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FOIA MARKER

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

OA/ID Number: 00834
Folder ID Number: 00834-022

Folder Title:
Chief of Staff-Designate Transition Files 11/88-1/89: Correspondence - January [2]

Stack:	Row:	Section:	Shelf:	Position:
G	15	26	2	

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

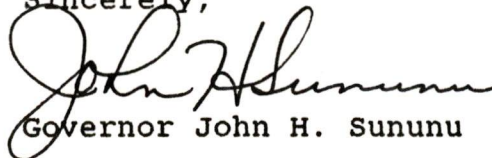
January 4, 1988

Dear Under-Secretary General Reed:

Many thanks for your recent kind note. I appreciate your warm words and good wishes. Thanks also for your generous offer of help. I will keep it in mind over the coming weeks and months.

Once again, thanks for writing. Best wishes for a distinguished tenure as you execute your duties at the United Nations General Assembly.

Sincerely,



Governor John H. Sununu

The Honorable Joseph Verner Reed
Under-Secretary General
United Nations
38th Floor
U.N. Headquarters
New York, N.Y. 10017

Joseph Verner Reed

Highest ranking American at U.N.

Under Secretary General for Polt'l. &

General Assembly Affairs

Point-man for General Assembly matters

Formerly: U.S. Ambassador to Morocco

U.S. Representative to U.N.
Economic & Social Council

Info. from Mr. John Hirschberg
at State Dept. Bureau for
Int'l Organization Affairs

647-6400



JOSEPH VERNER REED
UNDER-SECRETARY-GENERAL

*Good response -
research this guy*

1 DEC 1988

Thanksgiving 1988

Dear Governor,

I know that I add to the pile of missives of good wishes. Nevertheless, I wanted you to know that I am thinking of you as you take up your important challenge and send every good wish for a distinguished tenure. From my vantage on the Thirty-Eighth Floor at Headquarters of the United Nations, I look forward to full cooperation.

With every good wish.

The Honorable
John H. Sununu

38th floor
United Nations
New York, NY 10017

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

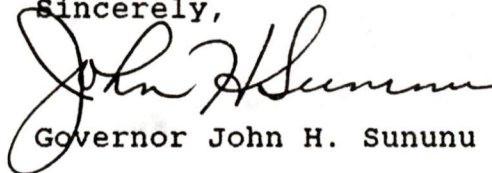
January 6, 1989

Dear Mr. Dabaghi:

Many thanks for your kind letter of December 23. I appreciate your warm words of congratulations, and hope to prove worthy of the trust that the President-elect has conferred upon me. I look forward to helping George Bush keep America strong and prosperous as we head into the 21st century.

Once again, thanks for writing. Best wishes to you and your family throughout this new year.

Sincerely,

A handwritten signature in cursive script, appearing to read "John H. Sununu".

Governor John H. Sununu

Mr. William K. Dabaghi
Arter & Hadden
1919 Pennsylvania Ave., NW
Washington, D.C. 20006

363-0008

ARTER & HADDEN

IN CLEVELAND
ARTER & HADDEN
1100 HUNTINGTON BUILDING
CLEVELAND, OHIO 44115
216/696-1100
TELECOPIER 216/696-2645
TELEX 98 5384

1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
202/775-7100
TELECOPIER 202/857-0172
TELEX 6502156242-MCI

IN COLUMBUS
ARTER & HADDEN
ONE COLUMBUS
10 WEST BROAD STREET
COLUMBUS, OHIO 43215
614/221-3155
TELECOPIER 614/221-0479

IN CANTON
ARTER & HADDEN
640 CITIZENS SAVINGS BUILDING
CANTON, OHIO 44702
216/453-1166
TELECOPIER 216/453-2364

IN DALLAS
ARTER HADDEN & WITTS
5353 RENAISSANCE TOWER
DALLAS, TEXAS 75270
214/741-7561
TELECOPIER 214/741-7139

December 23, 1988

PLEASE RESPOND TO:
Washington
TO CALL WRITER, DIRECT DIAL:
(202) 775-7143

The Honorable John Sununu
Chief of Staff-designate
1825 Connecticut Avenue, NW
Washington, DC 20270

Dear Governor:

Congratulations on your appointment and the superb way you are handling matters.

Marilyn and I wish you the best, and hope that during this holiday season there will be some time for enjoyment during your busy schedule.

Sincerely,

ARTER & HADDEN


William K. Dabaghi

WKD/cll

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Dr. Fletcher:

Many thanks for your recent letter on behalf of Mrs. Sandra Swift Parrino. Her reappointment as Chairperson of the National Council on the Handicapped will be considered strongly. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

Governor John H. Sununu

Dr. M. L. Fletcher
102 East First Avenue
Lenoir City, Tennessee 37771

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

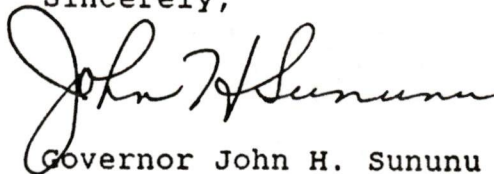
Dear Mr. McGinnis:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Peter J. McGinnis
345 Belmont Street
Manchester, N.H. 03102

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

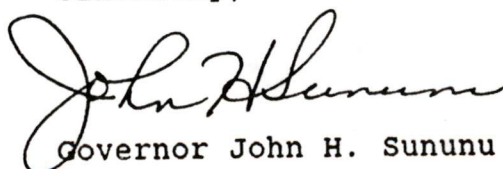
Dear Mr. Zogby:

Many thanks for your recent letter and resume. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. I will make sure that your application for a position in the Office of Policy Development receives serious consideration. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Charles Zogby
1230 North Quinn Street, #331
Arlington, VA 22209

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

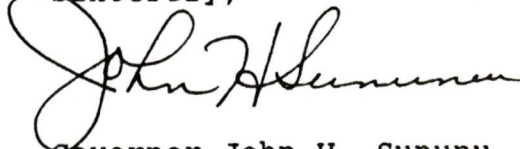
Dear Mr. Bivins:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Otis Bivins
Bonanza Station
P.O. Box 4501
Las Vegas, Nevada

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

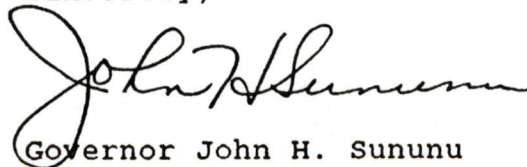
Dear Mr. Hendricks:

Many thanks for your recent letter on behalf of Mr. Robert W. Santy. After review of your comments, I have passed them along to our staff in the Office of Presidential Personnel. I will make sure that he is given serious consideration and that I am kept informed of any developments.

Thank you for taking the time to make your recommendation. It is very helpful to us in our search for the very best staff to serve the President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Edward D. Hendricks
Acme Inc.
230 Park Avenue
New York, NY 10169

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

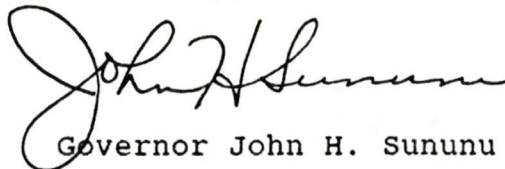
Dear Mr. Logan:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu". The signature is fluid and cursive, with the first name "John" being the most prominent part of the script.

Governor John H. Sununu

Mr. Fred J. Logan
348 East Olive Ave.
Sunnyvale, CA 94086

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OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

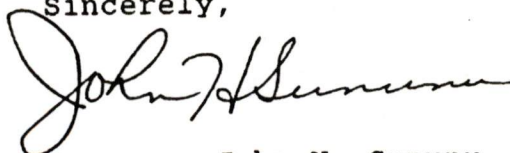
Dear Mr. Gowen:

Many thanks for your recent letter on behalf of Solomon J. Buchsbaum, Anthony J. Tether and Mark R. Dusbabek. Your comments have been reviewed and I have sent them on to our staff in the Office of Presidential Personnel. I will see that they are given serious consideration for the respective posts that they are seeking. I have also asked that I be kept informed of any developments.

Thank you for taking the time to make your recommendation. It is very helpful to us in our search for the very best staff to serve the President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Richard J. Gowen
American Association of Engineering Societies
415 Second Street, NE
Washington, D.C. 20002

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

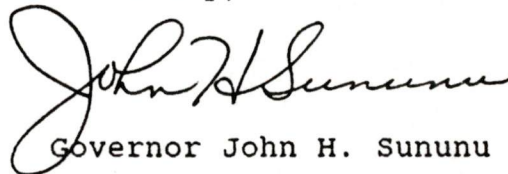
Dear Mr. MacIver:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. John K. MacIver
250 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Mr. Maleche:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Vincent Maleche
703 Windsor Dr.
Friendswood, TX 77546

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

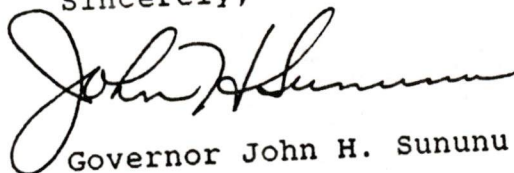
Dear Ms. Bogardus:

Many thanks for your recent letter and resume. I have reviewed your materials and your interest in public relations. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Ms. Linda Bogardus
70E South Street
Essex Jct, Vermont 05452

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

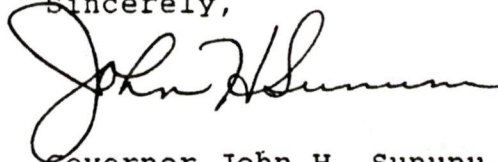
Dear Bob:

Many thanks for your recent letter on behalf of Mr. Alfred A. DelliBovi. I have passed your comments on to our staff in the office of Presidential Personnel. I will see that he receives serious consideration and that I am kept informed of any developments.

Thank you for taking the time to make your recommendation. It is helpful to us in our attempts to create the very best staff for the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr Robert M. Garrick
233 South Euclid Avenue
Pasadena, CA 20270

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

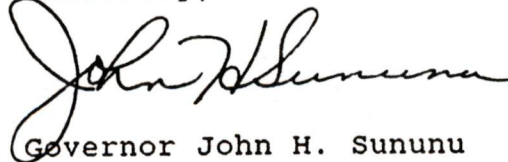
Dear Dr. Kauffman:

Many thanks for your recent letter on behalf of Dr. John Farina. He will be taken into serious consideration for a position in the office of public liaison for Catholics. I have passed your comments on to our staff in the office of Presidential Personnel where he will receive further review. I will see that he receives serious consideration and that I am kept informed of any developments.

Thank you for taking the time to make your recommendation. Your thoughts are helpful and appreciated.

Best wishes.

Sincerely,



Governor John H. Sununu

Dr. Christopher Kauffman
U.S. Catholic Historical Society
3 Downing Drive
East Brunswick, N.J. 08816

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Mr. Swartz:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. William E. Swartz
52 Old Federal Road
Camp Hill, PA 17011

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

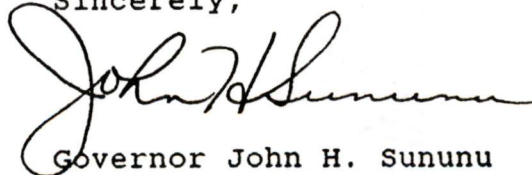
Dear Mr. Moy:

Many thanks for your recent letter and resume. I have reviewed your application for a position on the White House staff and in the Department of Health and Human Services. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. I will see that you receive serious consideration and that I am kept informed of any developments. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Edmund C. Moy
2831 N. Prospect Ave.
Milwaukee, WI 53211

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

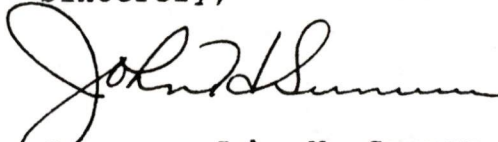
Dear Mr. Turner:

Thank you for your recent letter on behalf of Mr. Galen Reser. I have forwarded your comments along to our staff in the office of Presidential Personnel. I will see that he is given serious consideration and that I am kept informed of any developments.

Thank you for taking the time to make your recommendation. Your comments are helpful and appreciated.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Robert L. Turner
Belvidere Township
316 South State Street
Belvidere, IL 61008

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Mr. Hammett:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Dillard S. Hammett
14551 Bramblewood
Houston, TX 77079

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

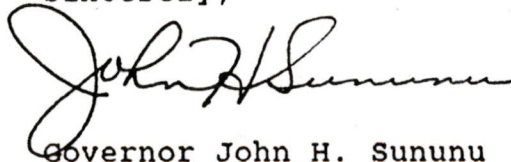
Dear Dave:

Many thanks for your recent letter of congratulations for me and your recommendation of Mr. William Parker. I have sent your comments on to our staff in our office of Presidential Personnel. I will see that he receives serious consideration and that I am informed of any developments.

Thank you for taking the time to make your recommendation. It is both very helpful and appreciated.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. David H. Marks
Department of Civil Engineering
Massachusetts Institute of Technology
Cambridge, MA 02139

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

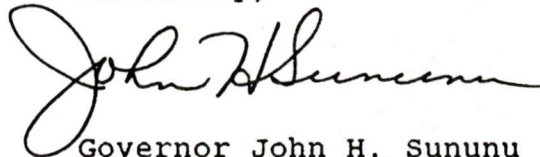
Dear Mr. Rennie:

Many thanks for your recent letter and resume. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. John C. Rennie
World Center
918 16th Street N.W. Suite 406
Washington, D.C. 20006

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

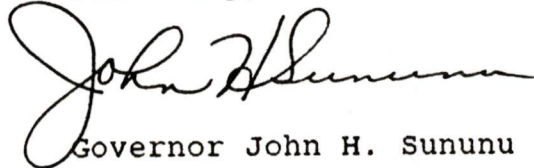
Dear Mr. Wickersham:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Mark Wickersham
3105 Federal Building
Fort Wayne, IN 46802

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

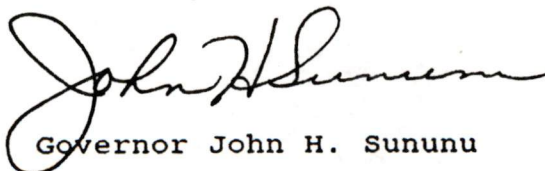
Dear Mr. Moran:

Many thanks for your recent letter on behalf of Mr. Thomas J. McHugh. I will pass your comments along to our staff at the Office of Presidential Personnel for their review. I will see that he is given serious consideration and that I am informed of any developments.

Thank you for taking the time to make your recommendation. It is very helpful in our search for the best staff to serve under the President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Patrick J. Moran
Merck & Co., Inc.
P.O. Box 2000
Rahway, NJ 07065-0900

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

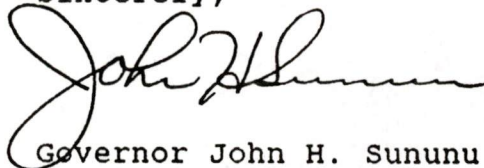
Dear Mr. Leighton:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Stephen B. Leighton
9007 Woodland Drive
Silver Spring, MD 20910

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

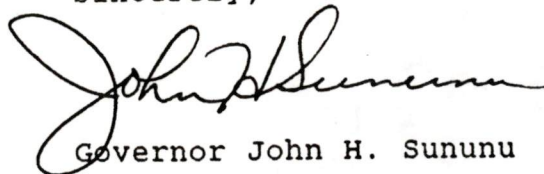
Dear Mr. Dupuis:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Bernard E. Dupuis
6543 N. 27th Street
Arlington, VA 22213

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Jon:

Many thanks for your recent letter and resume. Your interest in an appointment to the Department of Energy will be considered strongly. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. I will see that I am kept informed of any developments. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Jonathon S. Osgood
25 Bacon Road
Henniker, N.H. 03242

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

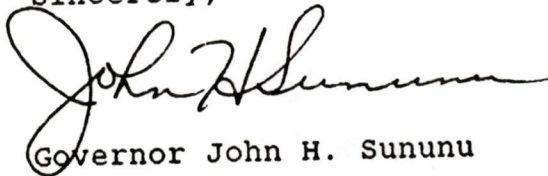
Dear Ms. Thorndike:

Many thanks for your recent letter on behalf of Mr. Richard Wilson. Your recommendation of him as Science advisor to the President will be considered strongly. I will pass your comments along to our staff at the Office of Presidential Personnel for their review.

Thank you for taking the time to make your recommendation. It is both very helpful and appreciated.

Best wishes

Sincerely,



Governor John H. Sununu

Ms. Elizabeth Thorndike
33 South Washington Street
Rochester, N.Y. 14608

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Judge Wilken:

Many thanks for your recent letter concerning your interest in being appointed an Associate Judge. I will pass your materials along to our staff in the Office of Presidential Personnel for their review. I will see that you receive serious consideration and that I am kept informed of any developments. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes and good luck in the new year.

Sincerely,



Governor John H. Sununu

The Honorable William J. Wilken
Norris Cotton Federal Bldg.
275 Chestnut Street, 3rd Fl.
Manchester, N.H. 03101

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

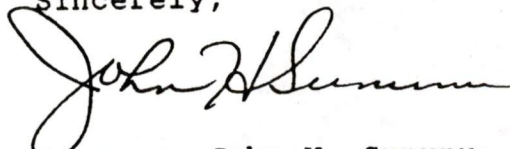
Dear Mr. Canary:

Many thanks for your recent letter and resume. I have reviewed your application for a position in the Intergovernmental affairs office and have passed them along to our staff at the Office of Presidential Personnel. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. William J. Canary
715 Potomac Street
Alexandria, VA 22314

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Thetus:

Many thanks for your recent letter on behalf of Mariam Bell. After review of your comments, I passed them on to our staff in the Office of Presidential Personnel. I will see that she receives serious consideration and that I am kept informed of any developments.

Thank you for taking the time to make your recommendation. It is very helpful in our search for the best staff to serve our President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Thetus Tenney
P.O. Box 55
Tioga, LA 71477

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

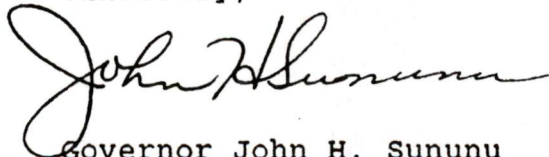
Dear Mr. Smith:

Many thanks for your recent letter and resume. Your application for the new post to head the President's efforts on behalf of volunteers will receive serious consideration. I will pass your materials along to our staff at the Office of Presidential Personnel for their review. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Nelson Smith
2939 Fort Baker Drive, S.E.
Washington, D.C. 20020

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

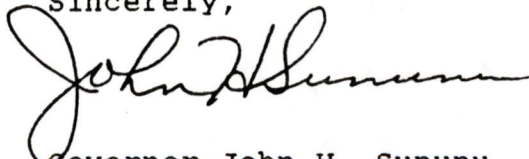
Dear Ralph:

Many thanks for your recent letter and resume. I agree that better education and greater understanding are the keys to success in dealing with the drug problems in this country. I will pass your materials along to our staff at the Office of Presidential Personnel for their review and I will see that you receive serious consideration. They will contact you if they need further information.

We appreciate your interest in serving the President-elect.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Ralph W. Murphy
143 Hilton
Alexandria, VA 22314

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 6, 1989

Dear Mr. Alvarez:

Many thanks for your recent letter and resume.
I will pass your materials along to our staff at the
Office of Presidential Personnel for their review.
They will contact you if they need further information.

We appreciate your interest in serving the
President-elect.

Best wishes.

Sincerely,



Governor John H. Sununu

Mr. Frank E. Alvarez II
603 N. Wharton
Sherman, TX 75090

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

Dear Mr. Delane:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Sununu", written in a cursive style. The signature is positioned above the printed name of the Governor.

Governor John H. Sununu

Mr. Michael Delane
P.O. Box 471004
Tulsa, Oklahoma 74147-004

THE HONORABLE JOHN SUNUNU, CHIEF OF STAFF DESIGNEE
C/O THE OFFICE OF THE VICE PRESIDENT
THE WHITE HOUSE WWI
WASHINGTON, D.C. 20500

11 JAN REC'D

RE: PROPOSED SALARY INCREASES FOR HIGH GOVERNMENT OFFICIALS

DEAR GOVERNOR SUNUNU,

I BELEIVE I UNDERSTAND MOST OF THE GOOD REASONS WHY THESE PROPOSED SALARY INCREASES HAVE BEEN RECOMMENDED.

HOWEVER I QUESTION WHETHER THE AVAERAGE VOTER WHO ON THE AVERAGE MAKES ABOUT \$9.42 PER HOUR OF LABOR WOULD APPRECIATE SUCH INCREASES, ESPECIALLY WHEN HE LEARNS HOW SUCH INCREASES WILL MOST LIKELY GENERATE MOMENTUM FOR PAY INCREASES AT LOWER GS-LEVELS. ALL OF WHICH COULD COST BILLIONS, IN A PERIOD THAT MOST VOTERS WANT MORE RESPONSIBLE FISCAL POLICY FROM THEIR GOVERNMENT.

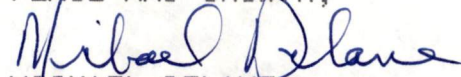
FURTHERMORE, SHOULD THE PROPOSED PAY INCREASES GO INTO EFFECT IN FEB. '89, THEN ELECTED (REPUBLICAN) OFFICIALS COULD CONSIDER MAKING SOME POLITICAL HAY BY SAVING EVERY OTHER PAY CHECK THEY RECEIVE IN A NON-COMMINGLED SAVINGS ACCOUNT. THEN WHEN ELECTIONS ROLL AROUND IN '90 AND '92, EACH REPRESENTATIVE COULD HAVE A CASHIER'S CHECK DRAWN ON HIS SPECIAL ACCOUNT WHICH WOULD BE MADE PAYABLE TO THE U.S. GOVERNMENT. OR IF THE TAX IMPLICATIONS OF SUCH AN APPROACH WERE NOT OFF-SET BY INTEREST INCOME, THE THE REPRESENTATIVE COULD SIMPLY VOID EVERY OTHER PAYROLL CHECK HE RECEIVED.

I WOULD THINK THAT WOULD SHOW THE PEOPLE AND THE PRESS WHERE THE ELECTED OFFICIAL STANDS ON THE PAY RAISE ISSUE. IT MIGHT EVEN HELP UNSEAT SOME CONGRESSMEN WHO LIKE THEIR CAKE AND EAT IT TOO!

OBVIOUSLY, THE REPRESENTATIVE WITH THE CASHIER'S CHECK OR HIS VOIDED CHECKS IN HAND WOULD HAVE THE UPPER HAND COME ELECTION TIME CONVENCING VOTERS ABOUT HIS LOYALTIES AND HIS FISCAL RESPONSIBILITY.

I THANK YOU FOR YOUR KIND CONSIDERATION OF THIS "FISICAL" SUGGESTION.

PEACE AND GROWTH,



MICHAEL DELANE
P.O. BOX 471004
TULSA, OK 74147-004
(918) 628-0731

(C)

10.01.89

P.S. I WOULD HOPE THAT SOME CONSIDERATION WOULD BE GIVEN TO A FEDERAL SALARY SCHEDULE THAT FACTORED IN THAT OFFICIAL'S GROSS ANNUAL INCOME AND BENEFITS OTHER THAN HIS GOVERNMENT SALARY. FURTHERMORE, FOR EXAMPLE, A MILLIONAIRE SENATOR COULD RECEIVE THE MINIMUM SALARY FOR A SENATOR WHICH MIGHT BE 50% OF THE HIGHEST SALARY PAID TO ANY SENATOR;

THE MAXIMUM SALARY MIGHT BE FIXED TO SOME MULTIPLE OF THE AVERAGE AMERICAN'S GROSS ANNUAL INCOME (? \$22,000 X 7 = \$154,000 ?).

P.P.S. IF ANY OF THESE SUGGESTIONS HAVE GOOD MERIT, PERHAPS IT WOULD BE POLITICALLY "FISICAL" TO HAVE PARTISAN CONGRESSMEN FROM IOWA AND/OR NEW HAMPSHIRE ROLL THE BALL OUT.

#

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

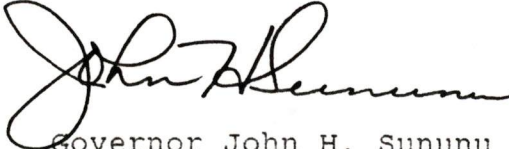
Dear Mr. Rifkin:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,



Governor John H. Sununu

Mr. Bernard M. Rifkin
3333 Henry Hudson Parkway
Apartment 150L
Riverdale, New York 10463

1 1 JAN REC'D

Bernard M. Rifkin
3333 Henry Hudson Parkway
Apt. 15-S
Riverdale, New York 10463

January 9, 1989

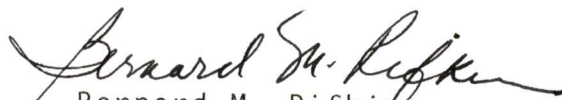
John H. Sununu
Transition Office
1825 Connecticut Avenue, N.W.
Washington, D.C. 20270

Dear Sir:

As a practicing attorney in New York State over the last forty years, I feel compelled to write to you in connection with the issue of **Federal Judicial Compensation**. I have always found it somewhat appalling to think that one has to take a step down in order to ascend to the Federal Judiciary. The step down in salary is an unfair situation which ought to be corrected. The recent report by the Commission on Legislative, Executive and Judicial salaries was modest in its recommendation with respect to the Judiciary. Judges cannot be paid for speaking engagements nor are they able to practice law and receive fees. Accordingly, in the area of comparability between the Judiciary and Executive Branch, Judges ought not be considered as co-equal with respect to their remuneration. Furthermore, it is typical in the Executive Branch for people to serve short periods of time and then to go on to private industry. It shall be our hope with respect to the Judiciary that they will be sufficiently compensated in order for them to have long and fruitful careers.

Therefore, may I respectfully suggest that the recommendation to the Commission be accepted in full and with diminution.

Very truly yours,


Bernard M. Rifkin

BMR/av

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

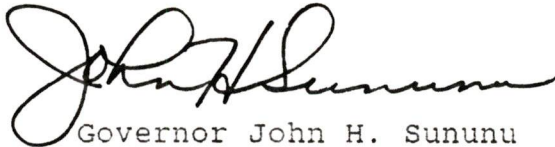
Dear Mr. Foulks:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,



Governor John H. Sununu

Mr. William S. Foulks, Jr.
185 West Carriage Drive
Chagrin Falls, Ohio 44022

residence:

185 West Carriage Drive
Chagrin Falls, Ohio
44022

William S. Foulks, Jr.

CONSULTANT

6 January 1989

10 NORTH MAIN STREET
CHAGRIN FALLS, OHIO 44022

Honorable John H. Sununu
24 Samoset Drive
Salem, New Hampshire 03079

Dear Governor Sununu:

It was good to see that, very soon after his election, President-elect George Bush selected you to be his White House Chief of Staff. It had been obvious that Vice President Bush absolutely needed a victory in the 1988 New Hampshire Primary election, and that you, as Governor, engineered the victory for him.

At your 4 November 1988 speech at the City Club in Cleveland, Ohio, I spoke with you and mentioned that I am an M. I. T. graduate -- earlier I had reminded the president of the club that you are an M. I. T. man also.

For the near-elimination of the federal budget deficit, I propose the following:

- (a) Stop the federal grants -- or decrease them progressively over a few years.
- (b) \$120 billion each year can be eliminated from the federal budget deficit by informing the nation's state governors and the nation's city and county officials that it is their job (and the responsibility of their local legislative bodies) to produce the now-to-be-stopped grant money at the local level -- to supplant the \$120 billion yearly that the states, cities, counties are now taking as grants from the federal budget.
- (c) Eleven percent of the \$1.1 trillion federal budget is given as grants to the local politicians' localities. That equals \$120 billion.
- (d) It is preferable to have local politicians demonstrate the political courage to raise the money -- which is now as grants -- locally than to cause great trouble for the United States.

I would greatly appreciate talking with you in your office in Washington. Please phone either (216) 247-7713 or (216) 247-7369. Thank you.

Sincerely,

William S. Foulks, Jr.
William S. Foulks, Jr.

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

Dear Mr. DiCarlo:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style. The signature is positioned above the printed name of the Governor.

Governor John H. Sununu

Mr. John DiCarlo
2229 7th Street
Peru, Illinois 61354

11 JAN REC'D

2229 7th Street
Peru, Illinois 61354
January 4, 1989

John Sununu,
Chief of Staff for
President-elect George Bush
The White House
Washington, D.C.

Dear Chief of Staff Sununu:

Subject: Deficit Reduction

I have been a kidney dialysis and transplant patient for the past 8 years and I have seen a lot of good things and wasteful things in government programs to help us. I believe that hospitals charge too much for in patient kidney dialysis (\$400 to \$600 or more per treatment) Medicare pays the entire bill except for the deductible. As an outpatient, (receiving kidney dialysis in a Hospital) Medicare is billed approximately \$150 to \$175 per treatment. Medicare pays about 80 per cent while the patient, the State or a Supplemental insurance plan picks up the balance. Why should Medicare pay the entire higher charge of \$400 to \$600 per treatment while hospitalized and just pay 80 per cent of the lower out-patient charge. If the patient doesn't have enough coverage or other supplemental insurance, sometimes he is stuck with a lot of out of pocket expense. While hospitalized, the kidney dialysis patient is also charged at least \$240.00 per day for a room besides all of the other costs associated with in hospital kidney dialysis.

My Medicare and Veterans Administration coverage for immunosuppressive drugs have been cut off because I have had my second kidney transplant beyond one year and the V.A. lacks funds for out-patient pharmacy. I can receive these drugs if I check into a hospital. Our government will pay for intravenously administered drugs to prevent kidney transplant rejection which is much, much more costly than receiving these drugs as an out-patient.

If I am unable to receive these drugs due to lack of funds, I will lose my kidney transplant and be back on kidney dialysis which will cost our government much more over a 5 year period. (approximately \$145,000 more)

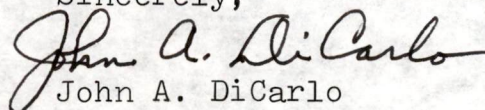
I need the costly miracle drug, Cyclosporine for the duration of my transplant life since the present drug which I am taking is causing damage to my liver. In 1984, I had to stop taking the immunosuppressive drug, imuran since it was endangering my life. It was a very difficult decision.

I am very grateful for all of the financial support our government gave to me after I was terminated from my job because of my illness. My former employer was very co-operative during the first 3 years of my illness during a trial work period but I had so many life-threatening medical conditions and frequent hospitalizations that they were forced into terminating me. If in the future, I am well enough to work, I would like to see a law passed to ask or force a former employer to take back a kidney dialysis or transplant patient. (providing the patient has no complications and is willing to return to work) The Social Security Administration should not illegally deny disability benefits to the severely disabled as they did a few years ago. Transplant is a great improvement in some cases but it is not a cure. It is temporary and we have to depend on immunosuppressive drugs to keep our kidney from rejecting.

The new Catastrophic Health Insurance Plan does nothing to help out-patient kidney transplant patients under age 65. All Medicare coverage ends for us after 3 years. We are in and out of the hospital continuously after our original kidneys fail. We need coverage until we die. Another alternative would be to force our former employers to provide hospitalization for life when they place us on their disability program.

I ask you to consider my thoughts to place more responsibility on our former employers and their employee hospitalization programs. In this way you could help cut our government's deficit. In cutting Medicare benefits please do not hurt the patients; we have enough of stressful, financial, family, and continuing medical problems to deal with. Excessive charges by the hospitals need to be looked into.

Sincerely,


John A. DiCarlo

Copy to Chief of Staff, John Sununu
The White House

NORTHWESTERN UNIVERSITY

CHICAGO, ILLINOIS 60611

THE MEDICAL SCHOOL
WARD MEMORIAL BUILDING
303 E CHICAGO AVE.

July 20, 1984

James S. Wolf, M.D.
Department of Surgery

Dear Jim:

Enclosed is a copy of a letter from a patient whom I had the opportunity to examine over twenty years ago. At that time we were doing a study on arthritis patients and their families and selected other families for contrast. The family of Mr. John DiCarlo came through and was very appreciative of the evaluation that we performed at that time.

As a consequence he now writes me because of his further complications with his disease. As you can see from his letter these have been multiple.

He is asking for further advice and guidance as to the new option that is presented to him, namely, losing his kidney because it is too risky to continue to use antirejection medication.

Would you be willing to see him and if so send him an appointment.

I know you will find him a very fine individual who would very much appreciate your help.

Sincerely yours,



Frank R. Schmid, M.D.
Professor of Medicine
Chief, Arthritis-Connective
Tissue Diseases Section

Note: Presently (1989) imuran is too risky to continue. My transplant could last much longer if I could receive Cyclosporine as an out-patient.

FRS:mm

cc: Mr. John DiCarlo

P.S.

Dear John,
Thank you very much for remembering our work done so many years ago. I hope the help from Dr. Wolf will be of use to you. I'm so sorry that you that you have had so many complications but I think he will be a reliable surgeon with whom to talk.

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

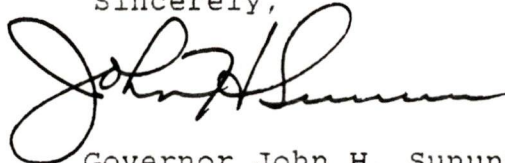
Dear Mr. Donahue:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Carl Donahue
Lord & Keenan
63 Fourth Street
Dover New Hampshire 03820



11 JAN REC'D

January 9, 1989

John Sununu
White House Chief of Staff
Transition Office
President Elect George Bush
1825 Connecticut Ave. NW #1016
Washington, DC 20270

Dear Mr. Sununu:

I am writing to express my concern regarding the procedures being employed in the Northeast natural gas "open season" proceeding, Docket CP87-451. My concern is that the Federal Energy Regulatory Commission (FERC), in its eagerness to expedite the regulatory process and eliminate red tape, may deny the basic due process rights to all parties that is necessary to make an informed public interest decision.

The Commission has before it multiple applications for projects that could cost up to \$1 billion to bring Canadian natural gas into the Northeast. It is essential that needed gas facilities be constructed, but it is equally essential that facilities which are not environmentally or economically appropriate not be licensed. It is my understanding that the Commission instituted a process by which a settlement judge has achieved the support of most parties in the gas industry. This should not be viewed as reflecting the interest of the public.

I am concerned that by using this process the Commission may be abdicating its statutory responsibility to protect the public interest. FERC must determine, independently of the industry's judgments, what new pipeline capacity is necessary, and what are the environmental, economic and competitive effects of any new pipelines. For these critical decisions, the Commission can not rely on the proposals of the applicants, no matter how well founded. The applicants' decisions are rooted in their own economic interest; the Commission's determination must be grounded in the public interest.

A number of people believe that these pipelines will have anticompetitive and adverse environmental effects, or that they are not needed to the extent that the sponsors claim. Before any decision is made on these critical issues, the Commission should give every party a fair opportunity to present their case. In that way, the Commission's decision can be based on an independent evaluation of evidence, not just on the claims of the applicants. This need not lead to delay. The Commission has available to it procedures and scheduling mechanisms that can lead it to a prompt and fully informed decision.

January 9, 1989

Expedition is a worthy goal, but it must not lead to abdication of the FERC's statutory responsibility to serve the public interest, or the elimination of the rights of adverse parties to present their position.

Please contact the Honorable Martha O'Hessee, Chairman of FERC and advise the Chairman of my concern.

Thank you very much for your consideration.

Sincerely yours,

LORD & KEENAN CO.



Carl Donahue
General Manager

CD/lb

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

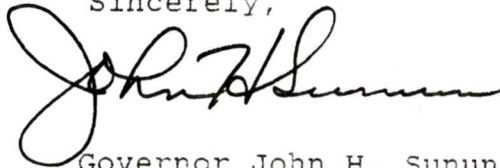
Dear Mr. Currier:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mr. Randall L. Currier
New Jersey State Bar Association
New Jersey Law Center
One Constitution Square
New Brunswick, New Jersey 08901



11 JAN 1989

NEW JERSEY
STATE BAR ASSOCIATION

NEW JERSEY LAW CENTER, ONE CONSTITUTION SQUARE
NEW BRUNSWICK, NJ 08901-1500
201-249-5000

December 29, 1988

John H. Sununu
Transition Office
1825 Connecticut Avenue, N.W.
Washington, D.C. 20270

Dear Mr. Sununu,

On November 28, 1988 the New Jersey State Bar Association adopted a resolution calling for substantial increases in the salaries of federal judges. A copy of that resolution is enclosed for your consideration.

Please contact me if I can be of any assistance.

Sincerely,

Randall L. Currier
Assistant Legislative Counsel

RLC/mg
Enclosure

RESOLUTION

TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES AND THE
COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES:

The New Jersey State Bar Association adopts this resolution in strong support of substantial adjustment of pay levels for justices and judges of the courts of the United States. In so doing, the Association takes cognizance of the following facts, which it deems significant to this cause:

1. The Federal Salary Act of 1967, as amended, provides for the impaneling of a Commission on Executive, Legislative and Judicial Salaries on October 1, 1988, with a mandate to report to the President of the United States by December 15, 1988, its recommendations of the appropriate pay levels and relationships between and among the offices of the United States Government under its purview.

2. The offices and positions to be considered by the Commission include the Chief Justice and Associate Justices of the Supreme Court of the United States, and United States Circuit and District Judges.

3. As a result of economic developments over the past 20 years Federal judges are substantially worse off today in purchasing power terms than at their 1969 salary levels.

4. The salaries of the Supreme Court Justices have actually declined in real terms by approximately 43 percent between 1969 and 1988, while the salaries of both circuit and district judges lost about 30 percent of their value over this period.

5. Aside from sporadic and inadequate adjustments for the announced purpose of reacting to increases in the cost of living, justices and judges have received only one major increase in pay since 1977, namely an increase of approximately 10 percent in March, 1987.

6. At the time he recommended the foregoing 1987 pay adjustment to Congress under the Federal Salary Act, President Reagan conceded its utter inadequacy and agreed to implement shortly a second adjustment to compensate more fully for past failure to keep judicial salaries current with the cost of living:

"This increase is but the first step in addressing the loss of real income documented by the Quad Commission. In addition to this pay raise, I anticipate submitting another salary recommendation prior to leaving office -- in response to the recommendations of the next Quad Commission, which will be appointed and will make its recommendations in 1988. While I cannot pre-judge those recommendations, assuming continued progress toward eliminating the deficit and favorable economic conditions, I would expect to recommend at that time another step toward overcoming that erosion of real income." 52 Fed. Reg. 4126 (1987).

7. The opportunity to fulfill the above promise is now at hand, and the facts in justification thereof are as compelling or more so than in 1987.

8. While the salaries of Federal judges have been declining in real income terms, the compensation of other components of the legal profession, from which judges are necessarily drawn, have matched or exceeded increases in the consumer price index -- this applies to the salaries of law firm partners and associates, corporate general counsel and their staffs, law school deans and faculties, and the judiciaries of many states.

9. The foregoing developments have led to inexorable pressure upon Federal judges to forsake the judiciary for other callings in order to provide for their families and educate their children. The rate of resignation from the Federal judiciary, once a rare and singular event, has increased sharply in the last two decades and continues to grow.

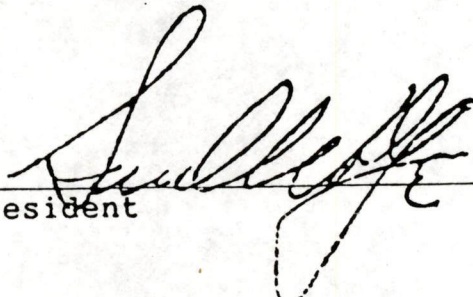
10. If adjustments sufficient to redress the loss of economic power of Federal judicial salaries are not made now, the pressure for further resignations will increase, damaging judicial independence and frustrating the conception of the Founders that Federal judges should have and fulfill life tenure in office during their good behavior.

11. The failure to adjust judicial salaries may also narrow the ranks of lawyers from which Federal judicial appointments can be made.

Wherefore, the New Jersey State Bar Association calls upon all actors in the ongoing salary review process taking place this year -- the Salary Commission, the President, and the

Congress -- to weigh the foregoing premises and to give due and favorable consideration to the anticipated report of the Commission and to the implementation of Presidential recommendations based on that report.

ADOPTED BY THE New Jersey State Bar Association
this 28 day of November, 1988.



President

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

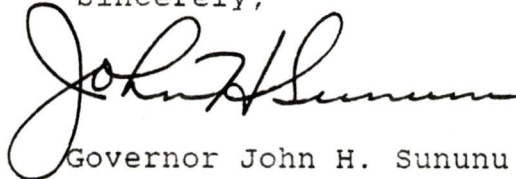
Dear Mr. Dewey:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style. The signature is positioned above the printed name of the Governor.

Governor John H. Sununu

Mr. Richard Dewey
University of New Hampshire
Department of Sociology and
Anthropology
Durham, New Hampshire 03824

UNIVERSITY OF NEW HAMPSHIRE

Department of Sociology and Anthropology
College of Liberal Arts
Horton Social Science Center
Durham, New Hampshire 03824
(603) 862-1800

11 JAN REC'D

Dec. 29, 1988

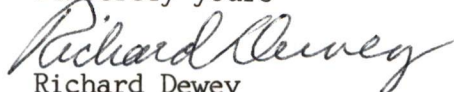
Governor John Sununu
State House
Concord, N.H. 03300

Dear Governor Sununu:

Please note the date when the accompanying letter was written. During the past years, including those of the Reagan administration, I often felt that the focal point of U.S. foreign policy was not consistently in Washington, but was on occasion with a minority party in Tel Aviv. In view of the recent remarkable, commendable, and, to many, surprising statements by U.N. Ambassador Walters and Secretary Schultz, my observation in the last sentence gains a new perspective. However, the remainder of my remarks are still, I firmly believe, accurate and relevant to the continuing problem which besets both Israelis and the Palestinians.

It is likely that certain opponents of the new position in both parties will surface and lend support to the more intransigent of Israel leaders. However, I believe that there is more support for the Administration's more positive attitude toward the Palestinians than one might infer from news media releases. Many of us hope that the new approach will receive strong bi-partisan support. We wish you good luck in your efforts to assure the new Administration's success in this notable departure from the fruitless stalemated actions of the past twelve years.

Sincerely yours



Richard Dewey
Professor of Sociology (Ret.)

UNIVERSITY OF NEW HAMPSHIRE

Department of Sociology and Anthropology
College of Liberal Arts
Horton Social Science Center
Durham, New Hampshire 03824
(603) 862-1800

Dec. 4, 1988

Governor John Sununu
State House
Concord, N.H. 03300

Dear Governor Sununu:

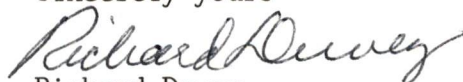
If the governmental officials of Northern Ireland were to cause to be blown up the Belfast houses of all whose sons are known to participate in IRA and other anti-state activities, and if the South Korean officials were to order the destruction of the homes, gardens, and trees of those whose children participate in anti-state violence, state officials and religious leaders throughout the world, including those of the United States, would react with outrage and the strongest of diplomatic protests, and properly so. Why, then, when such violent, and clearly misplaced, retributions are perpetrated by the current Israel authorities upon defenseless residents of the West Bank and Gaza Strip, is no outcry heard from governmental officials and religious leaders in the United States?

To perceive in this paragraph an espousal of tolerance for the violent and mindless acts of persons for whom the label "terrorist" is now popularly reserved, or evidence that its author is an anti-Semite is to subscribe to a whopping non sequitur. For nearly fifty years I have explicitly and enthusiastically opposed anti-Semitism in the classroom and in the text-books which I have authored. What IS intended by this paragraph is to remind all concerned that terrorism comes in many forms.

Webster's unabridged dictionary defines terror as "A state of intense fear caused by the systematic use of violent means by a party or faction, as bloodshed, imprisonment, and confiscation to maintain itself in power,...". Is it reasonable to expect the West Bank and Gaza Strip Palestinians, under current conditions, to escape this state of terror? Webster defines terrorism as "A mode of governing, or of opposing government, by intimidation." Does the fact that certain Israeli leaders' attempts at intimidation are open, public, legal (by their standards), and financed (in large part) by the U.S., reduce the feeling of terror on the parts of the victims? The pains of the wounded on both sides are real, and the hundreds of Palestinians killed by Israelis and the dozen or so Israelis killed by assassins are equally dead, and their families equally grieved.

The category "terrorism" is sufficiently broad to denote both the sporadic, small-scale efforts of Israel's opponents, and the large-scale and more or less open actions of the Israeli army. Both are designed for intimidation and retribution and, certainly, both terrorize. Is it now not clear that the countries of the world, with two exceptions, would perceive as an injustice the application of the "terrorism" label to only one side of the PLO-Israel standoff, and that, therefore, the denial of the United Nations forum to Arafat is also wrong?

Sincerely yours



Richard Dewey
Professor of Sociology (Ret.)

Copies to members
of Congress

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

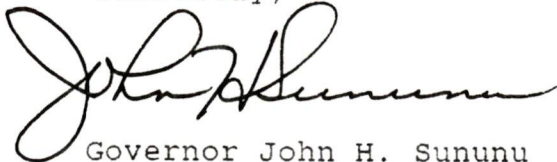
Dear Mr. Foulks:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,



Governor John H. Sununu

Mr. William S. Foulks, Jr.
185 West Carriage Drive
Chagrin Falls, Ohio 44022

WILLIAM S FOULKS JR
185 W CARRIAGE DR
CHAGRIN FALLS OH 44022 06AM

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11 JAN REC'D

HONORABLE JOHN H. SUNUNU
24 SAMOSET DR
SALEM NH 03079

THIS IS ALSO SENT BY LETTER TO YOU.

IT IS GOOD TO SEE THAT PRESIDENT- ELECT BUSH SELECTED YOU TO BE HIS WHITE HOUSE CHIEF OF STAFF. IT WAS OBVIOUS THAT VICE PRESIDENT BUSH ABSOLUTELY NEEDED A VICTORY IN THE 1988 NEW HAMPSHIRE PRIMARY ELECTION, AND THAT YOU, AS GOVENOR, ENGINEERED THE VICTORY.

AT YOUR NOVEMBER 1988 SPEECH AT THE CITY CLUB IN CLEVELAND, OHIO, I SPOKE WITH YOU, MENTIONING THAT I AM A GRADUATE OF THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, AND EARLIER I HAD REMINDED THE PRESIDENT OF THE CLUB THAT YOU ARE ALSO AN M.I.T. MAN.

FOR THE NEAR- ELIMINATION OF THE **FEDERAL BUDGET DEFICIT**, I PROPOSE THE FOLLOWING:

(A) STOP THE FEDERAL GRANTS TO LOCALITIES, OR DECREASE THEM PROGRESSIVELY OVER A FEW YEARS.

(B) 120 BILLION DOLLARS EACH YEAR CAN BE ELIMINATED FROM THE FEDERAL BUDGET DEFICIT BY INFORMING THE NATION'S STATE GOVENORS AND THE NATION'S CITY AND COUNTY OFFICIALS THAT IT IS THEIR JOB (AND THE JOB OF THEIR LOCAL LEGISLATIVE BODIES) TO PRODUCE THE HOPEFULLY TO BE STOPPED GRANT MONEY AND LET THEM PRODUCE IT AT THE LOCAL LEVEL, TO SUPPLANT THE 120 BILLION THAT THE STATES, CITIES, COUNTIES ARE NOW TAKING AS GRANTS FROM THE FEDERAL BUDGET.

(C) 11 PERCENT OF THE TOTAL BUDGET OF 1.1 TRILLION DOLLAR FEDERAL BUDGET IS GIVEN AS GRANTS TO THE LOCAL POLITICIANS' LOCALITIES. THAT 11 PERCENT EQUALS 120 BILLION DOLLARS.

(D) THE BUDGET DEFICIT IS APPARENTLY 145 BILLION DOLLARS, SO THE SAVINGS I PROPOSE RESPRESENTS 85 PERCENT OF THE CURRENT FEDERAL BUDGET DEFICIT.

(E) IT IS FAR MORE PREFERABLE TO PERSUADE LOCAL POLITICIANS TO DEMONSTRATE THE POLITICAL COURAGE NEEDED TO RAISE THIS MONEY RATHER THAN CAUSING GREAT, GREAT TROUBLE FOR THE UNITED STATES.

I WOULD GREATLY APPRECIATE TALKING WITH YOU IN YOUR OFFICE IN WASHINGTON PLEASE PHONE EITHER 216-247-7369 OR MY RESIDENCE NUMBER 216-247-7713. THANK YOU.

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OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

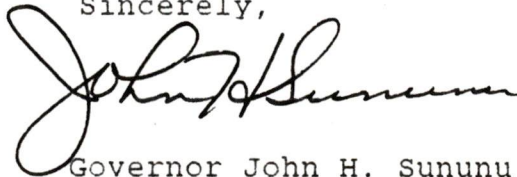
Dear Mr. Bistany:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style. The signature is positioned above the printed name of the Governor.

Governor John H. Sununu

Mr. Alfred J. Bistany
Landmark Center
1801 North Lamar
Suite 100
Dallas, Texas 75202

ALFRED J. BISTANY
ATTORNEY AND COUNSELOR
SUITE 100, LANDMARK CENTER
1801 NORTH LAMAR
DALLAS, TEXAS 75202

11 JAN REC'D

TELEPHONE
(214) 720-1820

December 29, 1988

ack-

The Honorable John H. Sununu
Governor of the State of New Hampshire
Concord, New Hampshire

Dear Governor Sununu:

I am prompted to write this letter to you out of my sincere concern about the Office of Hearings and Appeals, a part of the Social Security Administration, all of which are a part of the Department of Health and Human Services. One of the major functions of the Office of Hearings and Appeals is to allow Social Security claimants to be afforded due process of law in their appeals from adverse Social Security Administration decisions. Administrative Law Judges have the responsibility of hearing the appealed cases and rendering decisions based on the evidence and the applicable law in each individual case.

The Management of the Social Security Administration has traditionally opposed the impartial de novo hearings conducted by the Administrative Law Judges who were empowered by the Administrative Procedure Act in 1946 and are somewhat shielded from direct attacks by Management. Conditions in various field offices are to some extent chaotic and to a great extent disruptive, all of which contribute to low morale, inefficiency, and much waste. I am enclosing Exhibit "A" which is a rather lengthy documentation of a position paper and lawsuit filed in behalf of the Administrative Law Judges against the Social Security Administration. This material explores in detail the innate problems which continue to plague the Office of Hearings and Appeals.

Since Management has been unable to effectively directly control the Administrative Law Judges, it has adopted a policy of harassing the staffs of these Judges since the staffs are employed by and are under the direct control of the Social Security Administration.

Management has also advocated the use of its own staff attorneys to be able to make decisions on appealed Social Security claims or in the alternative, it proposes to elevate these attorneys to the rank of Administrative Law Judge since they are allegedly more

qualified to decide social security claims. If a claimant were denied benefits by the Social Security Administration, what useful purpose would be served by having its own controlled employees hear the appeal?

Management has also resorted to attempts to restrict the appeals process by the passage of rules which would make it more difficult for claimants to be successful in reversing an adverse decision of the Social Security Administration. I am attaching Exhibit "B" which is a clipping from a New York Times article on December 6, 1988 explaining how the House Democrats put a stop to this additional back door approach to prohibit Social Security claimants from having a fair and impartial hearing. Other newspaper clippings are also attached as Exhibit "B".

I am submitting this letter and material as a very much concerned citizen. Although I have been a practicing attorney in the State of Texas for approximately 35 years, I have handled fewer than six social security cases, and I have no social security cases pending at this time. I have no monetary interest in the matters that I have addressed. Politically, I have been a registered democrat during my entire adult life, but I have voted for republican candidates and in favor of republican issues 90 per cent of the time in the last ten years. Like President-Elect Bush, I was born in Massachusetts and moved to Texas in 1947. Unlike Mr. Bush, I have never been elected President of the United States. I believe that I am a good representative of middle class America, the same class which has been crying out for representation in its elected officials in Washington.

The Reagan Administration has been criticized for its neglect of the poor and middle class. Please see the enclosed Exhibit "C" which is a newspaper clipping from the Dallas Times Herald dated December 27, 1988. The principal complaint that I hear from the "man on the street" is that the Reagan Administration has no concern for most of the domestic problems and the needs of the "average" American, and that too much emphasis is being placed on the benefits to corporate America.

I believe that the incoming administration has a golden opportunity to score highly in one of the most sensitive areas in our society. Disabled Social Security claimants are in desperate need of having a forum where they can personally appear before a Judge, where they can produce witnesses in their behalf, where they can introduce any additional documentary evidence in support of their claim, and where they can be judged fairly and impartially under due process of law. The Office of Hearings and Appeals presently has a corps of very competent professionals sitting as Administrative Law Judges. The qualifications for these positions are very stringent and it is evident that the cream of the crop has been recruited. If

THE HONORABLE JOHN H. SUNUNU

Page 3 of 3

the incoming administration is going to cater to the misdirection of the Management of the Social Security Administration by allowing the Judges to be continually harassed and by allowing the impartiality of the Judges to be compromised, then this administration might just as well dissolve the Office of Hearings and Appeals and let the Social Security Administration make fair game out of the claimants. I believe that this incoming administration must choose a Social Security Management team with a mandate to allow the judicial process to operate in the manner for which it was originally intended, even if it means separating the Office of Hearings and Appeals completely from the Social Security Administration. If this administration drops the ball on this issue, the Democratic Congress is certain to continue to challenge the republican party on its failure to meet the needs of the "man on the street."

Yours very truly,

Alfred J. Bistany
Alfred J. Bistany

AJB/sk
Enclosures

POSITION PAPER ON ADMINISTRATIVE LAW JUDGE
WHISTLE BLOWERS

On September 10, 1984, Judge Joyce H. Green of the Federal District Court in Washington, D. C., refused to issue the injunction requested by the Association of Administrative Law Judges, Inc., Plaintiff, v. Margaret Heckler, et al, Defendants. The request was made because of harassment of the Administrative Law Judges in the Social Security adjudicative process in connection with Social Security disability cases. The following is her closing statement in that case:

"In sum, the Court concludes that defendants' unremitting focus on allowance rates in the individual ALJ portion of the Bellmon Review Program created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof. Defendants' insensitivity to that degree of decisional independence the APA affords to administrative law judges and the injudicious use of phrases such as "targeting", "goals", and "behavior modification" could have tended to corrupt the ability of administrative law judges to exercise that independence in the vital cases that they decide. However, defendants appear to have shifted their focus obviating the need for any injunctive relief or restructuring of the agency at this time. While it is incumbent upon the agency to re-examine the role and function of the Appeals Council and its relationship to the ALJs in light of this litigation, it would be unsuitable for the Court to order any affirmative relief under the present circumstances. Plaintiff has achieved considerable success in its valid attempt to reveal and change agency practices." [597 F.Supp. 1132] (See Exhibit A-1).

Obviously, Judge Green intended her Order as a warning to the Social Security Administration to "back off" in future attempts to unfairly discipline the Administrative Law Judges. She says it "appears" defendants have "shifted their focus, obviating the need for any injunctive relief or restructuring of the agency at this time..." She was correct -in part- about the agency shifting their focus but...not in the manner she anticipated.

What did the Social Security Administration do after the judge refused to grant the injunctive relief requested? They commenced an attack and harassment procedure against the Administrative Law Judges on a grand scale never before seen in the annals of the United States Government against a class of employees and causing all past harassment of "whistle blowers" to pale in comparison.

EXHIBIT "A"

A "whistle blower" is the most detested employee to management in the government. When the whistle is blown on management, management wants revenge, and here we have the majority of a class of government employees (ALJs) blowing the whistle on mismanagement in government. Punitive action has followed to the limit of the Social Security management's ability to inflict mental stress, frustration and anger on the Administrative Law Judges. The Social Security Administration has hampered and limited the judges in the performance of their judicial duties. (Management has also inflicted mental stress and suffering on certain other employees in the performance of their duties because they object to the harassment of the judges and were supportive of them. If an employee takes sides, they better be with management -not the judges- or they too will receive retribution).

What did the Social Security Administration do to the Administrative Law Judges -the whistle blowers- to punish them?

- (A) It removed the ALJ's control of their staff by a system referred to as "rotation of staff" whereby management refused to assign a staff to work for each individual judge for at least 12 months as had been done in the past, thus taking away from the judges the right to rate the personnel working for them. The right to rate that employee requires a supervisor for at least 12 months (unless employed for a lesser period of time) under 5 U.S.C. 4302(b)(2). Quotas were set on the Hearing Assistant by management in order for them to obtain a good rating. This, of course, pressures the Administrative Law Judge to produce larger numbers of cases without regard to quality or details of the case. (See Exhibit B-2, B-2A, B-2B).

This has resulted in:

- (1) The judges have very little, if any, control over the writers who draft their decisions and sometimes refuse to follow their instruction in the drafting of the decision. Control of the writers is now assigned to the Supervisory Attorney Advisor in the office and the judges are not allowed to rate this person. The cases are drafted in and out of the office with the ALJ being unable to identify many of the writers drafting the judges' cases.
- (2) Preparation of the case for hearing -on the record- being assigned to a Hearing Assistant or Hearing Clerk (Clerk-Typist) but -off the record- prepared many times by a different Hearing Assistant or Hearing Clerk, with management refusing to advise

the judge who actually prepared the material. Again, the judges do not get to rate these individuals.

- (B)(1) Management has moved the judges out of their judicial role required by 5 U.S.C. 3105, and required the judges to perform an inappropriate and unauthorized perpetual training mission, perpetually training employees to assist the judges rather than having "trained employees" assigned to the judge to assist the judge in the preparation of the case for hearing and at the hearing in violation of the above cited statute. Add to this the judges being prevented from rating the trainees. This has resulted in unacceptable preparation of the claimants' files for use at the time his or her case is heard by the ALJ, because of the continual rotation of staff. Currently we experience inexcusable errors in many cases consisting of no exhibit list at the time of some hearings, duplication of exhibits, failure to complete witness list for judges, misnumbering of exhibits, failure to send all of the medical exhibits to the Medical Advisor called to testify as to what the medical record reflects, exhibits from other cases included in the wrong case, ad infinitum.

While this harassment tactic is proceeding unabated, the Department continues to glorify the improved "quality" of the work product by the employees when actually the claimant's claim file is many times catastrophic in all respects.

- (2) Management has a Supervisory Hearing Assistant assign cases to judges -not in rotation- but at the whim and caprice of the management, and without allowing judges to see the manner of assignment of the cases. (See Exhibit C-3).
- (C) Management has removed the judges' individual secretary (hearing clerk), thus preventing the judges from voicing their complaints about agency policy and practices in a meaningful manner. A copy of all correspondence by a judge is now put in the computer, typed by a management secretary (hearing clerk), so that the judge must be careful not to offend management in our office in order to avoid the wrath of management as much as possible. Wrath can result in many forms of punishment, including the lowering of the number of hours the reconfigured staff works on that judges' cases, thus lowering his or her production. This is an attempt to silence the judge and prevent us from performing our duty to point out administration errors in order to improve the system. We are not suppose to work in lock-step. (See Exhibit

D-4).

- (D) Management leaves the judges "dangling in the wind" and delights in holding the judges up for contempt and ridicule by the staff that formerly worked under them. This is not supposed to be a military operation. It is supposed to be a judicial operation. But even the military is more respectful to its defrocked officers that they remove from his or her former troops so that he will not be ridiculed or embarrassed by those lower grade unit members no longer under the officer's control. Here we have GS-6's, GS-7's, GS-8's up to GS-13's in control and directing the ALJs (GS-15's), their former bosses. We have been stripped of all control and stand emotionally naked in the performance of our job because Social Security Administration has allowed our former employees to take control of our operation and harass us with no one we work with accountable to us. Many of the ALJs suffer severe mental stress, anger and frustration caused and orchestrated by the Social Security Administration because we "blew the whistle" on their attempt to make us get in lock-step. As one observer recently stated, "This is the closest I have been to a war zone since World War II."
- (E) Management continually issues criticisms along with accusations of wrong doing by the judges without foundation. In fact, they are now threatening us with an investigation of wrong doing by the Congress (G.A.O.). (See Exhibit E-5).

In all of their misrepresentation about the good job that is being done, I have never encountered a complimentary statement concerning the judges. However, the American Bar Association -familiar with the facts- gave us an award for maintaining the rule of law in a very hostile environment. Unfortunately, Social Security Administration would not allow our then Chief Judge, Paul Rosenthal, to attend the ceremony of the A.B.A. to receive it for us. (See Exhibit F-6).

I repeat, the harassment we worked under prior to Judge Green's decision pales by comparison with current harassment. Where it was formerly being done on a "selective basis", harassment is more severe and wide-spread among a larger number of the judges at the current time.

All of the foregoing is punishment of the ALJs for whistle blowing described under 5 U.S.C. 2302(a)(2)(A)(x) and (b)(1)(E)(8)(A). (See Exhibit G-7).

GAO Identification Number
(Omitted)

Enclosure: Exhibit A-1
Exhibit B-2
Exhibit B-2A
Exhibit B-2B
Exhibit C-3
Exhibit D-4
Exhibit E-5
Exhibit F-6
Exhibit G-7

Dated: November 10, 1988

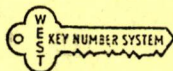
Presented To The
ADMINISTRATIVE LAW JUDGE CORPS
OF THE
SOCIAL SECURITY ADMINISTRATION
BY THE
AMERICAN BAR ASSOCIATION
AUGUST, 1986

Be It Resolved, That The
AMERICAN BAR ASSOCIATION
Hereby Commends The
Social Security Administrative Law Judge Corps
For Its Outstanding Efforts During
The Period From 1982-1984 To Protect The
Integrity Of Administrative Adjudication
Within Their Agency, To Preserve The Public's
Confidence In The Fairness Of Governmental
Institutions, And To Uphold The Rule Of Law

APPENDIX A—Continued

or disapprove the transfer, based on oral information furnished by the institutional superintendent.

In the event that the Assistant Director for Security or the Director of the Division of Corrections cannot be contacted, the transfer may be made upon mutual agreement of the two superintendents, subject to final review and approval by the Assistant Director of Security as soon as he may be contacted. All action, including the report of the investigation, shall be, as soon as possible, reduced to writing and signed by the appropriate staff members.



ASSOCIATION OF ADMINISTRATIVE
LAW JUDGES, INC., Plaintiff,

v.

Margaret M. HECKLER, et
al., Defendants.

Civ. A. No. 83-0124.

United States District Court,
District of Columbia.

Sept. 10, 1984.

Association of administrative law judges employed by Department of Health and Human Services to adjudicate claims for social security disability benefits brought action challenging Secretary's program of performance appraisal of judges pursuant to "Bellmon Amendment," alleging that procedures under program compromised their decisional independence. The District Court, Joyce Hens Green, J., held that although program of reviewing decisions of administrative law judges with high rates of allowing disability benefit claims was of dubious legality and tended to create improper pressure to issue fewer allowance decisions, association was not entitled to relief in absence of specific showing that program resulted in improper deni-

als of benefits and in light of Department's change in focus to more equitable program.

Judgment for defendants.

1. Officers and Public Employees ⇐11.1

Department of Health and Human Services' mere calculation and maintenance of data on frequency with which Appeals Council took action to correct particular administrative law judges' decisions and rates at which Council granted claimant's requests for review of ALJ decisions did not violate statute exempting administrative law judges from performance appraisals to which other civil service employees were subject. 5 U.S.C.A. § 4301(2)(D).

2. Administrative Law and Procedure ⇐443

While position of administrative law judge is not constitutionally protected, it is in many respects functionally comparable to that of federal judge.

3. Social Security and Public Welfare ⇐142.5

Administrative law judges in Social Security Administration must provide claimants full hearings under regulations and in accordance with beneficent purposes of Social Security Act; to provide for hearing, ALJ must scrupulously and conscientiously probe into, inquire of, and explore for all relevant facts, and must develop all evidence, including that contrary to claimant's position. Social Security Act § 201 et seq., as amended, 42 U.S.C.A. § 401 et seq.

4. Social Security and Public Welfare ⇐142.5

Conduct of hearing on social security disability benefits claim rests generally in administrative law judge's discretion; ALJ must conduct hearing according to his own understanding and conscience.

5. Administrative Law and Procedure ⇐444, 513

On matters of law and policy, administrative law judges are entirely subject to agency; although ALJ may dispute validity of agency policy, agency may impose its

policy through administrative appeals process.

6. Declaratory Judgment — 203

Although Department of Health and Human Services' program of reviewing decisions of administrative law judges with high rates of allowing social security disability benefit claims was of dubious legality and tended to create improper pressure for judges to issue fewer allowance decisions regardless of merits of claim, association of administrative law judges was not entitled to injunctive or declaratory relief against Department, in absence of any affirmative evidence that policy resulted in denial of benefits which should have been paid, and in light of Department's subsequent shift in focus to more equitable performance review program. Social Security Act, § 221, as amended, 42 U.S.C.A. § 421.

Elliott L. Richardson, Peter E. Halle, Milbank, Tweed, Hadley & McCloy, Washington, D.C., for plaintiff.

Richard A. Levie, U.S. Dept. of Justice, Washington, D.C., for defendants.

MEMORANDUM OPINION AND ORDER

JOYCE HENS GREEN, District Judge.

Plaintiff, the Association of Administrative Law Judges, is a not-for-profit corporation whose members are administrative law judges (ALJs) employed by the Department of Health and Human Services (HHS) and assigned to the Office of Hearings and Appeals (OHA) of the Social Security Administration (SSA). Plaintiff's members adjudicate claims for disability benefits under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401 *et seq.* (1982) and 42 U.S.C. §§ 1381 *et seq.* (1982). Plaintiff brought this lawsuit to challenge the "Bellmon Review Program", which defendants instituted to implement Section 304(q) of the Social Security Disability Amendments of 1980, the "Bellmon Amendment".¹ Plaintiff alleges that this program violates

the rights of its members to decisional independence under the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.* (1982).

State agencies administer the Social Security Disability Insurance Program pursuant to agreements with the SSA. Based upon medical information received from various sources and applying SSA guidelines, the state disability determination service issues the decision of SSA. A claimant who is denied benefits may file for reconsideration at the state level and if dissatisfied may then seek relief on the federal level. The ALJ hearing is a *de novo* proceeding. The ALJ is the first agency personnel in the review process to interview the claimant in person. The claimant may submit additional evidence, produce expert witnesses, and be represented by counsel. If his or her claim is denied by the ALJ, the claimant may appeal to the Appeals Council, which is the last step in the administrative process.

The Appeals Council has the authority to review all decisions of ALJs, at its own discretion ("own motion"), or at the request of a claimant. In either case, the Appeals Council is authorized to exercise jurisdiction only when: (1) there appears to be an abuse of discretion by the ALJ; (2) there is an error of law; (3) the action, findings or conclusions of the ALJ are not supported by substantial evidence; or (4) there is a broad policy or procedural issue that may affect the general public interest. 20 C.F.R. § 404.970(a), 416.1470(a) (1984). Based upon its review, the Appeals Council may modify, affirm, reverse or remand the ALJ's decision. When the Appeals Council reverses or remands an ALJ's decision, it issues an opinion stating the grounds for reversal or remand and identifying dispositive abuses of discretion, errors of law, problems with conclusions of law and findings of fact, insufficiencies of evidence, and policy or procedural issues of concern to SSA. If a case is remanded, the ALJ must take any action ordered by the Appeals

1. Pub.L. No. 96-265 (1980) (discussed at 42

U.S.C. § 421 (1982)).

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APPENDIX A—Continued

Council, but may also take any additional action that is not inconsistent with the remand order.

The Bellmon Amendment directed the Secretary of HHS to resume review of decisions of ALJs on her own motion. Congress expressed concern at that time about the high rate at which ALJs were reversing determinations made at the state level and the variance in these rates among ALJs. See H.R.Rep. No. 944, 96th Cong., 2d Sess. 57 (1980), reprinted in [1980] *U.S. Code Cong. & Ad. News* 1392, 1405; S.Rep. No. 408, 96th Cong., 2d Sess. 53 (1980), reprinted in [1980] *U.S. Code Cong. & Ad. News* 1277, 1331.

A study performed pursuant to the Bellmon Amendment and described in a report to Congress in January 1982 (PX-1), indicated that the Appeals Council more often would have changed decisions by ALJs allowing benefits made by ALJs with above average allowance rates than allowance decisions made by ALJs with average or below-average allowance rates.² The Bellmon Review Program, a series of measures designed to improve decisional quality and accuracy, began in October, 1981. Associate Commissioner of SSA, Louis B. Hays, announced that four categories of cases would be selected for possible "own motion" review:

(1) National random sample	21%
(2) Allowance decisions of new ALJs	16%
(3) Decisions referred by SSA's Office of Disability Operations	
Individual ALJs	63%

Initially, individual ALJs with allowance rates of 70% or higher were to have 100% of their allowance decisions reviewed for

accuracy and hearing offices with allowance rates of 74% or higher would also be reviewed. 106 ALJs, or approximately 13% of all ALJs in SSA, were placed on Bellmon Review because of their high allowance rates. The selection of entire hearing offices for review was soon discontinued. The other three categories of review were not yet operative.

An overview of the program was communicated to the ALJ corps in a Memorandum dated September 24, 1982 from Mr. Hays. (PX-111) ("Hays Memorandum"). That Memorandum explained that Bellmon Review was being instituted because of Congressional concern about high allowance rates and because only ALJ decisions denying benefits were generally subject to further review. Allowance rates were used as the basis for selecting the initial review group, in part, because studies had shown that decisions in this group would be the most likely to contain errors which would otherwise go uncorrected.

Based upon own-motion rates (the frequency with which the Appeals Council takes action to correct an ALJ's decision, as calculated by the Office of Appraisal) the individual ALJs were divided into four groups: 100% review; 75% review; 50% review and 25% review. In determining whether an ALJ should be removed from review, the Appeals Council considered only decisional accuracy, defined as a 5% own motion rate for three consecutive months. An ALJ with a 5% own motion rate could be said to be 95% accurate. Shortly after implementation, the criteria for removing targeted ALJs from review were amended.³ The 5% own motion rate

2. Plaintiff faulted this study because its results were reached during the time the "short form fully favorable" was in use. That form was phased out after Bellmon Review began. Many of the ALJs who were placed on Bellmon Review as a result of this study did not have experience with the sequential evaluation process of writing decisions.

3. The removal criteria were originally set forth in a Memorandum from Levi J. Ogden, Director of OHA's Office of Appraisal, to Mr. Hays. (PX-29). Three options were presented. Option 1

provided that ALJs in the 25% review category would be removed from review when the 95% level of accuracy had been approached and maintained for one month. (This option was ultimately approved with a modification by Mr. Hays, who changed one month to three months). Mr. Ogden recognized at the time that the 95% level could be difficult to achieve but that its employment could result in lowered allowance rates. (PX-29). In fact, Mr. Ogden testified, no ALJs were ever removed from review on the basis of having achieved a 5% own motion rate. Mr. Hays testified that at the time

was abandoned in favor of an own motion rate approximating that of the national random sample.⁴

A companion system for providing individualized feedback and counseling on the results of the review was also described in the Hays Memorandum. Never implemented, this feedback system was intended to complement the case-by-case feedback which occurs through the process of reversals and remands by advising ALJs of "decisional weaknesses and provid[ing] a mechanism for achieving long term improvement." Plaintiff's members believed that the feedback memoranda developed for peer counseling sessions that were scheduled to be held in January 1983 would direct high allowance ALJs how to develop, hear and decide cases. No counseling sessions under this program were ever conducted. Defendants decided not to initiate the feedback proposal except with respect to ALJs who choose to participate.⁵

Finally, the Hays Memorandum advised that if, after further review an ALJ's performance had not improved, "other steps" would be considered. Understandably, plaintiff's members viewed that as a warning that OHA would recommend that charges be brought before the Merit Systems Protection Board (MSPB) seeking ad-

verse personnel action, which could include dismissal. See testimony of Francis Mayhue, Robert B. Murdock.

The Bellmon Review Program has evolved substantially since the Hays Memorandum was issued. Significantly, in April 1982, before this lawsuit was filed, defendants stopped using allowance rates to target ALJs for Bellmon Review once own motion data became available.⁶ The ALJs whose allowance decisions were reviewed were selected for individual review solely on the basis of their own motion rates under the national random sample.

In mid-1983, OHA began to include in Bellmon Review unappealed decisions denying benefits by ALJs with high "grant-review" rates—the rates at which the Appeals Council grants claimants requests for review of denial decisions.⁷ This part of the program was not communicated to the ALJ corps at large,⁸ nor were written rules or procedures for this part of the program developed.

Most recently, OHA, under a new Associate Commissioner, has eliminated entirely the individual ALJ portion of Bellmon Review. Notice of Filing June 22, 1984, Memorandum to all ALJs, June 21, 1984. This Memorandum indicates that the number of

he approved Option 1, as modified, he questioned whether the 5% own motion rate was a realistic standard. He had been advised by the Office of Policy and Procedures that the 5% own motion rate was "unrealistic, essentially arbitrary ... and possibly inequitable." (PX-29A).

4. However, this change was not communicated to the ALJ corps at large. The national random sample did not include a certain portion of decisions of ALJs under Bellmon Review.

5. The proposed feedback system under Bellmon Review resembles the defunct Appellate Appraisal System. See PX-266. However, unlike that System, under Bellmon Review, the Appeals Council would not have been involved with the feedback process apart from issuing opinions reversing or remanding ALJ decisions.

6. The Appeals Council had not routinely exercised its own authority for several years prior to the Bellmon Amendment.

7. Grant-review was instituted despite a study of unappealed denial decisions by low allowance ALJs conducted by the Office of Appraisal,

which indicated no need for such review except in extreme cases. (PX-352). See testimony of Levi J. Ogden. But see PX-163.

8. At trial, Mr. Hays explained that since this was a matter likely to be raised in litigation, he felt that it was advisable to withhold this information. In addition, the relatively small size of the grant-review portion of the Bellmon Review rendered it a less appropriate subject for a general Memorandum. Those ALJs who were placed on grant-review were informed about its operation.

Had Mr. Hays informed the ALJ corps about this portion of the review, the negative reaction to the initial focus on allowance decisions only may have been tempered somewhat. However, although plaintiff stressed the unfairness of the initial focus on allowance decisions only, counsel argued that even a grant-review program or a low allowance review program initially adopted under Bellmon Review would have violated decisional independence.

cases reviewed under the national random sample will be increased. Apparently, the results of Bellmon Review demonstrated that the difference between the own motion rates of the selected ALJ and national random sample portions of the review had progressively narrowed, which suggested that overall, decisional quality and consistency had improved. The review of unappealed denial decisions by high grant-review ALJs has also been discontinued to be replaced by review of a national random sample of such decisions. These changes have been instituted on an interim basis only.

Plaintiff charged that the targeting of individual ALJs under Bellmon Review, based upon allowance rates and then own motion rates, was in essence an attempt to influence ALJs to reduce their allowance rates and thereby compromise their decisional independence.

The president of plaintiff Association, Charles Bono, sent a Mailgram to Associate Commissioner Hays (PX-110) in response to the Hays Memorandum requesting that the Bellmon Review Program be abandoned. Mr. Bono stated that the Bellmon Review Program would result in illegal performance ratings of ALJs and would have the effect of chilling ALJ decisional independence.⁹ Mr. Hays did not respond to this Mailgram.

Mr. Hays sought advice from the Office of the General Counsel for SSA, concerning the legality of targeting high allowance ALJs for Bellmon Review. (PX-387). The Office of General Counsel recognized that the Senate version of the Bellmon Amendment required such targeting but that the Conference Report did not. The Office of General Counsel inferred from the legislative history that targeting may have been perceived as having a possible chilling effect on the decisional independence of targeted ALJs. It concluded that while the law did not directly preclude targeting, there could be some legal risk, and sug-

gested the desirability of reviewing some denial decisions. Although Mr. Hays had solicited the advice of the General Counsel, he did not accept it, viewing the matter differently. He testified at trial that he interpreted the Bellmon Amendment and its legislative history to require the focus on allowance decisions only. His decision to focus initially on allowance decisions only was based upon several additional factors: the findings of the Bellmon study later reported to Congress; that own motion data was not yet completely available; that a high proportion of denial decisions were already being reviewed on requests of claimants; that the grant-review rate for denial decisions was fairly low; that data from review of the Fort Smith (Arkansas) Hearing Office demonstrated that denial decisions were generally correct; and the efficient allocation of limited resources.

Plaintiff presented evidence that there were significant problems with unappealed denial decisions which Mr. Hays did not take into account in his initial implementation of Bellmon Review. (PX-163). Moreover, the Bellmon "work group" had concluded in August 1980, that at least some denial decisions should be included in the Bellmon Review process to avoid biased adjudication and any denial of due process. (PX-407).

It was plaintiff's view that Mr. Hays had a financial incentive to pressure ALJs to reduce their allowance rates. As a member of the Senior Executive Service, he had a performance plan which stated as one of its goals or objectives, the reduction of allowance rates. (PX-368C, 368B). Mr. Hays' performance was rated higher in FY 1981, a year in which such a reduction took place, than in FY 1982, when it did not. Mr. Hays stressed that his performance plan goal, to improve the quality of adjudication in OHA, was derived in response to Congressional criticism. Studies had shown a correlation between high allowance rates and high error rates. Thus, Mr.

9. Some of plaintiff's members felt that maintaining statistics based upon allowance rates constituted illegal performance ratings. See

Testimony of Robert M. Murdock; PX-378 (based upon own-motion rates released pursuant to the Freedom of Information Act).

Hays expected that improved quality of adjudication would lead to some reduction in allowance rates, particularly since allowance decisions had not been subject to review by the Appeals Council for several years. Mr. Hays denied that the reduction of allowance rates was an independent goal in the performance plan. *See also* PX-301, 309.

Plaintiff also charged that OHA had at least considered allowance rate goals for the ALJ corps. One option for removal of targeted ALJs from review which was not implemented, was to remove ALJs from review when their allowance rates equaled or surpassed OHA's fiscal year goals. (PX-29). Mr. Hays disapproved this option and noted specifically, at that time, that no goal existed to reduce allowance rates, only one to improve decisional quality and consistency, which could have, as one effect, a reduction in allowance rates. Mr. Ogden testified that when he used the term "goal", he meant rather a budgetary assumption. Both Mr. Ogden and Mr. Hays explained that SSA must project allowance rates for budgetary purposes. Both denied that OHA made any attempt to keep allowance rates within the projections for any given year. OHA provided information to SSA, but did not determine the final estimates. *See* PX-288. Nonetheless, OHA continued to use the term "goals" to describe SSA projections of allowance rates. The insensitive choice of that term could reasonably have indicated that SSA considered a certain number of allowances too many.

Evidence apart from the budgetary projections cumulatively, and strongly, suggested that OHA had an ulterior goal to reduce ALJ allowance rates. When Mr. Hays first became Associate Commissioner, he issued a memorandum to the ALJs, in which he noted a perception that ALJ allowance rates were "untenable". (PX-157). Sometime later, he sent a memorandum to SSA, in which he described as "good news" a decline in allowance rates. (PX-360). Mr. Hays received a memorandum from SSA's Office of Management Coordination, which requested a decrease

in the variance among allowance rates and a decrease in allowance rates overall. (PX-324). *See also* PX-187, PX-189, PX-193, PX-197, PX-198, PX-199, PX-200, PX-201 (Reports on Bellmon Review tracking allowance rates of ALJs on Bellmon Review without mention of quality and consistency).

Much of the testimony in this case involved the Fort Smith, Arkansas Hearing Office. On December 10, 1980, prior to the institution of the Bellmon Review Program, Deputy Chief ALJ J. Robert Brown visited the Fort Smith Hearing Office to discuss with ALJs Jerry Thomasson, Francis Mayhue and David Hubbard the possible reasons why the allowance rate of the Fort Smith Hearing Office was significantly higher than the allowance rate of the Little Rock, Arkansas Hearing Office, which received cases from the same state agency. The allowance rate at Fort Smith was approximately 90%. *See* testimony of Andrew J. Young. ALJs Thomasson and Mayhue suggested that the Appeals Council review 100% of their decisions. These ALJs voluntarily submitted some of their decisions to Judge Brown, who reviewed and discussed them with other OHA personnel. In many cases, these decisions did not clearly convey what factors were considered in reaching the decision. Judge Brown provided the Fort Smith ALJs with an instructional memorandum that included samples of decisions from Fort Smith, both as they were written and as OHA had revised them. The results of the decisions were not changed.

The Fort Smith ALJs were subsequently advised by Chief ALJ Phillip Brown, that effective August 17, 1981, the Appeals Council would begin reviewing all of their decisions. The Fort Smith Review was a separate program entirely from Bellmon Review. During the course of its review OHA discovered significant deficiencies in the quality and accuracy of the Fort Smith Hearing Office decisions. *See, e.g.*, DX-J6. *See* testimony of Burton Berkley regarding decisions of Judge Thomasson; DX-Y2; DX-P6. OHA decided to provide training

to ALJs Thomasson and Mayhue on the application of the Social Security disability regulations and the sequential evaluation process of adjudicating cases. Judge Hubbard was not included in the training because he appeared generally to understand the regulatory scheme.

The training took place in January 1982 at OHA Headquarters in Arlington, Virginia. The individuals conducting the training, William LaVere, Deputy Director of the Office of Appeals Operations, and Burton Berkley, Deputy Chairman of the Appeals Council, testified that the sole purpose of the training was to help the Fort Smith ALJs issue correct decisions and not to pressure them to reduce allowance rates. Indeed, Mr. Berkley testified that he did not even know the allowance rates of the Fort Smith ALJs.

Judge Thomasson believed that the training was prompted by the high allowance rates and labor-management problems in the Fort Smith office, and designed to pressure him to allow fewer claims for benefits. He testified, as did Judge Mayhue, that Mr. LaVere had told them both that the only way to be free of OHA scrutiny was to lower their allowance rates to the national average of 45-55%. However, Mr. LaVere testified that he merely informed them of the national average in response to Judge Mayhue's inquiry. Mr. LaVere also testified that Judge Thomasson stated in the training session that he did not read the regulations of the Secretary. Mr. LaVere recommended that Judge Thomasson be placed on 100% Bellmon Review based upon his own motion rate. (DX-H3). Mr. Berkley testified that Judge Thomasson's writing did not improve at all while he was on Fort Smith Review.

In December 1981, Don Przybylinski, Special Counsel of OHA, visited the Fort Smith Hearing Office to conduct a preliminary investigation of complaints concerning labor-management problems, alleged time-and-attendance violations, and unfair labor practice charges that had been filed against OHA by employees of the Fort Smith office. This visit was independent of OHA's

concern about the Fort Smith ALJs' allowance rates. Mr. Przybylinski testified that Judge Thomasson introduced the subject of allowance rates during that visit but that he did not discuss that subject. He denied telling Judge Thomasson that the allowance rates in the Fort Smith office must be lowered, as Judge Thomasson had testified, and as Betty Davis stated in her deposition. From all of this evidence it appears that OHA was genuinely concerned about the quality of Judge Thomasson's decisions and not his allowance rate.

Judge Mayhue had been relying on Court cases which did not conform to the Secretary's regulations and cases which predated certain of the Secretary's regulations. Yet, it was never suggested to Judge Mayhue that he could be disciplined for those decisions. In fact, Mr. Berkley testified that the quality of Judge Mayhue's decisions increased markedly. Nonetheless, Judge Mayhue was put on Bellmon Review when Fort Smith Review ended. (PX-328). Judge Hubbard was also placed on Bellmon Review. As part of this training Judges Thomasson and Mayhue were sent to Southfield, Michigan to hold hearings on remand in cases which they had decided. An administrative decision was made that the education of these ALJs outweighed any expense and delay involved. No punishment of any sort was intended.

At trial, plaintiff identified other practices of defendants, which allegedly interfere with ALJ decisional independence. First, plaintiff objected to the Secretary's policy of nonacquiescence in certain federal court decisions. See Testimony of Jerry Thomasson, Francis Mayhue, David Hubbard. The position description for ALJs (PX-103) requires ALJs to take those decisions into account in the decisionmaking process. Thus, plaintiff asserted that some ALJ allowance decisions are considered erroneous by the Appeals Council when, in fact, they would be upheld on appeal to a United States District Court. Own motion rates, therefore, are inflated because they do not reflect the ultimate judicial disposition of the ALJs own motion cases.

The Secretary's policy of nonacquiescence, as explained by Mr. Berkley, has been in existence since SSA was established. The Secretary follows only the decisions of the Supreme Court of the United States, or those decisions which she decides to adopt by changing the regulations and those decisions in which the Commission decides to acquiesce. This system is intended to insure that claimants in all parts of the country are governed by the same laws, rules and regulations.

Second, plaintiff asserted that OHA personnel which represent SSA in disability hearings before ALJs under the experimental Government Representative Program, act as prosecutors in cases where the claimant is represented by counsel. Mr. Hays testified that the government representative develops a case for both sides based upon the prehearing record to determine whether or not the representation should be undertaken. The development work would be made available to the ALJ, at which time the government representative might recommend that the ALJ issue a fully favorable decision on the record. Alternatively, the government representative presents the government's case at the hearing. If the ALJ decides in favor of the claimant, the government representative may refer the case to the Appeals Council for possible review on its own motion.

As the program is now structured, the government representatives are ultimately responsible to the head of OHA, the same individual who supervises ALJs and has the authority to recommend disciplinary action. To remedy this problem, plaintiff requested that the Government Representative Pro-

gram be administered outside of OHA. Mr. Hays testified that the program could function elsewhere in SSA.

Third, plaintiff objected to the Appeals Council's *ex parte* use of the opinions of medical support staff. However, Mr. Berkley satisfactorily explained that when the Appeals Council relies on an opinion of a member of its medical support staff as the underlying basis for reversal of an ALJ decision, whether favorable or unfavorable, the medical support staff opinion is entered into the administrative record after the claimant has been given the opportunity to review and comment on it. Were this otherwise, an incomplete administrative record would be presented to the federal court ultimately reviewing the agency decision. Opinions of medical support staff are used primarily where new evidence is presented to the Appeals Council and where the ALJ clearly did not appear to understand the medical evidence, in which case the medical support staff would prepare a summary of the evidence in the record.¹⁰

With reason, plaintiff and its members viewed defendants' combined actions as a message to ALJs to tip the balance against claimants in close cases to avoid reversal or remand by the Appeals Council, which would increase their own motion rate, which would result in being placed on Bellmon Review, with the added potential for peer counseling and MSPB proceedings. Judge Ainsworth H. Brown testified that he felt compelled to practice defensive adjudication in order to protect himself and the record. In sum, Bellmon Review, according to plaintiff, had the purpose and

10. Plaintiff challenged numerous other practices of defendants, as well as those described above. Among them, plaintiff charged, without sufficient evidentiary substantiation, that the Office of Appeals Operations, a component of OHA, acts as a prosecutorial body, actively seeking out ALJ allowance decisions to be reversed by the Appeals Council.

Plaintiff also questioned whether the Appeals Council applies the same standard of review in own motion cases as it does when it reviews cases pursuant to claimant requests. Mr. Berkley testified that, although at one time the possibility of different standards was considered, the

standard employed is the same in all cases: The Appeals Council reviews the ALJ's decision to determine whether it was supported by substantial evidence. (PX-382, PX-420). If substantial evidence is lacking to support a particular finding, the decision will nonetheless be upheld, without an opinion, if the result is supported by substantial evidence. If the Appeals Council reviews a decision of an ALJ on its own motion and reverses or remands the decision because it was not based upon substantial evidence, presumably the ALJ's own motion rate would be affected.

effect of chilling ALJ decisional independence so as to lower the ALJ allowance rate. See testimony of Charles Bono, Jerry Thomasson, Francis Mayhue.

Defendants' position throughout this litigation, expressed by Mr. Hays emphatically at trial, has been that there is no agency policy to reduce allowance rates. The agency's policy is to reduce inconsistency in the application of law and regulations both within the ALJ corps and in the different levels of the adjudicatory process, and to reduce the number of decisions that do not correctly apply substantive agency policy. In keeping with this policy, OHA recognized that high allowance rates may indicate undue inconsistency of adjudicatory standards within SSA and that a reduction of that inconsistency may result in or be reflected by some reduction in allowance rates, among other things.¹¹ Defendants maintained that ALJs were not ranked by allowance rates.

Defendants insist that no adverse action is planned against any ALJ based on the ALJ's failure to maintain an acceptable level of decisional correctness, but have not ruled out the possibility that such action may be necessary in the future in an extreme case. Indeed, participants at a meeting about feedback under Bellmon Review considered that in phase three of the feedback program, "assuming no changed behavior on the part of the individual ALJ, OA [Office of Appraisal] would initiate a memorandum to the ALJ recommending that the ALJ file be turned over to the Office Special Counsel for Administrative processing through OPM [Office of Personnel Management] for appropriate action." (PX-17). See testimony of Levi J. Ogden.

Yet, Mr. Hays denied any intention to pursue disciplinary action when he referred to "other steps" in the Hays Memorandum. He never even imagined that the Bellmon Review Program could have a chilling effect on ALJs, particularly since their denial

decisions had always been subject to review. He believed that ALJs would successfully resist any possible pressure.

The APA contains a number of provisions designed to safeguard the decisional independence of ALJs. See generally, *Butz v. Economou*, 438 U.S. 478, 513-14, 98 S.Ct. 2894, 2914-15, 57 L.Ed.2d 895 (1978); *Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. 128, 132, 73 S.Ct. 570, 573, 97 L.Ed. 872 (1953); *Nash v. Califano*, 613 F.2d 10, 15-16 (2d Cir.1980). Although employees of the selecting agency, ALJs are entitled to pay prescribed by the Office of Personnel Management independently of agency recommendations or ratings. 5 U.S.C. § 5372 (1982), 5 U.S.C. § 554 (1982). They are exempted from the performance appraisals to which other Civil Service employees are subject. 5 U.S.C. § 4301(2)(D) (1982). See also 5 C.F.R. § 930.211 (1984). ALJs do not receive monetary awards or periodic step increases based upon performance. Cases must be assigned whenever possible, in rotation, an ALJ may not be assigned duties inconsistent with his or her responsibilities as an ALJ, and an ALJ may not communicate *ex parte* with anyone inside or outside the agency about the facts of a particular case. 5 U.S.C. §§ 3105, 557(d)(1) (1982).

[1] In order to institute an adverse action against an ALJ, the employing agency must establish good cause after an opportunity for a hearing before the MSPB. 5 U.S.C. § 7521(a) (1982). This section permits the institution of performance-related adverse actions despite the proscription of 5 U.S.C. § 4301. See *Drew v. U.S. Dep't of the Navy*, 672 F.2d 197, 201 (D.C.Cir.) cert. denied, 459 U.S. 1072, 103 S.Ct. 493, 74 L.Ed.2d 634 (1982). By implication, then, an agency may gather data and form an opinion of an ALJ's performance. See J. Mashaw, et al., *Social Security Hearings and Appeals* 123 (1978). Accordingly, the mere calculation and maintenance of own

11. "Targeted Ongoing Review", or Bellmon Review, according to defendants, "is a multifaceted program to correct ALJ [allowances] and, in the process, promote behavioral change. By

behavioral change we mean to correct those aspects of decisional performance which do not reflect the content of the law, regulations or SSA policy." (PX-379).

motion and grant-review data does not violate 5 U.S.C. § 4301.

[2-4] While the position of an ALJ is not "constitutionally protected," *Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. at 133, 73 S.Ct. at 573, in many respects, it is "functionally comparable" to that of a federal judge. *Butz v. Economou*, 438 U.S. at 513, 98 S.Ct. at 2914. The ALJ serves as the factfinder and decisionmaker. ALJs in SSA must provide claimants "full hearings under the Secretary's regulations and in accordance with the beneficent purposes" of the Social Security Act. *Gold v. Secretary of HEW*, 463 F.2d 38, 43 (2d Cir.1972); see also *Echevarria v. Secretary of HHS*, 685 F.2d 751, 755 (2d Cir.1982). To provide a full hearing, the ALJ must "scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts." *Gold v. Secretary of HEW*, 463 F.2d at 43; *Diabo v. Secretary of HEW*, 627 F.2d 278, 281-82 (D.C.Cir.1980). The ALJ must develop all of the evidence, including that contrary to the claimant's position. *Richardson v. Perales*, 402 U.S. 389, 408-410, 91 S.Ct. 1420, 1430-1431, 28 L.Ed.2d 842 (1971); *Bowman v. Heckler*, 706 F.2d 564, 567-68 (5th Cir. 1983). The conduct of the hearing rests generally in the ALJ's discretion, *Richardson v. Perales*, 402 U.S. at 400, 91 S.Ct. at 1426; the ALJ conducts the hearing according to his own understanding and conscience. Cf. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-67, 74 S.Ct. 499, 502-03, 98 L.Ed. 681 (1954). Finally, the ALJ must issue a decision based upon the complete hearing record which may include numerous subjective elements. The complete position description for ALJs in SSA (PX-103) is set out in the Appendix made part of this Memorandum Opinion.

[5] On matters of law and policy, however, ALJs are entirely subject to the agency. E.g., *D'Amico v. Schweiker*, 698 F.2d 903, 907 (7th Cir.1983); See Scalia, *The ALJ Fiasco—A Reprise*, 47 U.Chi.L.Rev. 57, 62 (1980). Although an ALJ may dispute the validity of agency policy, the agency may impose its policy through the administra-

tive appeals process. In reviewing an ALJ's decision the agency retains "all the powers which it would have in making the initial decision." 5 U.S.C. § 557(b) (1982). If the agency accepts the ALJ's decision, or if that decision is not appealed, it becomes the final decision of the agency. "The statute authorizes the Secretary, not the ALJ, to make reviewable final decisions in disability cases." *Baker v. Heckler*, 730 F.2d 1147, 1150 (8th Cir.1984). The Secretary has delegated that authority to the Appeals Council. It is the Appeals Council's decision, not the ALJ's, that a court reviews to determine whether the agency's decision is based upon substantial evidence. *Id.* In sum, the ALJ's right to decisional independence is qualified.

[6] The sole issue in this case is whether that qualified right has been violated by the now discontinued individual ALJ portion of the Bellmon Review Program, which targeted individual ALJs initially on the basis of their allowance rates and then on the basis of their own motion rates. Although the evidence at trial did not suggest that defendants intend to resume the practice of targeting high allowance ALJs for Bellmon Review, and although targeted review based upon own motion rates and grant-review rates of individual ALJs is no longer in effect, defendants have advised the ALJ corps of the possibility that Bellmon Review could be resumed. Notice of Filing June 22, 1984, Memorandum to all ALJs June 21, 1984. For this reason, there remains a live controversy between the parties. See e.g., *Murphy v. Hunt*, 455 U.S. 478, 480, 102 S.Ct. 1181, 1182, 71 L.Ed.2d 353 (1982).

At the same time, perhaps in response to this litigation, defendants have modified the Bellmon Review Program significantly for the better. The worthiness of defendants' stated goal of improving the quality and accuracy of decisions notwithstanding, targeting high allowance ALJs for review, counseling and possible disciplinary action was of dubious legality for at least two reasons. First, that practice was not consistent with the language of the Bellmon

Amendment nor its sparse legislative history. Neither directed SSA to focus on allowance decisions or target for review only ALJs with high allowance rates. In his introductory remarks, Senator Bellmon did state that SSA was to review the allowance decisions of those ALJs with high allowance rates but those remarks were not incorporated into the law. See Staff of Senate Comm. on Governmental Affairs, 98th Cong., 1st Sess., *The Role of the Administrative Law Judge in the Title II Social Security Disability Insurance Program* 9 (Comm. Print 1983) ("Senate Comm. Print"). Second, high allowance ALJs were initially targeted for review without regard to their actual own motion rates in an overbroad sweep.

The practice of targeting ALJs on the basis of own motion rates, once that data became available, did reflect defendants' stated goal of improving the quality and accuracy of ALJ decisions. However, the evidence as a whole, persuasively demonstrated that defendants retained an unjustifiable preoccupation with allowance rates, to the extent that ALJs could reasonably feel pressure to issue fewer allowance decisions in the name of accuracy. While there was no evidence that an ALJ consciously succumbed to such pressure, in close cases, and, in particular, where the determination of disability may have been based largely on subjective factors, as a matter of common sense, that pressure may have intruded upon the factfinding process and may have influenced some outcomes.¹² In denying this contention, even as a possibility, Mr. Hays may have paid the ALJs an undue compliment. Selecting allowance decisions and unappealed denial decisions for review for accuracy from the national ran-

dom sample is undeniably a more equitable and more conciliatory means of accomplishing the same purpose and does not compromise ALJ independence by focusing excessively on allowance rates.

The evidence, on balance, did not suggest that in the controversial proposed feedback system, if it had been implemented, ALJs would have been directed to deny deserving claims for benefits. If a case discussed in a feedback session or memorandum was to be remanded, a different ALJ would be assigned to hear that case.¹³ Nor did the evidence suggest that ALJs would be disciplined simply for allowing a large number of deserving claims. Should disciplinary action ever be instituted against an ALJ who failed to maintain an acceptable level of decisions correctness, the MSPB would have to determine whether that constituted "good cause" under the statute. 5 U.S.C. § 7521(a) (1982).

The ALJ is not insulated from review by the Appeals Council for decisional correctness. See *Chocallo v. Bureau of Hearings and Appeals*, 548 F.Supp. 1349, 1361-62 (E.D.Pa.1982), *aff'd without opinion*, 716 F.2d 889 (3d Cir.), *cert. denied*, — U.S. —, 104 S.Ct. 426, 78 L.Ed.2d 360 (1983). It appears that ALJs often differ with the Appeals Council as to the definition of correctness in particular cases. This is a matter to be resolved on a case-by-case basis should a claimant appeal the final decision of the agency to a federal district court. See *Baker v. Heckler*, 730 F.2d at 1150. While the ALJ may have difficulty discerning the correct result in a given case because of the Secretary's policy of nonacquiescence in certain federal court decisions,¹⁴ there was no evidence that because

12. This conclusion was reached wholly independently of the results of the survey of ALJs by Dr. Donna Price Cofer.

13. The remand policy at OHA has been changed in general. Now, remand cases are put into the regular rotational process in any given hearing office so that a remand case may or may not be assigned to the ALJ who made the initial decision. However, the ALJ who made the initial decision still receives a copy of the remand order for feedback purposes.

14. The position description for ALJs in SSA (PX-103) directs ALJs to "take into account all applicable Federal, State and foreign laws, statutes, regulations, rulings, and decisions of the Federal Courts." To the extent the Secretary has not acquiesced in a federal court decision the ALJ is put in the difficult position of "trying to serve two masters; the courts and the Secretary of Health and Human Services." *Hillhouse v. Harris*, 547 F.Supp. 88, 93 (N.D.Ark.1982), *aff'd* 715 F.2d 428 (8th Cir.1983) (*per curiam*).

of that policy any ALJ denied benefits which should have been paid, the questionable legality of that policy notwithstanding.¹⁵

Nor did the evidence demonstrate that the Government Representative Program has interfered with the decisional independence of any ALJ. While any potential for conflict built into the structure of the program is sharply reduced now that ALJs are no longer subject to Bellmon Review based upon allowance rates or own motion rates, the agency would do well to consider whether any potential of the appearance of conflict might be avoided by some organizational modification.

In sum, the Court concludes, that defendants' unremitting focus on allowance rates in the individual ALJ portion of the Bellmon Review Program created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof. Defendants' insensitivity to that degree of decisional independence the APA affords to administrative law judges and the injudicious use of phrases such as "targeting", "goals" and

"behavior modification" could have tended to corrupt the ability of administrative law judges to exercise that independence in the vital cases that they decide. However, defendants appear to have shifted their focus, obviating the need for any injunctive relief or restructuring of the agency at this time. While it is incumbent upon the agency to reexamine the role and function of the Appeals Council and its relationship to the ALJs in light of this litigation, it would be unsuitable for the Court to order any affirmative relief under the present circumstances. Plaintiff has achieved considerable success in its valid attempt to reveal and change agency practices.

It is, therefore, by the Court, this 10th day of September, 1984

ORDERED that judgment be entered in favor of defendants and that this cause stands dismissed.

APPENDIX

Position Description, Administrative Law Judge, Social Security Administration

15. See Senate Comm. Print at 28-29.

House Democrats Vow Social Security Watch

By MARTIN TOLCHIN

Special to The New York Times

WASHINGTON, Dec. 5 — House Democrats today pledged close scrutiny of Administration efforts to restrict Social Security appeals, and they hailed the demise of proposed rules that would have made it harder to appeal a decision denying benefits.

A three-hour hearing of the House Ways and Means Committee today discussed the proposed rules, which were rejected on Saturday by the Commissioner of Social Security, and committee members sought to learn how the rules were drawn up.

Representative Dan Rostenkowski, the Illinois Democrat who heads the panel, told the hearing that "while it is unusual for a committee of Congress to hold a hearing on draft regulations that have been withdrawn," the hearing underscored his contention that "Congress should act swiftly to react to regulations if it finds them contrary to the wishes of Congress."

"The basic direction of the proposed regulations is contrary to the course that has been charted by the Committee on Ways and Means," Mr. Rostenkowski said.

Representative Thomas J. Downey, a New York Democrat who is acting chairman of the public assistance subcommittee, said the Social Security Administration had rejected the draft regulations because "they got caught and they were embarrassed."

Congress would closely scrutinize any new regulations, Mr. Downey said, because "after eight years of the Reagan Administration's hostility to Social Security, we're not going to take any chances."

The draft proposal, which was reported in The New York Times on Nov. 16 and rejected Saturday by the Social Security Commissioner, Dorcas R. Hardy, noted that the agency was losing more than 50 percent of the cases that were appealed. The proposal said the agency sought to improve the Government's chances of winning and to reduce a growing backlog of claims by tightening the rules on the kinds of evidence that could be submitted at an appeals hearing.

Louis D. Enoff, the agency's Deputy Commissioner for Programs, testified today that the article in The Times was "misleading and inaccurate." He said the article said the White House had approved the proposal and described the document as having been prepared

by relatively low-level Social Security Administration aides.

In fact, the article said the document was a draft that had been approved by the Agency's Office of Hearings and Appeals; it did not mention the White House. It said the regulations had not yet been seen by Dr. Otis R. Bowen, Secretary of Health and Human Services.

Mr. Enoff also said the article would have a "chilling effect" on policy formulation because premature publication

Scrutiny of any new effort to curb appeals is pledged.

tion would discourage policy-makers from developing creative new proposals.

Representative Bill Archer, a Texas Republican, said the hearing was a partisan Democratic effort intended to "instill fear in the minds of the elderly and disabled."

Representative J. J. Pickle, a Texas Democrat who is chairman of the oversight subcommittee, took issue with Mr. Enoff's description of the regulations as relatively low level.

"These proposed regulations were put out by the Associate Commissioner for Hearings and Appeals — the top person in appeals," Mr. Pickle said. "It wasn't somebody low down."

As for the substance of the proposals, Mr. Pickle said that agency officials had "always been for this position."

Representative Robert T. Matsui, a California Democrat, said, "Frankly, I'm happy that it came out and I'm happy that you people killed it." He added, "I read the article very carefully, and I didn't see anything inaccurate."

Representative Beryl Anthony Jr., an Arkansas Democrat, said that although the 158-page regulation was only a draft, "once the process gets started, by the time it gets to the tail end, some of the onerous decisions can't be reversed."

Associated Press
senior leader

or tackling came to say that more than simply reform committees.

Republican Conference

Mr. Martin, one of the

women in the party

supporter of George

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in, 85 to 82.

Republicans said they believed

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said her first interest was

position.

Republicans have called for

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measures suggested by

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nds candidates can raise

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ance on public financing

king office.

Challenges Chemical Arms Program as Unsafe

IREW ROSENTHAL

Special to The New York Times

TON, Dec. 5 — An environmental group today filed a suit that the Defense Department of

Citing a Federal report, a group

the Senate Subcommittee on Oversight of Government Management. Federal financing for chemical weapon programs has jumped from about \$63 million in 1980 to about \$270 million in 1987

"B"
EXHIBIT



The New York Times/José R. Lopez

President-elect Bush's transition
yesterday on posts remaining to

though Mr. Baker has denied that
trying to block Mr. Tower's ap-
ment, some Republicans close to
Bush express strong doubt that Mr.
r would support the choice of the
ervative Mr. Tower. "If you've got
ong Secretary of State, as Baker
d be, it's fairly easy to be domi-
n relation to the national security
er," a Republican official said.
if you've got a strong Secretary of
se then you can have prob-
That guy can really run a sepa-
policy."

hard Burt, the United States Am-
dor to West Germany, is being
dered for the National Security
il job, but at the moment the
g candidate seems to be Brent
troft, a retired Air Force lieuten-
eneral, who held the post in the
Administration. But there is con-
among some senior Bush aides
Mr. Scowcroft is so skilled in the
of the bureaucracy that he could
as a serious rival to Mr. Baker.
ard G. Darman, the former
y Treasury Secretary who is now
vestment banker, is favored for
p spot at the Office of Manage-
and Budget.

Bush is considering retaining At-
General Dick Thornburgh, but
names under consideration in-
William D. Ruckelshaus, who has
been administrator of the Envi-
mental Protection Agency.

ans to Visit Library Site

ASHINGTON, Nov. 16 (AP) —
ent Reagan and his wife, Nancy,
ke part on Monday in ground-
ing for the Ronald Reagan Presi-
Library in Simi Valley, Calif.,
the House has announced. The
s plan to make the stop on the
their ranch north of Santa Bar-
a Thanksgiving vacation.

Leaders in Congress Oppose Cutting Appeals on Benefits

By MARTIN TOLCHIN
Special to The New York Times

WASHINGTON, Nov. 16 — Three
Congressional committee chairmen
predicted today that Congress would
block proposed new rules that would
sharply restrict the rights of elderly
and disabled people to appeal Govern-
ment decisions denying Social Securi-
ty, Medicare and welfare benefits.

The A.F.L.-C.I.O. also assailed the
proposed rules, as did groups repre-
senting the elderly.

The proposal by the Social Security
Administration's Office of Hearings
and Appeals noted that the agency
loses more than 50 percent of the cases
that are appealed. It proposed tighten-
ing the rules on the kinds of evidence
that can be submitted at an appeal
hearing so as to improve the Govern-
ment's chances of winning and to re-
duce a growing backlog of claims.

Senator Daniel Patrick Moynihan, a
New York Democrat who is chairman
of the Social Security Subcommittee of
the Senate Finance Committee, said
that he would hold hearings on the pro-
posal shortly after Congress recon-
venes in January "unless they scratch
the whole thing."

Could Affect Millions

"There's not a prayer that Congress
will allow it," the Senator said.
"They're doing this not because they
need to modernize, but because they're
losing too many appeals. Instead of
saying, 'Maybe we shouldn't turn these
people down and then lose the appeals,'
they find a way to keep these people
from appealing in court."

The proposals could affect millions
of people who seek or receive Social Se-
curity retirement or disability benefits,
health insurance under Medicare or
welfare benefits under the Supplemental
Security Income program for the
aged, blind and disabled. In the fiscal
year that ended Sept. 30, the agency re-
ceived 5.5 million claims and more
than 300,000 appeals from its rulings.

The rules would bar new evidence of
a disability or evidence of new disabili-
ties in the appeal process. They would
also limit a person's ability to obtain a
full review of all issues when appealing a
decision either to the Department of
Health and Human Services or in Federal
court.

Accountability Faulted

Noting that the proposal had not been
seen by Dr. Otis R. Bowen, the Secre-
tary of Health and Human Services,
Mr. Moynihan said the proposal pro-
vided the latest reason why the Social
Security Administration should be
made an independent agency, directly
accountable to Congress.

"In the present arrangement, the So-
cial Security Administration isn't re-
sponsible to anybody," Mr. Moynihan
said. "It nominally reports to the Sec-
retary of Health and Human Services,
but it really doesn't."

Dr. Bowen declined to comment.
"The Secretary has not even seen the
proposal and therefore has no com-
ment," said Chuck Kline, a spokesman.
The Social Security Administration
said the Commissioner, Dorcas R.
Hardy, had not made a final decision on
the rules yet.

Representative Edward R. Roybal, a

California Democrat who is chairman
of the House Select Committee on
Aging, said, "You can be sure that Con-
gress will strongly oppose the proposed
rules."

And Representative Thomas J. Down-
ey, a New York Democrat who is act-
ing chairman of the Public Assistance
Subcommittee of the House Ways and
Means Committee, said his panel
would examine the regulations within
the next few days.

"You can expect the closest scrutiny
of these rules, and a very negative
reaction from the Congress," said Mr.
Downey, who is also chairman of the
Human Services Subcommittee of the
Aging Committee.

Mr. Downey was one of three Ways
and Means subcommittee chairmen
who wrote to Secretary Bowen today
protesting the proposed regulations.
The others were Representative Fort-
ney H. (Pete) Stark, a California
Democrat who is chairman of the
Health Subcommittee, and Representa-
tive Andrew Jacobs Jr., an Indiana
Democrat who is chairman of the So-
cial Security Subcommittee.

"To impose rigid and unreasonable
bureaucratic burdens on an elderly,
disabled, sick or poor individual at a

Changes on Social Security and welfare are battled.

hearing on what may be their lifeline is
cruel and inhumane," they wrote.

The chairman of the House Rules
Committee, Representative Claude
Pepper, a Florida Democrat, de-
nounced the proposal as "a callous,
heartless, brutal assault by this Ad-
ministration on the most helpless and
disabled in our country." He called
upon President-elect Bush "to person-
ally intervene and stop the implemen-
tation of this proposal."

The A.F.L.-C.I.O. also urged the Bush
administration to reject the proposal,
saying it "would especially hurt dis-
abled people."

A spokesman for President-elect
Bush's transition team said that Bush
aides were not informed of the pro-
posed rule changes in advance and had
not focused on them.

Job Prospects Seen Damaged

Some Congressional aides privately
predicted that hostility to the proposal
could adversely affect the chances that
two Social Security Administration of-
ficials might be approved for jobs in
the Bush administration.

They are Commissioner Hardy, who
has been mentioned as a possible Sec-
retary of Health and Human Services,
and Eileen Bradley, director of the Of-
fice of Hearings and Appeals, which
drafted the proposal. She has been
mentioned as a possible successor to
Miss Hardy.

12-6-88

SS plan blasted

By JILL LAWRENCE
Associated Press

WASHINGTON (AP) — Democrats called Social Security officials on the carpet Monday over draft regulations to limit the rights of people trying to obtain benefits, even though Commissioner Dorcas Hardy already had killed the controversial proposal.

House Ways and Means Committee Chairman Dan Rostenkowski, D-Ill., said the plan would have violated Congress' intent that the benefits hearings process be "non-adversarial and simple enough for an individual claimant to navigate without legal representation."

He said that based on past actions, he feared what steps the agency might take in the future.

Rep. Tom Downey, D-N.Y., said "The administration does not have a track record on Social Security that I feel comfortable with. There's suspicion."

Downey, acting chairman of the Ways and Means public assistance subcommittee, cited an instance last Christmas when he said the Reagan administration "tried to count as income the blankets and food that poor (Social Security) recipients might get from local charities."

Hardy over the weekend rejected the draft staff regulations, one of which would have required claimants to submit all evidence in a proceeding at least seven days be-

fore it began.

Deputy Commissioner Louis Enoff assured the Ways and Means Committee on Monday that Hardy's decision was final.

"They've been tossed," Enoff said of the regulations. "They will not be considered or started (anew). They will not officially be brought forward in the Social Security Administration."

Most of the 300,000 people who request hearings each year before administrative law judges are seeking disability benefits, and most who appeal denials eventually win. An appeal through the administrative process to the court level takes an average of nearly two years.

Under questioning by Downey, Enoff denied that the draft regulations were developed to cut the number of appeals. "Our primary concern is getting the correct decision at the earliest point in the process," he said. He said 110 administrative law judges were added last year, bringing the total to more than 700.

Republicans complained bitterly that the hearing was unnecessary in light of Hardy's action and inconvenient since it was held while GOP members met to elect leaders for the 101st Congress.

"I must conclude that the majority is unwilling to let the media down," said lame-duck Rep. Hai Daub, R-Neb. He said even without Hardy's action, given the glacial

pace of regulatory change, the hearing would have been premature.

Downey defended the hearing, saying Congress is "extraordinarily sensitive" to any Social Security changes and "brooks no effort" to instill among the elderly and disabled fear of their own government.

"The people who did these draft regulations were not out to intimidate or hurt anybody," Enoff replied. He said one reason for proposing the advance evidence requirement is that some lawyers introduce evidence at the end of a proceeding simply to prolong it, because they make more money that way.

He said the system remains targeted for change and he challenged committee members to ask other witnesses, most of them from senior advocacy groups, "if they would deny that the hearings and appeals process sorely needs improving."

In testimony to the committee, many groups agreed that the process needed to be improved. The most common suggestion was that SSA hire more people in order to better determine the validity of disability claims when they are first made.

And several witnesses said administrative law judges need more independence from the Social Security bureaucracy.

THE NEW YORK TIMES, FRIDAY, DECEMBER 2, 1988

Letters

Curb on Social Security Appeals Is Still a Draft

To the Editor:

In my 24-year career with the Social Security Administration, I have seen a number of articles in your paper which caused me to question your concept of ethical journalism. Usually, I bite my tongue and move on. The Nov. 16 news article on plans to limit appeals of Social Security rulings, however, is such a breach of basic rules of fair play that I must comment.

What has happened is quite simple. A staff office three layers down in the organization has drawn up draft regulations and asked other staff offices to comment on those regulations. The Office of Hearing and Appeals reports to me, as Deputy Commissioner for Programs, and I have not yet read the draft regulations. The article and accompanying piece purporting to summarize the "Reagan Administration's" Social Security policies are clearly intended to convey the impression that this staff proposal has some sort of official Administration blessing and it does not.

As the S.S.A.'s press officer made perfectly clear, regulations go through a long and sometimes tortuous review process within the Social Security Administration, the Department of Health and Human Services and the Office of Management and Budget before they are published in draft for public comment. After pub-

lic comments have been analyzed and the draft regulations have been revised to accommodate or respond to the public comments, the regulations go through the same review process again before they are published in final form. The internal review and public comment process is designed to insure that all public policy issues have been identified and addressed.

What I find most troubling is the chilling effect the article will have on formulation of public policy. I do not wish to debate the merits of the draft, but I want to make known that it was prepared by career civil servants, including administrative law judges and members of the S.S.A.'s Appeals Council, in an effort to improve the efficiency and effectiveness of the hearings and appeals process. If career civil servants must be concerned that their ideas for change may end up on the front page of The Times — even before their colleagues have had a chance to comment, much less before senior career or political officials have reviewed them — only the most cautious and uncontroversial ideas will ever be committed to paper. That would be disastrous for the policy-making process and the public it is designed to serve.

LOUIS D. ENOFF
Deputy Commissioner for Programs
Social Security Administration
Baltimore, Nov. 17, 1988

Tuesday, December 27, 1988 A-3

Poll: Reagan helped rich, harmed poor

ASSOCIATED PRESS

NEW YORK — Americans believe President Reagan has helped the rich and hurt the poor, but most approve of his work in the White House, says a national poll.

Most of those questioned in the Media General-Associated Press survey gave negative grades to Reagan's social policies and ethics enforcement and said they would not have supported him for a third term.

Two-thirds approved of the way Reagan has done his job overall and said history will view him positively; 55 percent said he has improved the nation.

The telephone survey was conducted Nov. 10-20 among a random sample of 1,084 adults. It has a margin of error of 3 percentage points.

The poll found two factors boosted Reagan's popularity: helpful economic policies and good leadership. He also scored well on defense and U.S.-Soviet relations.

Reagan's ratings flagged elsewhere. While nearly two-thirds said his economic policies have been good for the nation, 80 percent rated as negative his handling of the budget deficit.

Moreover, 54 percent said the poor are worse off economically after Reagan's policies, and 72 percent said the wealthy are better off. Opinion was divided on the middle class: A third called it worse off, a quarter said better off, and the rest saw little change.

A third of respondents said they and their families were better off as a result of Reagan's efforts; 18 percent said worse off.

Reagan received negative ratings for his handling of every social issue posed: civil rights, 51 percent negative; education, 54 percent; housing, 65 percent; and welfare, 67 percent.

EXHIBIT "C"

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

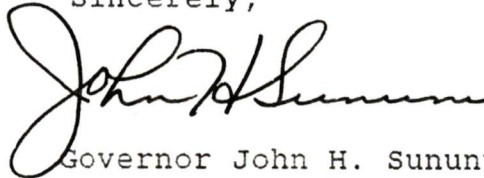
Dear Ms. Schofield:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu". The signature is fluid and cursive, with the first name "John" being the most prominent.

Governor John H. Sununu

Ms. Ehtel S. Schofield
305 Thrush Avenue
Sebring, Florida 33872

305 Thrush Avenue
Sebring, Florida 33872
December 28, 1988

11 JAN REC'D

Governor John H. Sununu
Concord, New Hampshire

Dear Sir:

Nursing Home Care for the Elderly

I sincerely urge President Bush to sponsor care for the elderly, where they can spend their remaining years with TLC. What does one do with no family and so limited financial substance? Its a scary situation at best.

There's more than enough money being needlessly spent and wasted on pork barrel projects, perks for Congressman and such.

STOP all foreign aid and take care of our own at home. So far Foreign Aid is money down a rathole. People like the horrible cruel Mobutu of Zaire, a billionaire over who lives in splendor and stashed funds in Swiss banks while his people grovel in poverty.

Foreign Aid to Third World countries does little or nothing for the people - it only goes in the coffers in banks to pay the interest on bad loans.

STOP subsidizing the terrorist State of Israel. If they can't make it since 1948 so be it. US dollars are going into the destruction of surrounding countries and its a horrible, cruel and murderous life for their "neighbors."

Count up the above, as only a few places where wasteful spending is in operation and one will find billions and billions to take care of needy Americans, whether the homeless or the elderly needing financial assistance to be placed in good nursing homes.

Isn't it time America became patriotic towards it own?

Sincerely,

Ethel S. Schofield

Ms. Ethel S. Schofield

OFFICE OF THE PRESIDENT-ELECT
WASHINGTON, D.C. 20270

January 16, 1989

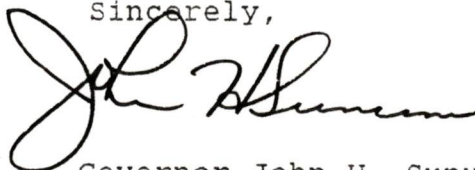
Dear Mrs. Whitehead:

Thank you for your recent letter.

I appreciate you taking the time to share your thoughts with me and I will forward your suggestions to other officials in the Administration for their review.

Again, we appreciate your input.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Sununu", written in a cursive style.

Governor John H. Sununu

Mrs. George G. Whitehead
245 Pleasant Street
Laconia, New Hampshire 03216

11 JAN REC'D

245 Pleasant St.
Laconia, N.H. 03246
December 28, 1988

ex-Gov. John Sununu
State Capitol
Concord, N.H. 03300

Dear Governor Sununu:

We are very familiar with the Bush name since the early days when we campaigned for his father, Prescott, when he ran for the Senate from Connecticut. Since you are now his Chief of Staff and a very competent man, would you please give Pres. Bush some suggestions that I feel would be very good for the U.S. government.

First, to lower the federal debt, initiate a special lottery. I have attached a clipping outlining the benefits of such a plan. Please do not reduce aid to the elderly in bad health with incomes under \$20,000.00 per year. I hope that the new president will give this some thought.

Sincerely yours,

Mrs. George G. Whitehead