATE:

6-25-90

FROM THE PRESIDENT

To:

Boyden 

I surrender!!

Please draft a letter to
the person that offered us
this Chris Craft and say
after a lot of soul searching
the U.S.G. cannot accept it.
Be sure the Navy is advised.

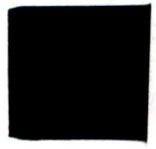


The Chris craft donor was
here last week at the 'outdoors'
meeting.

Thank them profusely on my behalf.

gb .

cc: ANDY Card



6-25-90

THE WHITE HOUSE
WASHINGTON

June 21, 1990

MEMORANDUM FOR ANDREW H. CARD, JR
ASSISTANT TO THE PRESIDENT AND DEPUTY TO THE CHIEF
OF STAFFFROM: C. BOYDEN GRAY *CBG*
COUNSEL TO THE PRESIDENTSUBJECT: Chris Craft American Classic Boat

This responds to your request for a status report on the offer from the Outboard Marine Corporation (via Jocelyn White of Apco Associates) to donate a Chris Craft American Classic Boat for the President's use.

As indicated in my last memo, the Navy has gift acceptance authority that may permit it to accept the boat for official use. Its decision on acceptance would be subject to Navy procedures and conflict-of-interest standards. Key Navy standards include:

- o a policy against accepting a gift that might embarrass the Department by reason of favors expected, appearance considerations, or unwarranted publicity for the donor;
- o a policy of declining offers from a commercial enterprise if acceptance would appear to endorse the donor, its product, or its services; and
- o careful evaluation of a gift requiring substantial expenditures or administrative efforts to determine whether acceptance is desirable.

At your request, my staff has explored informally the Navy's willingness to consider accepting the gift of the boat. The bottom line is that Navy probably can accept the boat. Application of Navy gift acceptance standards is complicated by: (1) the publicity likely to be generated by a gift of a pleasure boat (particularly such an attractive one); (2) the company's request for a photograph of the President with the boat, which may imply a desire to seek commercial benefit from the gift; and (3) the reference in the White letter to the company President's gratitude for recognition he received at a White House awards ceremony.

If we want to pursue this further, I recommend that the company approach the Navy independently of the White House, so that the gift can be considered on its own terms. On the whole, though, I recommend against pursuing this opportunity. I suspect that the utility of the boat to the government will be outweighed by the flack we are likely to get for having accepted such a gift.

THE WHITE HOUSE
WASHINGTON

June 21, 1990

MEMORANDUM FOR ANDREW H. CARD, JR
ASSISTANT TO THE PRESIDENT AND DEPUTY TO THE CHIEF
OF STAFF

FROM: C. BOYDEN GRAY *CBM*
COUNSEL TO THE PRESIDENT

SUBJECT: Chris Craft American Classic Boat

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THE WHITE HOUSE
WASHINGTON

October 26, 1989

MEMORANDUM FOR C. BOYDEN GRAY

FROM:

AMY L. SCHWARTZ *ALS*

SUBJECT:

Offer to the President of a Chris Craft Boat

Attached for your signature is a memo to Andy Card responding to his inquiry about the propriety of accepting the offer of a Chris Craft American Classic Boat for the President's use.

Please let me know if you have any questions.

Attachment

CBG/ALS:lbr
CBGray
ALSchwartz
Chron

THE WHITE HOUSE
WASHINGTON

October 27, 1989

MEMORANDUM FOR ANDREW H. CARD, JR
ASSISTANT TO THE PRESIDENT AND DEPUTY TO THE CHIEF
OF STAFF

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

RECEIVED BY 106

SUBJECT: Chris Craft American Classic Boat

This responds to your inquiry about the propriety of accepting the offer from Jocelyn White of Apco Associates, on behalf of Outboard Marine Corporation, to donate a Chris Craft American Classic Boat for the President's use.

The Navy (unlike the White House Office) has gift acceptance authority that may permit it to accept the boat for official use. Its decision on acceptance would be subject to Navy procedures and conflict-of-interest standards.

Key Navy standards include:

- o a policy against accepting a gift that might embarrass the Department by reason of favors expected, appearance considerations, or unwarranted publicity for the donor;
- o a policy of declining offers from a commercial enterprise if acceptance would appear to endorse the donor, its product, or its services; and
- o careful evaluation of a gift requiring substantial expenditures or administrative efforts to determine whether acceptance is desirable.

Two points in White's letter could complicate consideration of the offer. First, by requesting a picture of the President with the boat, White implies that the company would seek commercial benefit from the gift. Second, an appearance issue could be raised by White's mention that the Outboard Marine Corporation's CEO was recently recognized at a White House awards ceremony. It would be a problem if the gift was seen as a response to the White House recognition.

If you wish to pursue the prospect, my staff could sound out Navy officials informally on whether the Navy would likely be able to accept the boat if we wished it to do so. Then, if the answer

seems favorable, we could refer the offer to the Navy officially.

Shall I have my staff make informal inquiries?

_____ Yes

_____ No

For your convenience, I am returning the materials you sent me.

Attachments

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1Name of Correspondent: Andy Card☐ MI Mail Report

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

Subject: Chris Craft American Classic Boat

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CNO</u>	<u>2</u>	<u>8/10/26</u>			<u>1/1</u>
<u>Cuat 12</u>	<u>2</u>	<u>8/10/27</u>	<u>CBG signature</u>	<u>S</u>	<u>8/10/07</u>

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.

1618000

THE WHITE HOUSE
WASHINGTON

September 25, 1989

MEMORANDUM FOR C. BOYDEN GRAY

FROM:

ANDREW H. CARD, JR. *Andrew H. Card, Jr.*

SUBJECT:

Chris Craft American Classic Boat

Attached is a letter offering to donate a Chris Craft American Classic Boat to the Executive Office of the President. The President has seen the letter and brochure and is interested in pursuing this.

Your guidance will be appreciated.

Attachments

THE WHITE HOUSE

WASHINGTON

September 21, 1989

Dear Jocelyn:

Wow! My favorite boat of all time is a mahogany Chris Craft. Growing up I remember someone on the lake where my Grandmother's cottage was having a Chris Craft. It was the envy of everyone at the lake.

I promise to show the President the brochure and to tell him about the uniqueness of the 24 boats being constructed. I can anticipate how he will react, but I don't know what action he will take. When I have some direction, I will follow up with you or you can touch base with Linda.

With best wishes,

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

Jocelyn White
Vice President
Government Relations
APCO Associates
1155 - 21st Street, N.W.
Washington, D.C. 20036

APCO
ASSOCIATES
THE ARNOLD & PORTER CONSULTING GROUP

JOCELYN WHITE
Vice President
Government Relations

September 15, 1989

*Rec'd 9/15/89
AKC*

The Honorable Andrew H. Card
The White House
Washington, D. C. 20500

Dear Andy:

I am writing on behalf of Outboard Marine Corporation regarding the donation of a limited edition Chris Craft American Classic boat to the Office of the President of the United States.

Chris Craft, which is owned by Outboard Marine Corporation, is producing 24 boats constructed to the specifications of the 1930, 24-foot, Model 103 mahogany runabout. (I have enclosed a brochure on the boat for your information.) These boats will be built under the personal supervision of Christopher J. Smith, grandson of the founder of Chris Craft. Outboard Marine Corporation would like to offer one of these 24 boats to the Office of the President of the United States to be used as an "official presidential launch." We understand that the donation of this gift would need to comply with all appropriate laws overseeing gifts to the Office of the President.

As a recognized lover of boats and, in particular, quality boats, Outboard Marine Corporation believes that President Bush would truly appreciate this American Classic. The boat will be American built and of first rate quality. If the President is able to accept the use of this boat, Outboard Marine Corporation would appreciate a photo of the President with the boat.

Charles Strang, Chief Executive Officer of Outboard Marine Corporation, was recently recognized at a White House-sponsored awards luncheon honoring people with a technical background. Mr. Strang is very enthusiastic about the donation of this boat to the Office of the President.

Please let me know if there is any interest in this donation or if you need further information. I will call Linda Gambatesa to follow-up on this letter.

Sincerely,



Jocelyn White

Enclosure

Chris-Craft

MAHOGANY RUNABOUT COMPANY PRESENTS:
THE 1930 MODEL 103 REPRODUCTION

THE WHITE HOUSE
WASHINGTON

h.c.

25 June 1990

MEMORANDUM FOR THE PRESIDENT

From: Chase Untermeyer

Subj: Fifth Circuit Judicial Candidates

Boyden sent me a copy of his memo to you of 22 June reagrding Ricardo Hinojosa, Lynn Hughes, and the Fifth Circuit.

There may be as many as four vacancies on that court soon, and there are two other longtime Bushbackers who have expressed strong interest in serving there: HAL DeMOSS, who will be here on Monday, 2 July for interviews at Justice; and BILL CASSIN. Both men are in their late 50's.

cc: Boyden Gray
Andy Card ✓

THE WHITE HOUSE
WASHINGTON

DATE: June 19, 1990

FROM THE PRESIDENT

To:

C. Boyden Gray
Chase Untermeyer

I have known Lynn Hughes for ages.

Please give me an update on where this
Court of Appeals vacancy stands.

Are we considering Lynn?

Are we considering Ricardo Hincosa?

*Written before
my lunch with
Boyden today 6-19*

cc: John Sununu

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Memo	C. Boyden Gray to President Bush, Re: Fifth Circuit Vacancy. (1 pp.)	06/22/90	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Card, Andrew H., Jr., Files
Subseries:
WHORM Cat.:
File Location: Counsel's Office Materials [1]

Date Closed: 5/16/2025	OA/ID Number: 08373-009a
FOIA/SYS Case #: 2025-0373-S	Appeal Case #:
Re-review Case #:	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

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

Deed of Gift Restrictions

C(1) Closed by Executive Order 13526, governing access to national security information
C(2) Closed by statute or by the agency which originated the information
C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
PRM. Removed as a personal record misfile

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

P-2 Relating to the appointment to Federal office [(a)(2) 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]

THE WHITE HOUSE

WASHINGTON

May 1, 1990

*Linda G.
This is good!
Fred*

MEMORANDUM FOR ANDY CARD

FROM:

ROBERT GATES 8.

SUBJECT:

Draft Letter to President From Members of
Congress re: BTR/Norton

The draft Congressional letter to the President, which you forwarded to me, asks the President to initiate a CFIUS (Committee on Foreign Investment in the United States) investigation of the hostile takeover now underway in Massachusetts where a British conglomerate, BTR, is attempting to gain control of Norton Corporation. According to the draft letter, Norton is a leading developer of technologies that could be applied to spacecraft, submarines, aircraft, and computers.

According to Treasury Department officials, agencies that are members of CFIUS (State, Treasury, Defense, Justice, Commerce, OMB, USTR, and CEA) decided April 25 to initiate a CFIUS investigation pursuant to the Exon-Florio provision of the Omnibus Trade and Competitiveness Act of 1988. Commerce and DOD favored an investigation and Treasury went along, to become the third agency needed to approve an investigation.

In the meantime, a French company, Compagnie de Saint-Gobain, has come in as a "white knight" with a much higher stock price offer. The vote by shareholders took place yesterday, but the votes will not be counted for some indeterminate time and the CFIUS deadline for deciding on an investigation was Wednesday. If the Saint-Gobain offer is accepted, the acquisition becomes an entirely new transaction for CFIUS purposes and the process starts all over again.

THE WHITE HOUSE
WASHINGTON

DATE: 5-14-90

TO: Boyden Gray

FROM: ANDY CARD *Andy*

Many moons ago your
shop was doing some work
on the 25th Amendment.
Where do we stand?

THE WHITE HOUSE
WASHINGTON

October 27, 1989

MEMORANDUM FOR ANDREW H. CARD, JR
ASSISTANT TO THE PRESIDENT AND DEPUTY TO THE CHIEF
OF STAFF

FROM: C. BOYDEN GRAY *cmh*
COUNSEL TO THE PRESIDENT

SUBJECT: Chris Craft American Classic Boat

This responds to your inquiry about the propriety of accepting the offer from Jocelyn White of Apco Associates, on behalf of Outboard Marine Corporation, to donate a Chris Craft American Classic Boat for the President's use.

The Navy (unlike the White House Office) has gift acceptance authority that may permit it to accept the boat for official use. Its decision on acceptance would be subject to Navy procedures and conflict-of-interest standards.

Key Navy standards include:

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- o careful evaluation of a gift requiring substantial expenditures or administrative efforts to determine whether acceptance is desirable.

Two points in White's letter could complicate consideration of the offer. First, by requesting a picture of the President with the boat, White implies that the company would seek commercial benefit from the gift. Second, an appearance issue could be raised by White's mention that the Outboard Marine Corporation's CEO was recently recognized at a White House awards ceremony. It would be a problem if the gift was seen as a response to the White House recognition.

If you wish to pursue the prospect, my staff could sound out Navy officials informally on whether the Navy would likely be able to accept the boat if we wished it to do so. Then, if the answer

seems favorable, we could refer the offer to the Navy officially.

Shall I have my staff make informal inquiries?

X Yes *AHC 11/6/89*
_____ No

For your convenience, I am returning the materials you sent me.

Attachments

*2 Boyden's Office
must have
the materials.*

*10-27
N. materials
attached.
LL*

THE WHITE HOUSE
WASHINGTON

fil
AC HAS SEEN 5/1

May 1, 1990

MEMORANDUM FOR ~~ANDREW H. CARD, JR.~~
JAMES R. WRAY
JAMES P. PINKERTON
EDWARD M. ROGERS
DAVID M. CARNEY

FROM: FREDERICK D. NELSON *F.D.N.*

THROUGH: C. BOYDEN GRAY *cmh*
FREDERICK D. MCCLURE *fm*

SUBJECT: Campaign Finance Reform

Attached for your information is a copy of the background memorandum prepared for Marlin Fitzwater describing certain aspects of the new Dole/McConnell campaign finance proposal announced today.

This memo is not for public distribution; talking points are attached at page 3.

May 1, 1990

Campaign Finance Update (In-house)
Talking Points Attached at Page 3

Several Republican Senators, led by Dole and McConnell, will hold a press conference at noon today to unveil a new campaign finance package. Because they realize that this new plan differs from the President's proposal in certain respects (and might raise certain constitutional problems from the Administration's perspective), the roughly 32 Republican Senate co-sponsors do not anticipate our explicit endorsement. Rather, they hope that the Administration will commend the goals that underlie their approach and, at least by implication, further take issue with competing proposals advancing spending limits and public financing schemes. No one necessarily expects that the bill announced today will be enacted into law, but Senator Dole et al. are seeking to gain the moral high ground from which to gain negotiating power. By continuing to stress the principles that guide the President's own campaign finance reform proposals made last year, the Administration can help its congressional allies and work toward some reasonable enactment offering true reform.

A. Dole Proposal

The new Dole/McConnell proposal would, among other provisions:

- o eliminate all Political Action Committees (PACs), including the "non-connected" PACs that would continue to exist under the President's plan not subsidized by corporate or union monies;
- o reduce the limit on individual contributions by out-of-state donors from \$1,000 to \$500;
- o establish far reaching bans on "soft money," including a prohibition on any political activity by a tax-exempt, 501(c) corporation;
- o allow a "seed money" mechanism by which party committees could match early in-state contributions to challengers;
- o raise the limits on what individual contributors may give to opponents of candidates who spend large sums of their own money in the races;
- o command broadcasters to sell candidates non-preemptible time at a discounted rate;
- o adopt certain provisions of the Bush proposal (codifying the Beck decision protecting employee rights, attacking "bundling," limiting gerrymandering).

We need to study the Dole/McConnell package further to determine whether it is so restrictive on speech as to present real constitutional difficulties. By banning even non-connected PACs, for example, and by placing de facto restrictions on how much of their own money candidates can spend, the bill may go beyond what is allowed under the Supreme Court cases permitting restrictions on contributions aimed at reducing corruption.

The proposal on the whole correctly recognizes that it is the source, not the amount of campaign monies that presents the real corruption problem. Thus, the bill operates without imposing overall limits or a cap on campaign expenditures (which would tend to hamper challengers who confront the built-in advantages of incumbent name recognition and perks). It also steers away from costly public financing schemes.

B. The Administration Proposal

The Administration bill, introduced last year by Republican Leaders Dole and Michel, is based upon three guiding principles:

- o reducing special interest influence;
- o promoting competition/reducing unfair incumbent advantages;
- o enhancing the role of individual citizens and the political parties.

The proposal would achieve these goals consistent with constitutional principles. Among other reforms, the Administration bill:

- o Eliminates PACs subsidized by corporations, labor unions, and trade associations. These groups account for 90% of all PAC money contributed.
- o Tightens limits on "non-connected" PACs, reducing maximum permitted contributions from \$5,000 to \$2,500 per candidate.
- o Requires full disclosure of all "soft money" contributions and assures that "non-federal" dollars are not used to support federal candidates.
- o Eliminates certain unfair incumbent advantages by barring the "rollover" of campaign funds from one election to the next, banning use of the frank for unsolicited mass mailings, and ending gerrymandering by requiring neutral redistricting criteria.
- o Strengthens political parties by increasing the amounts they can spend on behalf of congressional candidates.

Talking Points

Any reform proposal must be judged by the principles underlying the President's approach:

- attacking special interest influence;
- promoting electoral competition;
- increasing the voice of individual citizens and the parties.

- o We have not fully analyzed the new Senate proposal, but its goals appear to be in line with our own and we applaud this significant effort toward true reform. We hope to work with Congress to achieve reforms along the lines suggested by the President last year.

- o We commend the Senate Republicans for sharing our conclusion that true campaign finance reform must be aimed not at protecting incumbents but at reducing special interest influence on the election process.

- o Special interest influence is best curtailed by eliminating special interest PACs, and both the Administration bill and the new Dole/McConnell proposal flatly abolish PACs subsidized by corporation, labor unions, and trade associations. We must seize this opportunity to eliminate the undue influence of such PACs.

- o These proposals stand in stark contrast to other bills that would enshrine special interest PACs by keeping them part of the system and limiting overall contributions (thus maximizing the importance of early special interest PAC money flowing easily to incumbents).

- o The new proposal also appears to head in the right direction because it does not seem designed to lock incumbents into office: it recognizes that challengers generally begin at a significant disadvantage and must mount effective campaigns in order to have a chance of winning. The proposal, like the Administration bill, also attacks certain of the unfair incumbent advantages such as taxpayer funded mailings and gerrymandering.

THE WHITE HOUSE
WASHINGTON

AC HAS SEEN 5/24

May 22, 1990

MEMORANDUM FOR ANDY CARD
ROGER PORTER

FROM: C. BOYDEN GRAY *CBH*
SUBJECT: United States v. Washington

We have been approached persistently by a group called "United Property Owners of Washington (UPOW)" about a suit currently in U.S. district court in Washington State. The property owners, along with the State, are concerned with the latest claims of various Indian tribes to treaty shellfishing rights along the coast. UPOW has requested a meeting with this office to garner our support for their case. We have also received a significant number of letters concerning this suit. UPOW has indicated that it may try to arrange for meetings with your offices.

This office has reviewed the various materials provided by the property owners, and we are of the opinion that it is inappropriate for the White House to intervene at this stage. Accordingly, we are referring all letters or other inquiries to the Department of Justice for appropriate response. If you have questions or receive correspondence concerning this matter, you may wish to refer them to Jay Bybee (x2898).

4/30/90

All materials sent to
Central Files Lg

THE WHITE HOUSE

4-27-90

David -

I assume the Norton
situation has mitigated because
of the friendly relationship
they invited. Keep in touch.
Andy

THE WHITE HOUSE
WASHINGTON

Mr. David P. Forsberg
U.S. Department of Housing and
Urban Development
Boston Regional Office
Thomas P. O'Neill Jr. Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092

Please send by red dot.

**Document Originally
Attached to
Following Page**

*Returned
tickets
4/27/90*

THE WHITE HOUSE
WASHINGTON

April 24, 1990

MEMORANDUM FOR ANDREW H. CARD, JR.
ASSISTANT TO THE PRESIDENT AND DEPUTY TO THE CHIEF
OF STAFF

FROM: AMY L. SCHWARTZ *ALS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Continental/Texas Air Invitation to the
Virginia Gold Cup Races

Per our conversation earlier today, this confirms my advice about the invitation you received from Continental Airlines and Texas Air Corporation to the Virginia Gold Cup Races, on May 5.

Texas Air and Continental Airlines are prohibited sources (i.e. companies that do business with the Executive branch). Thus, you may only accept if the event can be approved as a "widely-attended gathering" attendance at which is in the interest of the White House and would not create an appearance of impropriety.

According to a company employee, about 400 people have been invited to a company-sponsored reception tent at the site of the races. Invitees include Hill staff, Administration officials, industry representatives, travel agents, consultants, and families of company employees. The company would supply a complimentary ticket to the races, and once admitted to the races, there is no charge for admission to the tent. Admission to the races is ordinarily \$35 at the door (or \$25 in advance).

Although going to the company reception tent at the races can be approved under our usual standards, Counsel's Office has generally not approved acceptance of complimentary tickets to events from groups other than the sponsoring organization. Accordingly, since the races themselves are not sponsored by Texas Air/Continental, it would be appropriate for you to purchase your own ticket to the races. Once admitted to the race area, however, you could freely go to the Texas Air/Continental tent and accept the offered refreshments there.

I am returning the original invitation that you sent to us with your request for advice.

Please feel free to call if you have any questions.

Attachment



JOHN SODOLSKI
President

April 17, 1990

Mr. Andrew H. Card, Jr.
Assistant to the President
Deputy to the Chief of Staff
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Card:

I am delighted that you and your wife Kathleen will be able to join us for the Annual Running of the Virginia Gold Cup, and other steeplechase races, on Saturday afternoon, May 5, 1990. My wife Jan and I look forward to seeing you there. Enclosed you will find badges, parking passes and parking instructions. On the back of the parking pass there are directions to The Plains. A map of the Great Meadow Course is also enclosed.

You should anticipate arrival as early as possible. We will be set up and ready to go by 11:00 a.m. There will be a lunch in the USTA tent on the course. The last race of the afternoon usually is run at about 4:30 p.m.

If you have any questions, please call Virginia Brown at 835-3116.

Sincerely,

ID # _____ CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) _____

Name of Correspondent: _____

☐ MI Mail Report

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

Subject: _____

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuozc	ORIGINATOR	9004/13			1 1
Cuat 12	Referral Note: A	9004/13			S 9004/16
	Referral Note:				1 1
	Referral Note:				1 1
	Referral Note:				1 1
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Type of Response = Initials of Signer
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Comments: _____

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THE WHITE HOUSE
WASHINGTON

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March 28, 1990

MEMORANDUM FOR ANDREW H. CARD, JR.
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: LEE S. LIBERMAN *LSL*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Federal Courts Study Committee Request

The Federal Courts Study Committee will issue its findings and recommendations on Monday, and would like to meet with the President personally to present its report to him. The Committee, we understand, will separately meet with the Chief Justice and with the Speaker of the House.

Created by statute, the Committee is composed of federal judges, scholars, and legislators (Heflin, Grassley, Kastenmeier and Moorhead), and includes one Administration member (the Assistant Attorney General for the Criminal Division). Its report has been fifteen months in the making and will be the focus of serious discussion in Congress. In commenting on drafts of the forthcoming report, the Administration endorsed a number of the Committee recommendations, including the controversial proposal to abolish "diversity" jurisdiction (whereby cases may go to federal rather than state courts solely because the adverse parties are from different states). Other Committee proposals are less desirable, including new tax court recommendations and certain proposals in the criminal law area.

The distinguished membership of the Committee and the significant efforts it has made in preparing the report seem deserving of respect, and the proposals will prompt some legislative action. Because we are unlikely to be in full agreement with the report, however, we should not be seen as embracing it without further study. The President is scheduled to be out of town on Monday, which may provide an excuse to have some other Administration official accept the report. We would suggest that either the Vice President or the Attorney General serve that ceremonial function.

Do you concur that either the Vice President _____, the Attorney General _____, or some other official _____ should be designated to receive the report?

Or do you believe that the President should meet with the Committee's representatives to receive the report upon his return to Washington?

Let's wait for a review of the report.

THE WHITE HOUSE

WASHINGTON

April 17, 1990

Dear Spike,

Thank you for your recent letter on behalf of
Greg Mize for a Superior Court judgeship.

Your recommendation is appreciated, and I will
share it with the appropriate officials.

Great to hear from you. Keep in touch.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

Mr. S. Steven Karalekas
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

S. STEVEN KARALEKAS

1250 CONNECTICUT AVE., NORTHWEST - WASHINGTON, D. C. 20036

April 12, 1990

The Honorable Andrew H. Card
Assistant to the President and
Deputy to the Chief of Staff
The White House
Washington, D.C. 20500

Dear Andy:

I just learned from my friend, Greg Mize, general counsel to the D.C. City Council, that President Bush has nominated him for one of the vacate Superior Court judgeships. He is the fellow I wrote you about recently. It is a magnificent appointment and I know Greg will be a terrific judge.

Looking forward to seeing you soon. Take care, Andy.

Sincerely,

Spike

S. Steven Karalekas

SSK/bam

THE WHITE HOUSE

WASHINGTON

March 30, 1990

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MEMORANDUM FOR ANDREW H. CARD, JR.
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: FREDERICK D. NELSON *FON*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Civil Rights Legislation: Veto Threat

With the Senate Labor Committee scheduled to mark up the Kennedy-Hawkins civil rights legislation on Wednesday April 4, the Department of Justice has drafted a report laying out the Administration's objections to the bill and supporting the Administration's own proposal. The report, which has not yet been sent into OMB clearance, contains a "senior advisors" veto threat.

Boyden, Roger Porter, and the Office of Legislative Affairs all agree that the Administration needs to express its strong and committed opposition to the Kennedy-Hawkins legislation in order to keep in place legislators who fear going onto a limb that the Administration might later saw off. Counsel's Office, OPD and OLA therefore strongly recommend the proposed veto language, which would be welcomed by our Hill allies.

Justice expects that the Labor Committee will approve Kennedy-Hawkins on an 11-5 vote, with the 5 Republicans who are not co-sponsors voting in the negative. Kennedy-Hawkins currently has 39 cosponsors in the Senate (with Lieberman and Dixon being the newer additions) and 156 cosponsors in the House. These numbers still are smaller than those often associated with "civil rights" legislation. The debate thus far has focused significantly on the quota issue, although Kennedy-Hawkins backers to the dismay of the business community will try to move the debate to remedies (noting that racial discrimination results in compensatory and punitive damages under the Civil War statutes, while relief for discrimination on the basis of sex and other grounds is limited to injunctions and back pay under Title VII).

A summary of the draft report is attached, along with the draft itself. I would appreciate your letting me know at your earliest convenience whether you and Governor Sununu agree that the DOJ draft report should contain a "senior advisors" veto threat and be circulated through the OMB process in that form.



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

Honorable Edward M. Kennedy
Chairman
Committee on Labor and Human Resources
U.S. Senate
Washington, D.C. 20510

Dear Chairman Kennedy:

This letter presents the views of the Administration regarding S. 2104, the Civil Rights Act of 1990. For the reasons discussed below, senior advisers to the President would recommend Executive disapproval of S. 2104, if it reached the President's desk.

Sections 1 through 3 of the bill are, respectively, the short title, statement of findings and purpose, and definitions. The substantive provisions of the bill begin with section 4, which would reverse Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989).

In Wards Cove, the Court addressed three important stages of a lawsuit alleging that an employer's hiring practices had the effect of discriminating in violation of Title VII of the Civil Rights Act of 1964. First, the Court reaffirmed that statistics may form the basis for a prima facie case of disparate impact. It also reaffirmed that the statistics must compare the employer's workforce to the pool of qualified job applicants or qualified members of the labor force. Because any "racial imbalance" may result from an absence of qualified or interested minorities in the labor force, the proper comparison for statistical purposes is between the relevant portion of the employer's workforce and the labor force or applicant pool. See, e.g., Hazelwood School District v. United States, 433 U.S. 299, 308 (1977).

A second, related issue addressed by the Court involved causation. Consistent with established precedent, the Court noted that a Title VII plaintiff must identify the specific employment practice that has produced the challenged disparate impact.

S. 2104 would permit plaintiffs to allege simply that the end product of all the employer's employment practices was a

statistically disparate workforce. The Court's approach seems to us to be a much more sensible, efficient, and fair allocation of litigation responsibilities. Absent the link between specific practices and a resulting disparate impact, employers could be found liable for the numerous innocent factors that can cause statistical imbalance in the composition of a workforce. Liability could be premised entirely on statistics showing "bottom line" racial imbalance, a measure of discrimination that the Supreme Court has appropriately rejected when bottom line balance has been offered as a justification for discriminatory selection devices. See Connecticut v. Teal, 457 U.S. 440 (1982).

Moreover, asking the plaintiff to identify the specific practices that produce a disparate impact before employers are asked to justify them is consistent with traditional rules allocating burdens of proof. This allocation of responsibilities strikes us as more efficient and equitable than allowing plaintiffs simply to allege that a hiring system produces a disparate impact and forcing employers to demonstrate that each individual employment practice within that system does not have a disparate impact, as S. 2104 would. Furthermore, in view of the liberal discovery rules and the record-keeping requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607.1 et seq. (1988), we do not think that this requirement of specificity should unduly burden plaintiffs.

Indeed, the Court's prior "disparate impact cases have always focused on the impact of particular hiring practices on employment opportunities for minorities," Wards Cove, 109 S. Ct. at 2124, and plaintiffs have always targeted those specific practices. See Griggs v. Duke Power Co., 401 U.S. 424 (1971) (high school diploma requirement); Dothard v. Rawlinson, 433 U.S. 321 (1977) (height and weight requirements for prison guards); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1977) (employment tests and seniority systems); Connecticut v. Teal, 457 U.S. 440 (1982) (written examination); Watson v. Fort Worth Bank & Trust, No. 86-6139 (June 29, 1988) (subjective judgment of supervisor). The Court's rule is also consistent with the general practice in the lower courts. Obviously, in the basically equitable approach of Title VII, there could be exceptions to this rule if a court is presented with a situation where it is literally impossible to specify which of several criteria has caused the inquiry. But those instances are not foreclosed by Wards Cove and ought to be treated as exceptions and not as a reason to amend the statute.

Finally, in Wards Cove, the Court addressed the burdens imposed on the parties once a plaintiff has established a prima facie case of discrimination. The Court held that the employer's burden was to produce evidence that the "challenged practice pursues, in a significant way, the legitimate employment goals of the employer." Wards Cove, 109 S. Ct. at 2125-2126. The burden of persuasion, however, remains with the plaintiff. The

plaintiff may defeat the employer's evidence by showing that reasonable alternatives would serve the employer's purpose equally well.

S. 2104 would reverse these requirements. It would shift the burden of persuasion to the employer and require that he prove that the challenged practice was "essential to effective job performance." In our view, the Court correctly held that the burden of persuasion remains with the plaintiff throughout a disparate impact case, just as it does in a case alleging intentional discrimination, see Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256-258 (1981), and just as it generally does when causation is an element of a violation. See Restatement (Second) of Torts 433B (1965). This is also the accepted rule in civil litigation generally. Fed. R. Evid. 301. We think it would be unjustifiable to impose a greater burden on an employer who is alleged to have violated Title VII by employing a practice that produced a statistical imbalance than on one who is alleged to have engaged in purposeful discrimination.

Likewise, we think that the Court's formulation of the applicable substantive standard is fully justified as an appropriate balancing of the interests of employers and employees. Prior decisions had used varying terminology in describing the employer's burden after a showing of disparate impact. See, e.g., Connecticut v. Teal, 457 U.S. 440, 446 (1982) (citation omitted) ("manifest relationship to the employment"); Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975) ("job related"); Griggs v. Duke Power Co., 401 U.S. 424, 431, 432 (1971) ("business necessity"; "manifest relationship to the employment"); New York Transit Authority v. Beazer, 440 U.S. 568, 587 n.31 (1979) ("legitimate employment goals of safety and efficiency * * * are significantly served"). The standard molded by the Court from those prior formulations, i.e., that a "challenged practice serves, in a significant way, the legitimate employment goals of the employer" (Wards Cove, 109 S. Ct. 2125-2126), has sufficient teeth to ensure that employers do not use practices of dubious business utility, while not pressuring employers to resort to hiring and promotion quotas, and respecting the needs of employers to preserve legitimate management prerogatives. We find it unlikely that this formulation of the standard for a business justification will preclude the assertion of meritorious claims, particularly since the plaintiff may still prevail by showing that other reasonable business practices would satisfy the employer's need without producing a discriminatory effect.

Those who say that Wards Cove represents a radical change in the law are simply wrong. Each of the Court's holdings was presaged by earlier Supreme Court and lower court decisions. These adjustments represent at most judicial fine tuning to a

method of proving discrimination that has been developed entirely by courts. We are convinced that the Court thoughtfully balanced the competing interests and produced a workable distillation of some eighteen years of precedents applying the disparate impact standard. Indeed, the Court in large part adopted the approach urged by a brief filed by the United States. This approach will enable employees to pursue successfully meritorious claims, and employers will not be unduly burdened in defending claims of discrimination. Nor will employers be encouraged to resort to quotas to ward off the threat of lawsuits based on statistical imbalances.

Even though the employer's burden is now established as one of production and not proof, it is by no means insubstantial. Under existing Supreme Court precedent (Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254-255 (1981)), the employer's burden is "to rebut the presumption of discrimination" by "the introduction of admissible evidence" which is "legally sufficient to justify a judgment for the defendant."

Section 5 of the bill would reverse the holding in Price Waterhouse v. Hopkins, 109 S. Ct. 1775 (1989), in which the Court ruled in favor of a woman who alleged that she had been denied partnership by her accounting firm on account of her race. The Court there faced a so-called mixed motive case in which plaintiff alleged that her sex had supplied part of the motivation for her rejection for partnership. The Court held that once she had established by direct evidence that sex played a substantial part in the decision, the burden shifted to the employer to show that it would have reached the same decision had sex not been considered. The result reached in Hopkins is as favorable or more favorable to plaintiffs as that adopted by the overwhelming (9-2) majority of courts of appeals. See id. at 1784 n.2. It is also consistent with the Supreme Court's own earlier decisions for mixed motive cases brought under the Constitution and the National Labor Relations Act. See Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977); NLRB v. Transportation Management Corp., 462 U.S. 393 (1983); see also Hunter v. Underwood, 471 U.S. 222 (1985). We think that the Court's balancing of interests is reasonable and should be preserved.

Yet, S. 2104 would state that a violation of Title VII is established when the plaintiff demonstrates that race, color, religion, sex, or national origin was "a motivating factor" in an employment decision, regardless of whether the employer demonstrates that he would have made the same decision for legitimate reasons absent the discrimination. The latter proof would go only to the question whether the plaintiff was entitled to the position that he or she had been denied. The bill would reverse the general rule that in employment discrimination cases, as in any civil case, the plaintiff must show that the

defendant's unlawful conduct caused an injury. Allowing recovery based not on injury but on an employer's state of mind is antithetical not only to the spirit of Title VII, but to the spirit of our legal system as well. Of course, the inequities resulting from such an approach would be further magnified in the class action context. At the very least, reversal of Price Waterhouse is premature, since there was not a majority opinion for the Court and there is no evidence that the decision has worked inequitably. Moreover, the creation of this new category of Title VII violation would have an exacerbating effect if section 8 of the bill were enacted, authorizing compensatory and punitive damage awards for disparate treatment violations of Title VII. A plaintiff would be entitled to such awards and attorney fees even if the employer demonstrated that he would have made the same employment decision he did for legitimate reasons absent the alleged discrimination.

Section 6 of the bill would reverse the holding in Martin v. Wilks, 109 S. Ct. 2180 (1989). That case arose in the context of a civil rights action, but it turned on principles of fairness and access to court that apply in every area. The Court held that white firefighters, who had not been parties to a consent decree that mandated racial preferences, could have their day in court to contend that the decree violated their civil rights. The Court rejected the so-called collateral attack doctrine, pursuant to which some courts had held that, once a decree was entered, it could not be challenged, even by individuals who had not been parties to the original lawsuit.

The Court's decision turned on a straightforward application of the Federal Rules of Civil Procedure and underlying notions of due process. The Federal Rules establish procedures for joinder of all interested parties in a case. Quite simply, and quite fairly, anyone who is not joined in the lawsuit and given an opportunity to appear in court to protect his or her rights cannot be bound by the final judgment. The Court's decision is a reaffirmation of the fundamental notion that everyone is entitled to his or her day in court. The Department of Justice advocated the position adopted by the Court.

S. 2104, however, would reverse this holding by prohibiting challenges to a Title VII decree by individuals who had notice of the proposed judgment and an opportunity to present objections to it or if the interests of the challenger were adequately represented by another individual who challenged the judgment. The bill would also forbid challenges if the court that entered the judgment determined that reasonable efforts were made to notify interested persons of the judgment.

We strongly oppose this provision. Rather, we think that Wilks should have a salutary effect. By requiring early joinder of all those who may be adversely affected by a lawsuit, the

decision should enable courts to consider the full range of interests affected by a proposed decree. The decision should lead to fairer, more carefully considered, and unassailable remedies for discrimination. It will discourage defendants from settling discrimination cases by bargaining away third party rights, rather than making whole the actual victims of discrimination. In addition, the participation of all of the affected parties in formulation of a decree should aid in its implementation. Successful, voluntary compliance with Title VII may depend upon the cooperation of a broad range of individuals. Involving as many of those individuals as possible in formulating the decree will lead to smoother and more effective implementation of the remedy for discrimination. We view this decision working in conjunction with our proposed amendment to alter the statute of limitations in response to Lorance v. AT&T Technologies, Inc., 109 S. Ct. 2261 (1989), to ensure that aggrieved individuals have an opportunity to litigate their claims. In practice, the only time a consent decree will be disturbed under Wilks is when a federal judge finds that its operation is violating the rights of the challenging party. It is hard to understand why anyone would try to prevent such an adjudication. The unfortunate effect of this provision would be to insulate illegal or unconstitutional quota decrees from judicial review.

Finally, by foreclosing appropriate review, the proposed Wilks legislation would raise serious constitutional concerns under the Due Process Clause of the Fifth Amendment. In particular, proposed section (m)(1)(B) of Section 6 of the bill would authorize the deprivation of an individual's legal claims without any attempt to notify the individual that his rights were in jeopardy. Rather, it would suffice that a court found that the individual's interests had been represented adequately by another party, regardless of whether the excluded individual stood in privity or in some similar relationship with the representative party. This provision of the bill is inconsistent with the "principle of general application in anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." Martin v. Wilks, 109 S. Ct. 2184, quoting Hansberry v. Lee, 311 U.S. 32. 40 (1940) (black home buyers could not be bound by prior suit approving racially restrictive covenant, since they had not been parties nor in privity with parties to the earlier suit). It also cannot be squared with the Supreme Court's consistent holding that notice is an "elementary and fundamental requirement of due process." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Proposed section (m)(1)(C) also violates the Due Process Clause. This section would cut off future challenges to discriminatory employment practices if the court entering the

judgment determined that "reasonable efforts were made to provide notice to interested persons." As discussed in the preceding paragraph, a general, and fundamental, principle in our legal system is that individuals are not bound by litigation in which they are not a party -- that everyone is entitled to his or her day in court. This bill, moreover, differs considerably from other special statutory schemes approved by the Supreme Court where the need to resolve the ownership of specific property justifies foreclosing successive litigation by nonlitigants of preexisting claims. This is quite different from the preclusion of discrimination claims, including constitutional equal protection claims. Moreover, this bill purports to foreclose not only legal claims existing at the time of adjudication, but also claims that may arise in the future. Indeed, claims foreclosed by S. 2104 would arise only after judgment had been entered and new acts of alleged discrimination occurred against, for example, individuals who had never previously applied for a job with the employer or, indeed, had not been born at the time of the original decree. Further, the procedure for determining the reasonableness of notice under section (m)(1)(C) is constitutionally defective. Such a proceeding would necessarily lack the adversarial character which normally gives us confidence in determinations reached by courts. Indeed, not only will the proceeding be nonadversarial, but defendants can be expected to support plaintiffs' claim to have provided reasonable notice. We do not believe an individual's due process rights are satisfied by a court determination entered with no one present to represent the individual's interests and where everyone who is present has interests contrary to those of the individual. Cf. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327 n.7 (1979); Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 329 (1971).

Section 8 of the bill provides for compensatory damages for intentional violations of Title VII and punitive damages when violations are committed with malice, or reckless or callous indifference to the rights of others. The section also explicitly acknowledges that any party will have a right to request a jury trial in an action for damages. This section represents a major change in Title VII and is in no way related to any of last Term's decisions. It was part of the original compromise that led to passage of Title VII that the only monetary relief available would be in the form of back pay. The scheme of relief authorized in Title VII reflected a careful balancing of employees' rights and the need to preserve legitimate management prerogatives. Title VII has proved effective in eradicating systematic exclusion of minorities and women from the workplace.

The bill's proposal to authorize damages threatens to upset this careful balance. Adding damages to the remedies already available will discourage conciliation and encourage litigation. Plaintiffs' lawyers will inevitably include claims for pain and

suffering, emotional harm, and the like as a matter of course. Placing these issues before a jury, as well as the complex and emotional issues of liability that are often involved in Title VII cases, will turn Title VII litigation into a time-consuming, high risk venture for both plaintiffs and defendants. We think it is better to preserve Title VII's current remedial scheme, with bench trials and prompt equitable relief including back-pay and rightful place seniority, which has worked so well for over 25 years.

The Administration endorses the bill's effort to overturn two of last Term's decisions: Lorance v. AT&T Technologies, Inc., 109 S. Ct. 2261 (1989), and Patterson v. McLean Credit Union, 109 S. Ct. 2363 (1989). The Administration has, however, itself proposed legislation to accomplish these results, and, for the reasons stated below, we urge the approach taken in the Administration's bill rather than S. 2104.

Section 7 of S. 2104 would reverse the holding in Lorance v. AT&T Technologies, Inc., *supra*, in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for plaintiffs, who claimed that the employer had adopted the seniority system intentionally to alter their contract rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for plaintiffs to file their complaint began to run when the employer adopted the allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which plaintiffs suffered the diminution in employment status about which they complained. The Court viewed this result as dictated by its prior cases holding that the statute of limitations begins to run when the act of discrimination occurs and not when its effects are felt.

The rule adopted by the Court was contrary to the position taken by the Government and the EEOC. It would shield large numbers of existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. Moreover, such an application surely focuses the controversy between an employer and an employee more sharply and permits more precise litigation. In addition, a rule that limits challenges to the period immediately following adoption of a

seniority system will promote unnecessary, as well as unfocused, litigation. Employees will be forced to challenge the system before it has produced any concrete impact or forever remain silent. Given such a choice, employees who might never suffer harm from the seniority system may be forced to choose to file a charge -- an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to. And, finally, the Court's rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after becoming subject to a seniority system is unfair to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the employee's status had been adversely affected by the seniority system and, therefore, before the challenge was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees would be reluctant to begin their jobs by suing their employers.

The Administration, therefore, supports an amendment to Title VII of the Civil Rights Act of 1964 that would start the period for filing a charge when a discriminatory system was adopted, when an employee becomes subject to the system, or when he is injured by it.

S. 2104 would address Lorance v. AT&T Technologies, Inc., supra, by adding the following sentence to Section 703(h) of Title VII of the Civil Rights Act of 1964:

Where a seniority system or seniority practice is part of a collective bargaining agreement and such system or practice was included in such agreement with the intent to discriminate on the basis of race, color, religion, sex, or national origin, the application of such system or practice during the period that such collective bargaining agreement is in effect shall be an unlawful employment practice.

This provision contains two apparent and significant limitations. First it would apply only to seniority systems that are adopted as part of a collective bargaining agreement. Apparently, it

would not apply to a non-union shop or where a seniority practice was not the result of a collective bargaining agreement or, where a collective bargaining agreement had expired, but the seniority system remained in place.

Second, this provision does not make explicit that an unlawful employment practice also occurs when a discriminatory seniority system is adopted and when an employee first becomes subject to it, even though it has not been "applied" in any tangible sense to the employee to produce some employment consequence. Rather, this amendment states only that the unlawful employment practice occurs when the system is applied. Thus, an employee may be precluded from challenging a discriminatory seniority system any time before it is applied to him or her.

By contrast, the Administration proposal is broader. It states:

For purposes of this section, an unlawful employment practice occurs when a seniority system is adopted, when an individual becomes subject to a seniority system, or when a person aggrieved is injured by the application of a seniority system, or provision thereof, that was adopted for an intentionally discriminatory purpose, in violation of this Title, whether or not that discriminatory purpose is apparent on the face of the seniority provision.

This proposal would reach all seniority systems, regardless whether they were part of a collective bargaining agreement. It also makes explicit that an employee may challenge a discriminatory system when it is adopted, when the employee first becomes subject to it, and when the employee suffers some injury by virtue of the application of the system. We, therefore, urge adoption of the Administration's language.

Section 12 of S. 2104 would overrule Patterson v. McLean Credit Union, 109 S. Ct. 2363 (1989). In Patterson, an employee sued pursuant to 42 U.S.C. 1981, alleging that her employer had harassed her on the job, failed to promote her, and ultimately discharged her, all because of her race. The Court held that Section 1981 is limited by its terms to prohibiting discrimination in "mak[ing] and enforc[ing] contracts," and does not extend to "problems that may arise later from the conditions of continuing employment." Patterson, 109 S. Ct. at 2372. Thus, the Court held, the statute prohibits discrimination -- whether governmental or private -- in the formation of a contract and in the right of access to a legal process that will enforce established contract obligations without regard to race. While the plaintiff's

allegation that she had been discriminatorily denied promotion might fall within the prohibition against discrimination in making contracts, her allegations of harassment on the job addressed only conditions of employment. And there was no allegation that she had been discriminatorily denied access to legal process to enforce her contract of employment.

Our review of the cases applying Patterson leads us to the conclusion that the Court's reading is causing many meritorious cases to be dismissed and thus creates a significant gap in the fabric of our civil rights laws that must be filled. We, therefore, support corrective legislation to ensure that section 1981 will apply to the performance, breach, and termination of contracts to the same extent that it does to their making and enforcement. Furthermore, to remove any possible ambiguity for future cases, we believe that it is appropriate to codify the holding of Runyon v. McCrary, 427 U.S. 160 (1976), that section 1981 prohibits private, as well as governmental discrimination.

Again, however, we urge adoption of the language offered by the Administration. S. 2104 would overturn Patterson by adding the following sentence to 42 U.S.C. 1981:

For purposes of this section, the right to "make and enforce contracts" shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

The Administration bill would add the following new language:

The rights protected by this section are protected against impairment by nongovernmental discrimination as well as against impairment under color of state law. This section affords the same protection against discrimination in the performance, breach, or termination of a contract, or in the setting of the terms or conditions thereof, as it does in the making or enforcement of that contract.

The proposals are comparable in extending the protection of section 1981 to every aspect of contract performance and termination. The Administration proposal, however, goes beyond S. 2104 in codifying the holding of Runyon v. McCrary, 427 U.S. 160 (1976), that section 1981 reaches private, as well as governmental conduct. While the Supreme Court declined to overrule Runyon in Patterson, this provision ensures that Runyon will remain the law of the land.

S. 2104 contains several changes to current civil rights law of less significance and varying degrees of merit. At present, however, we conclude that none of them is necessary.

Section 7(a)(2) of S. 2104 would overturn much of the Supreme Court's jurisprudence regarding the time for challenging an unlawful employment practice. Under current law, an employee must challenge such a practice within 180 days after it "occurred." Section 7(a)(2) would also permit such a challenge within 180 days after the unlawful practice had "been applied to affect adversely the person aggrieved." The selection of a starting point for the running of a statute of limitations initially involves a weighing of two important interests: (1) ensuring that as many meritorious claims as possible can be pursued, while (2) not unfairly burdening employers with the obligation to defend stale suits. The Court has generally designated the point at which the employee receives notice of an employment action as the relevant moment. See Delaware State College v. Ricks, 449 U.S. 250 (1980); Chardon v. Fernandez, 454 U.S. 6 (1981). S. 2104 would go too far in upsetting the present balance. By focusing on the subsequent applications of an employment practice, rather than the occurrence of the practice, S. 2104 would allow charges to be filed long after -- in many instances years after -- the challenged practices occurred. Increasing the time between the challenged act and the filing of a charge will increase the likelihood that memories will fade, witnesses will disappear, and documents will be lost, making it more difficult for both plaintiffs and defendants to meet their respective burdens, but placing at a particular disadvantage defendants who may not have been on notice that a charge would be filed.

Similarly, section 7(a)(1) would extend the statute of limitations for filing a charge of discrimination pursuant to Title VII from 180 days (or 300 days in a state that is certified as having a comparable procedure) to 2 years. We are aware of no body of proof that suggests a need for such prolongation of the existing filing rules. Instead, this additional time between the occurrence of the challenged practice and the charge will simply increase the likelihood that employers will have to defend against stale claims. It may also disadvantage some plaintiffs by lulling them into delaying assertion of their claims until their claims are stale and more difficult to prove. In the Department's view, two years is longer than fairness to plaintiffs requires and may seriously disadvantage employers.

Likewise, Section 10(1) of S. 2104 would extend the time for filing a charge against the federal government from 30 to 90 days. We are not convinced of the need for this change. The short filing deadline ensures fresh claims and provides an opportunity for structured resolution of a grievance before positions become hardened.

Section 9 of the bill addresses attorney and expert witness fees in Title VII actions. Section 9(2) would authorize awards of the full amount of expert witness fees to prevailing parties. The fees would be awarded according to the same standard that governs awards of attorney fees; that is, prevailing plaintiffs always recover and prevailing defendants recover if the plaintiff acted frivolously or unreasonably.

Experts are often essential in Title VII litigation. The development of a properly focused and relevant statistical case, and defending against such a case, require the use of a range of costly experts and computers. The prospect that these expenses could be recovered would reduce the expected cost of bringing suit and thereby encourage litigation. Certainly, more meritorious suits might be brought; on the other hand, so might more dubious actions. In all events, the current state of the law regarding awards of expert fees is unsettled, and is likely to be resolved soon. The Supreme Court recently granted certiorari in West Virginia Hospital v. Casey, No. 89-994, to resolve whether the fees of expert witnesses may be included in an award of attorney fees pursuant to 42 U.S.C. 1988. Because the statutory language of section 1988 and Title VII is similar, that case should shed light on the question whether such fees may be recovered pursuant to Title VII. Legislation may prove to be premature.

Section 9(3) of the bill would strike the language of section 706(k) of Title VII that states that attorney fees shall be awarded "as part of the costs." This section would overturn Marek v. Chesny, 473 U.S. 1 (1985), in which the Court held that attorney fees awarded pursuant to 42 U.S.C. 1988 as part of the costs were subject to Rule 68 of the Federal Rules of Civil Procedure. Rule 68 states that when a timely pretrial offer of settlement is made and "the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer." Thus, Marek held that if a plaintiff rejects a pretrial offer and fails to recover more at trial, he may not recover from the defendant attorney fees incurred after the offer.

The Government supported this result as *amicus curiae*, and we are not convinced that the current rule fails to make sense as a matter of judicial administration. Rule 68 is designed to encourage settlement and avoid litigation. The inclusion of attorney fees as an expense that cannot be recovered serves those goals. Title VII is otherwise designed to encourage resolution of complaints prior to litigation and Rule 68 constructively reinforces that structure. The Administration is not aware that Marek has imposed substantial hardship.

Section 9(4) of the bill would prohibit a court from entering a consent decree unless the parties and their counsel attested that a waiver of attorney fees had not been compelled as a condition of the settlement. This provision would overturn Evans v. Jeff D., 475 U.S. 717 (1986), in which the Court held that a district court has discretion to approve a settlement that is conditioned on a waiver of statutory attorney fees. Again, the Government urged this result as amicus curiae.

This provision is designed to eliminate a potential bind for attorneys for Title VII plaintiffs. Where a defendant offers a favorable settlement, but conditions it on the attorney's waiver of any claim for attorney fees, the plaintiff's attorney will often disserve his client by rejecting the offer, but may forego compensation if he accepts. This provision, however, would remove a chip from the bargaining table, thereby making settlement less attractive by eliminating a way in which defendants can limit their liability and be certain of the bottom line. In addition, a district court has discretion to reject a settlement that contains a compelled fee waiver. It may also instruct the parties to negotiate fees separately. In view of these safeguards, the Administration is not convinced that this provision is necessary.

Section 9(4) of S. 2104 would also authorize a party who prevailed in a Title VII action to recover from the party against whom relief was granted attorney fees incurred in defending that relief from subsequent collateral attack. This provision addresses indirectly the rule announced in Independent Federation of Flight Attendants v. Zipes, 109 S. Ct. 2732 (1989), in which the Court held that individuals bringing a collateral attack would be treated as Title VII plaintiffs, not defendants, for attorney fee purposes -- i.e., the original plaintiffs would recover from them only if the collateral attack had been frivolous. The Government, as amicus curiae, once again supported this result.

While it is important to ensure that Title VII plaintiffs can afford to defend the relief that they have won, and to encourage relief that inappropriately infringes on the rights of third parties, it is also important that defendants who settle litigation not be left liable for open-ended and unforeseeable fee awards resulting from collateral challenges. Pursuant to this provision, the cost of another party's unsuccessful -- and perhaps frivolous or ill-advised -- litigation would be imposed on a defendant who had no control over it. The Administration is not convinced that the solution offered by this provision is wise.

Section 10 of the bill, in addition to lengthening the statute of limitations for filing a charge against the federal government, would also authorize payment of interest on Title VII

awards against the United States. At present, such awards are barred by sovereign immunity. The Administration does not support this increase in the cost of the government's Title VII litigation.

Section 11 of S. 2104 would require that all civil rights statutes be broadly construed to effectuate their purposes. To the extent that this provision suggests that courts should eschew traditional rules of statutory construction in favor of judicial policymaking, we oppose it. Civil rights statutes, like all others, should be construed in a manner that is consistent with their language and the intent of Congress.

Section 11 of the bill further provides that no federal civil rights law shall be construed to "limit the rights, procedures, or remedies available under any other Federal law protecting such civil rights." Again, civil rights statutes should be construed and reconciled according to their language and the intent of the enacting Congress. To the extent that this provision suggests that courts do otherwise, we oppose it.

Section 13 of the bill states that it shall not be construed to affect "court-ordered remedies, affirmative action, or conciliation agreements that are otherwise in accordance with the law." The purpose of this section is unclear. It should be clarified so that it may be debated.

Section 14 of the bill contains a severability provision.

Section 15 of the bill creates transition rules. It states, in effect, that each provision that overrules a Supreme Court case shall apply retroactively to the date of the decision. It also provides for vacating orders entered in the interim and tolls until enactment of the bill the running of the statute of limitations on actions that were not filed because of one of the overturned decisions. By upsetting final judgments, this section may unconstitutionally interfere with vested legal rights. Finally, by changing the rules of employment discrimination litigation retroactively, it raises serious fairness concerns, even when those concerns do not actually implicate the Constitution.

In conclusion, the Administration supports overruling Patterson and Lorange, but urges the Committee to adopt the language of the Administration's proposal. The Department vigorously opposes those parts of S. 2104 that would overturn Wards Cove Packing Co. v. Atonio, Martin v. Wilks, and Price Waterhouse v. Hopkins, as well as the creation of a damage remedy for Title VII violations. Based upon this opposition, senior advisers to the President would recommend Executive disapproval if S. 2104 were presented to the President for signature.

The Office of Management and Budget has advised us that there is no objection to the submission of this report and that enactment of S. 2104 would not be in accord with the program of the President.

Sincerely,

Bruce C. Navarro
Acting Assistant Attorney General

Summary

Beyond the veto threat, the draft report expresses the Administration's support for legislation reversing the results in Patterson (by creating additional remedies for on-the-job racial harassment, ensuring that Section 1981 covers the performance as well as the formation of a contract) and in Lorance (by allowing suits to challenge discriminatory seniority systems not only on adoption, but also upon application to the affected employee).

Further, the draft report summarizes the principle bases of our opposition to Kennedy-Hawkins:

- o it would pressure employers into adopting hiring quotas by requiring any company whose workforce shows a racial or sexual imbalance to prove that its hiring practices are demanded by "business necessity" as "essential to effective job performance" (thus shifting the burden of proof and establishing an almost impossible standard to meet);
- o it would deprive people of their day in court (and would infringe constitutional rights) by restricting the ability of employees who were not parties to court-approved settlements to challenge a settlement imposing racial preferences when their own rights prove to be affected;
- o it would reverse for civil rights cases the general rule that the plaintiff must show not only some degree of proper motivation on the part of the defendant, but also show harm resulting from that factor;
- o and it would upset Title VII's current remedial system by providing compensatory and punitive damages for intentional violations. (This section of the bill does not even purport to address any Supreme Court decision; it alters the carefully balanced determination that Congress made in 1964.)

The draft bill report also favorably contrasts the Administration's responses to Patterson and Lorance with the analogous Kennedy-Hawkins language. Further, the report dismisses as unnecessary other more minor provisions contained in Kennedy-Hawkins (such as certain statute of limitations extensions, proposals to award expert witness fees to prevailing parties [a matter now under Court review] and to authorize payment of interest on awards against the U.S.). The report also attacks the Kennedy-Hawkins dictate that all civil rights statutes be broadly construed (as opposed, presumably, to being interpreted in accord with their meaning consistent with traditional statutory construction).