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2009-0166-S

FOIA Number:
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FOIA MARKER

**This is not a textual record. This is used as an
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Library Staff.**

Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Office of the President
Series: Daily Files
Subseries:

OA/ID Number: 90566
Folder ID Number: 90566-002

Folder Title:
Saturday, October 20, 1990

Stack:	Row:	Section:	Shelf:	Position:
V	12	12	3	4

Withdrawal/Redaction Sheet

(George Bush Library)

Doc. No. / Type	Subject/Title	Date	Restriction	Classification
01. Log	White House Telephone Log [Signal Switchboard] [redaction of personal information] (1 pp.)	10/20/90	(b)(6)	
02. Note	Handwritten notes of Presidential Phone call with JAB III [James A. Baker, III] (1 pp.)	10/20/[90]	(b)(1)	
03. Note	From President Bush to Brent [Scowcroft] (1 pp.)	10/20/90	(b)(1)	
04a. Memo	From Brent Scowcroft to President Bush (1 pp.)	10/20/90	(b)(1)	S
04b. Memo	From Brent Scowcroft to President Bush (1 pp.)	10/20/90	(b)(1)	S
04c. Message	Leadership (2 pp.)	n.d.	(b)(1)	S
05. Memo	From Brent Scowcroft to President Bush (1 pp.)	10/19/90	(b)(1)	S
06a. Note	From George Bush to Brent [Scowcroft] (1 pp.)	10/20/[90]	(b)(1)	
06b. Letter	Draft Letter from George Bush to King Hussein (6 pp.)	n.d.	(b)(1)	

Page 1 of 1

Collection:

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Office: Office of the President

Series: Daily Files

Subseries:

WHORM Cat.:

File Location: Saturday, October 20, 1990

Pinksheet Number: dw1858

OA/ID Number: 90566-002

Date Closed: 11/18/2010

FOIA/Sys Case #: 2009-0166-S

Re-review Case #:

P-2/P-5 Review Case #:

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AR Case #:	MR Case #:
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RESTRICTION CODES

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

P-1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

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

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THE WHITE HOUSE
WASHINGTON

TELEPHONE MEMORANDUM
SIGNAL SWITCHBOARD

October 20, 1990

	TIME		NAME	ACTION
	PLACED	DISC		
OUT	7:57 AM	8:09	Mrs. Nancy Ellis (b)(6)	Tlkd-ok 8:00 AM
INC	PM			
OUT	9:19 AM	9:35	Governor John H. Sununu (b)(6)	Tlkd-ok 9:19 AM
INC	PM			
OUT	9:36 AM	9:41	Senator Patrick Leahy (b)(6)	Tlkd-ok 9:39 AM
INC	PM			
OUT	9:42 AM	9:46	Senator Bob Kasten (b)(6)	Tlkd-ok 9:42 AM
INC	PM			
OUT	9:47 AM	10:01	General Brent Scowcroft Office, Washington, D.C. White House Signal 2-2260	Tlkd-ok 9:48 AM
INC	PM			
OUT	10:02 AM	10:20	Congressman William Broomfield (b)(6)	Tlkd-ok 10:17 AM
INC	PM			
OUT	11:22 AM	11:24	Mrs. Barbara P. Bush Aspen Cabin, Camp David, Maryland Camp David Signal 4-1617	Tlkd-ok 11:22 AM
INC	PM			
OUT	AM		Governor John H. Sununu Senator Dole's Office Washington, D.C. 224-6521	Tlkd-ok 12:18 PM
INC	12:18 PM	12:21		
OUT	AM		Governor John H. Sununu Office, Washington, D.C. White House Signal 2-2287	WCB 2:12 PM Tlkd-ok 3:00 PM
INC	2:09 PM	3:03		
OUT	AM		Mr. James W. Cicconi Office, Washington, D.C. White House Signal 2-2280	Tlkd-ok 3:03 PM
INC	3:00 PM	3:11		
OUT	AM		Mr. James W. Cicconi Office, Washington, D.C. White House Signal 2-2280	Tlkd-ok 3:24 PM
INC	3:23 PM	3:26		

THE WHITE HOUSE

WASHINGTON

TELEPHONE MEMORANDUM

SIGNAL SWITCHBOARD

October 20, 1990

	TIME		DISC	NAME	ACTION
	PLACED				
OUT		AM		Governor John H. Sununu Congressman Michel's Office Washington, D.C. 225-0601	Tlkd-ok 3:38 PM
INC	3:38	PM	3:53		
OUT		AM		Governor John H. Sununu Office, Washington, D.C. White House Signal 2-2287	Tlkd-ok 4:41 PM
INC	4:40	PM	4:43		
OUT		AM		Mr. Marvin Bush Birch Cabin, Camp David, Maryland Camp David Signal 4-1710	Tlkd-ok 5:09 PM
INC	5:09	PM	5:10		
OUT		AM		Secretary James A. Baker III Residence, Washington, D.C. White House Signal 2-3103	Tlkd-ok 5:15 PM
INC	5:15	PM	5:21		
OUT		AM		Mr. Marvin Bush Birch Cabin, Camp David, Maryland Camp David Signal 4-1710	Tlkd-ok 5:25 PM
INC	5:25	PM	5:26		
OUT		AM		Governor John H. Sununu Office, Washington, D.C. White House Signal 2-2288	Tlkd-ok 5:39 PM
INC	5:39	PM	5:43		
OUT		AM		Mr. Marvin Bush Birch Cabin, Camp David, Maryland Camp David Signal 4-1710	Tlkd-ok 5:49 PM
INC	5:49	PM	5:50		
OUT		AM		Lieutenant Paul F. Nichols Chestnut Cabin, Camp David, Maryland Camp David Signal 4-1407	Tlkd-ok 7:24 PM
INC	7:23	PM	7:24		
OUT		AM			
INC		PM			
OUT		AM			
INC		PM			
OUT		AM			
INC		PM			

THE WHITE HOUSE
WASHINGTON

TELEPHONE MEMORANDUM

PRESIDENT BUSH

OCTOBER 20 , 19 90

	TIME		NAME	ACTION
	PLACED	DISC		
OUT	AM		NO CALLS	
INC	PM			
OUT	AM			
INC	PM			
OUT	AM			
INC	PM			
OUT	AM			
INC	PM			
OUT	AM			
INC	PM			
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INC	PM			
OUT	AM			
INC	PM			
OUT	AM			
INC	PM			
OUT	AM			
INC	PM			

PRESIDENTIAL MOVEMENTS

LOCATION Camp David, Maryland

DATE 20 October 1990

[illegible]

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Presidential Phone Calls



DATE: 10-20-90 TIME: 5:40
incoming/outgoing

WITH: T S

SUBJECT: send new civ. rts
up to Hill tonight
Send veto up Monday

FOLLOW UP:

Presidential Phone Calls



C. David

DATE: 10-20-90

TIME: 9²⁰ - 11¹⁵ A
incoming/outgoing

WITH: Sumner

SUBJECT: secret meetings done

Mitch Roat, Buttram Foley made
offer to Dole -

Keep rate 28 but add
10% surtax - on

Max Fisher don't want
to come in Monday - discuss
w/ Baile - John couldn't understand
why not come in.

FOLLOW UP: John surprised Max NOT
want to come in.

call
Discuss Newt's tirade
against Michel
Discuss Rollins - style WP 10-20

Bush Presidential Library Photocopy

Presidential Phone Calls



DATE:

10-20-90

TIME:

12²²

~~incoming~~ outgoing

in

WITH:

T. S.

SUBJECT:

1. civil rights - package

being FAXed up here

would on statute

2. Budget - now in P. Wood
office

3.

flat 31 + some Pearce

(cryptic on own / million)

FOLLOW UP:

reduce 33 to 31

increase 28 to 31

add Pearce (some)

" some similar

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Presidential Phone Calls



DATE:

10-20-90

TIME:

~~incoming/outgoing~~

WITH:

Sen Kasten

SUBJECT:

Thank Egyptian

2/3 of Reps } for us
1/3 of Dems }

8 votes we didn't need
- would have voted with us

FOLLOW UP:

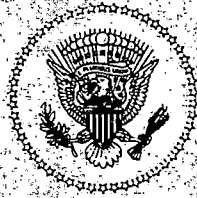
Harrel to get through
without 1-day, ad Gephardt
cause Okey & Edwards. At

Edwards opposed

Problem getting it through
cause of Salvador, Mex City
Birth Control etc

Bush Presidential Library Photocopy

Presidential Phone Calls



DATE: 10-20

TIME: 10²⁰
incoming/outgoing

WITH: Bill Broomfield

& Purcell

SUBJECT: _____

① will keep open in
mind -

will do everything
I can to ^{help} you
& Mitchell

FOLLOW UP: Will try to get
more moderators to help

good call

Presidential Phone Calls



DATE:

10-20-90

TIME:

9:40
incoming/outgoing

WITH:

Pat Lahey

SUBJECT:

Thanks for Egyptian
Debt

met 1-1 on my Senators
(woke him up)

FOLLOW UP:

Bush Presidential Library Photocopy

From the desk of
George Bush

P

Hand to Brent
Brent.
Special Channel

THE WHITE HOUSE

WASHINGTON

Your Majesty:

One of the most agonizing by-products of this terrible situation in the Gulf has been the strains now placed on the relationship between Jordan and the U. S. I hope I need not tell you that I have always tried to demonstrate the respect I feel for your country, your countrymen and especially for you personally.

As you know, in spite of these strains and difficulties, all caused by Saddam Hussein's brutal aggression against Kuwait, we have been trying to encourage economic support for Jordan. We have been doing this in spite of some concerns that I would now like to call to your personal attention.

The Conference in Amman hurt -- so many known terrorists convening to blast the U. S. joined, I hate to say, by some of your own officials. I tried to understand the pressures that you and the government are under from the more radical left; but you must know that blatant attacks on my country, attacks that assign to us outlandish motives, only make things very difficult. Had a Cabinet member in my government attacked Jordan the way your Prime Minister attacked us, he would have been dismissed. I refer to his public remarks on our motivation in putting forces into Saudi Arabia.

I am determined to keep relations from totally disintegrating. I say this as one who wants our friendship to be strong and intact when all this ends. Thus may I comment on your recent interview with the New York Times. I make the following comments based on the premise that if I don't level with you and you don't level with me it will be more difficult for both countries.

In your recent interview with the New York Times, Your Majesty, it is simply incorrect that the United States decided to send, let alone dispatched, troops to Saudi Arabia before receiving a request from King Fahd. Our only motivation was to deter Iraq and, if necessary, defend a friend; we went when asked and we will leave the same way. It is also deeply troubling to read that an old and close friend "honestly can't tell" if Iraq's invasion was justified, when the entire world is united in condemning this action.

I was also troubled by your apparent acceptance of Saddam the Invader's claim that Saudi Arabia was not threatened by him. The irrefutable evidence, which I thought we had presented to you, shows that the very day he announced he was moving his forces out of Kuwait, vast Iraqi armor was heading south toward the Saudi border.

Now, let me tell you what concerns me a lot. In that entire interview there was no mention of concern about the brutal treatment of the people of Kuwait, and no mention about Saddam Hussein's barbaric policy of detaining innocent foreigners -- holding them as hostages and staking them out near plants and installations so as to avoid retaliation for his brutality. The reports coming out of Kuwait are horrible.

I know how you personally feel about young people -- surely you must be shocked and offended by the documented reports of rape, of shooting children for passing out leaflets (and making their parents watch), of the systematic dismantling of Kuwait from the hospitals to the factories and stores. It is tragic. It is indeed reminiscent of how Hitler behaved in Poland before the rest of the world came to its senses and stood up against him. As I write this I know you, too, care deeply about these atrocities.

Having written the above right from my heart, I simply want to add that I hate it that you and Jordan are in this very difficult situation. I would be no friend at all if I didn't understand

the enormous problems all of this has inflicted upon your wonderful country.

The other day I saw a picture of you and some of your associates receiving yet another delegation. I recognized several of your associates. All of them friends, all of them not historically opposed to the U. S. All of them having worked with us in difficult situations before. I still remain hopeful that it will be that way in the future.

I have a personal feeling that perhaps you don't like it when those wild demonstrators in Baghdad and regrettably Amman attack me in very personal terms.

I know you have tried hard to find peace through dialogue; but the longer this matter goes on, the more I am convinced that there can be no compromise that stops short of the United Nations' demands and universal condemnation.

I have warned Saddam Hussein that any terrorist act against us or our allies will be his responsibility. Further containment and continued brutality against "hostages" (he still refers to them as "guests") will hasten the day of other than a peaceful settlement.

This letter is being conveyed to you in this special channel. I did not want it ricocheting around the corridors at State or anywhere else. It comes from a man who is your friend. It comes from a heart laden with grief and sadness; but it also comes from one who is determined to see the total failure of Saddam's unwarranted aggression.

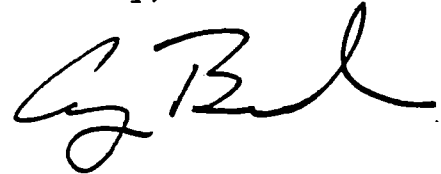
Barbara enjoyed her visit with Queen Noor and Brent Scowcroft filled me in on every nuance of your distinguished brother's recent visit. I ask you to convey my respects to him.

I pray we will find a way out of this terrible situation; but the longer I think about this it can only come from Saddam Hussein's turning 180 degrees and his trying to undo the horrible offense he has committed against the rule of law.

My sincere best wishes to you and your family.

With respect,

Sincerely,

A handwritten signature in black ink, appearing to be 'Hussein I', written in a cursive style.

His Majesty
Hussein I
King of the Hashemite Kingdom of Jordan
Amman

CAMP DAVID

P

send over
1st thing
Monday

Bush Library Photocopy
George Bush Handwriting

Please copy
all

Michael

1. hand-deliver
fred mcclure's yourself
2. have a driver take
Sullivan's over 1st thing
this morning.
3. these should both be marked
personal (to be opened by addressee
only)
4. keep copies for us
in our personal file ...over

make cc for Sununu, but
walk to Jackie so that it's not floating
around and tell Jackie that we only made
2 cc's and are keeping this PERSONAL.

put one of our cc's in the daily file
put one in the file of personal
correspondence that B has

thanks

Patty

Document Originally
Attached to
Following Page

THE WHITE HOUSE
WASHINGTON

10-20-90

Dear Fred,

You - I have not
discussed the Civil Rights
Bill. Let me just say I
am certain this has not
been easy for you. I can
guarantee you it's a tough
one for me; but I have
been thinking about you and
Lou Sullivan, Connie + Art.
I hate to see friends
troubled and hurt -

Fred, you are doing

Fred McClure

an outstanding job, and I
hate to see your life
complicated but surely of
his nature, as I assume it is

Hang in —
Warm Regards

GB

FROM
THE WHITE HOUSE
WASHINGTON, D.C.

The Honorable Louis W. Sullivan
Secretary
U.S. Department of Health
and Human Services
Room 615F
200 Independence Avenue, SW
Washington, D.C. 20001

THE WHITE HOUSE
WASHINGTON

Saturday PM
Camp David

Dear Lou,

I have your note of
Oct. 19th.

I know the horrible bind
you are in. Indeed I really
feel deeply for you and for the
"various minority members" of
this administration.

I will send an acceptable
bill to the Hill. It is a true civil
rights bill that corrects past
wrongs but clarifies the quota
problem.

I am distressed at
some of the partisan ^{rhetoric} ~~speech~~
equating me with David Duke
etc; but I've gotten used to the

THE WHITE HOUSE
WASHINGTON

- 2 -

slings and arrows

What I don't like is that
you and Art and Connie and
many other friends and defenders
are put in a terrible position.

I am convinced some
folks like Ralph Neas wanted
all along to have me veto this
bill. They fail to understand that
a President ought to try to
perfect faulty legislation and
they see great personal
benefit in forcing a veto.

By now you will have
received all the legalese
that supports my position.

THE WHITE HOUSE

WASHINGTON

- 3 -

What it does it do is
address itself to the
terrible feeling in my
heart when I disappoint
or hurt a friend -

My warm best

notes -

by Ben

P.S. You are doing a superb
job -



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

Friday, October 19

Dear Mr President,

I am pleased that you are having some further discussions with some of our Republican senators on the civil rights bill.

From my many travels "outside the beltway", I am convinced that the vast majority of Americans want to move forward on civil rights and they have not been convinced at all - that the proposed legislation is a "quota bill".

I hope that language will be found which will enable you to sign the bill, for your own history over the years, has put you on the right side of this issue.

In addition to the fairness issue, you have a unique, historic opportunity to bring a significant number of blacks, Hispanics and other minorities into the Republican family by this concrete action, demonstrating your care and concern to all, including many whites.

Conversely, a veto would cause irreparable damage which I seriously doubt would be overcome by a subsequent bill, next year. This would also put your various minority members of your administration in a situation where their effectiveness and credibility with our minority communities would be lost.

As always, I am available to discuss this with you and help in any way I can.

Sincerely,
Joe

daily

THE WHITE HOUSE
WASHINGTON

(CAMP DAVID)

DATE: 10-20-90

FROM THE PRESIDENT

To: Michael:

First good news I've seen in some time.

Thanks for sharing.

I still want to have that session
on the economy.

GB

GB

cc: John Sununu

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS

October 1900¹⁹⁹⁰ OCT 19 PM 6:44

To: The President

From: Michael J. Boskin *MJB*

Re: Oil Prices

Since much of the uncertainty in the economic outlook for the next several quarters revolves around oil prices, it is worth noting that the oil price picture has improved considerably in the last few days. Prices are now about what they were in mid-September and futures prices throughout the next year are \$5 or \$6 a barrel below what they were just a week ago.

The attached graph may be of some interest: the solid blue line represents the path of futures prices starting next month as of noon today (they came down a little bit more later in the day). The dashed green line represents the much worse futures outlook a week ago, etc.

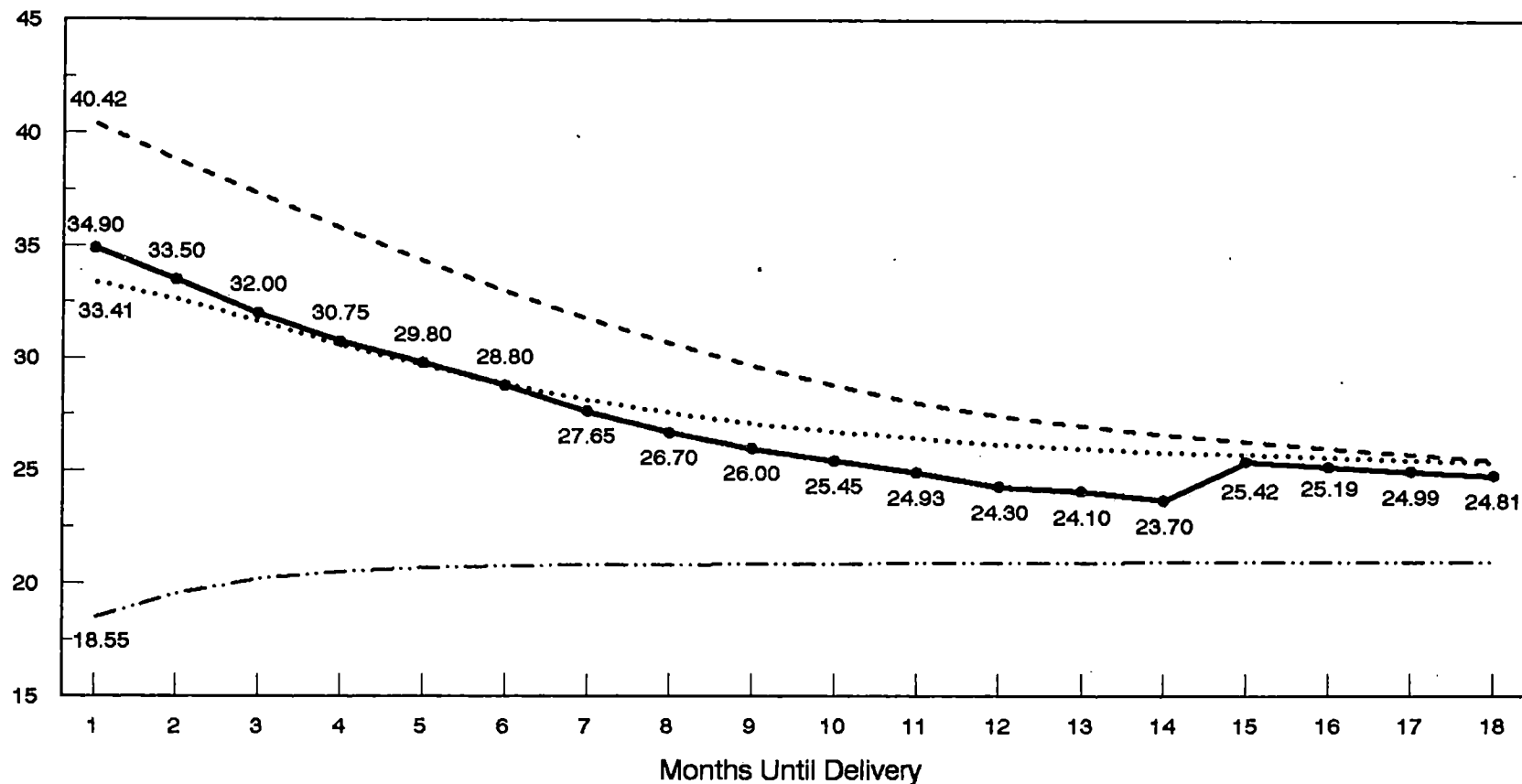
If oil prices actually follow the current prediction of the futures market, the "oil shock" will still be somewhat worse than the base case scenario we analyzed in August and September.

Michael J. Boskin
Chairman

Futures Prices: West Texas Intermediate Crude

(as of 12 noon, Friday, October 19, 1990)

\$/Barrel



3 months ago
(July 18)

1 month ago
(Sept 18)

1 week ago
(Oct 11)

Oct 19
(12 noon)

New York Mercantile Exchange

Note: There have been no transactions in the 15 - 18 month contracts yet today.

SPECIAL INSTRUCTIONS/REMARKS:

✓ MR. PRESIDENT:

Attached are final copies of your statement and message transmitting our legislation package to the Congress. These were released at 7:00 p.m. Only minor changes were made since you last saw these. Changes include an emphasis on fairness, and adjustments to reflect fact that S. 2104 will be vetoed on Monday. All changes you requested have been made. --Jim

UNCLASSIFIED

CLASSIFICATION

WHCA FORM 8 15 OCTOBER 84

Bush Presidential Library Photocopy

Bush Library Photocopy
George Bush Handwriting

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 20, 1990

STATEMENT BY THE PRESIDENT

Today I received S. 2104, the Kennedy-Hawkins "Civil Rights Act of 1990." As I have said before, in its current form, this bill is a quota bill. Throughout Congressional consideration of this bill, I have said repeatedly that I want to sign a civil rights bill this year that addresses certain Supreme Court decisions regarding employment discrimination. There are reasonable compromises that I would support that address legitimate issues raised in these cases without resulting in employers adopting quotas.

The legislation as enacted by Congress fails to cure several critical defects I find in the bill. In its present form, the measure remains a quota bill because inescapably it will have the effect of forcing businesses to adopt quotas in hiring and promotion. Throughout Congressional consideration of this bill, I have emphasized my support for legislation to strengthen our employment discrimination laws, and have already signed the most sweeping civil rights bill in 25 years: The Americans with Disabilities Act. With regard to S. 2104, I want to sign a civil rights bill; but I will not sign a quota bill. Instead of solving problems, quotas foster divisiveness and litigation, set group against group, minority against minority, and in so doing, do more to promote legal fees than civil rights. S. 2104 undermines the basic principles of fairness on which our system of laws is based. The Administration has tried to work with Congress in good faith on these issues, but I cannot accept legislation that is unfair and turns back the clock on progress that has occurred since passage of the Civil Rights Act of 1964.

Because I believe Congress shares my commitment to civil rights and my opposition to quotas -- an opposition that is shared by most Americans -- I believe together we can enact good legislation. During House and Senate consideration of this measure, the Administration supported bipartisan alternatives to S. 2104.

On Monday I will veto S. 2104 and return it to Congress with my objections. I believe legislation can be enacted that I can sign before Congress leaves. The bill I am today forwarding to Congress includes those specific changes to The Civil Rights Act of 1990 that will make it acceptable. My proposal contains a number of compromises designed to accommodate the concerns of the proponents of S. 2104. It overrules several Supreme Court decisions from last year, and it addresses the so-called "Wards Cove issue" by shifting the burden of proof to the defendant to justify "business necessity" in disparate impact cases. I urge Congress to enact my proposal before adjournment.

Congress has the opportunity to cure the defects that necessitate my rejection of S. 2104. With the changes I am forwarding to the Congress, together we can produce legislation that will strike a blow against racial bias without institutionalizing quotas.

#

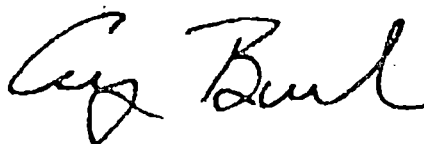
TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit a legislative proposal that if adopted would cure critical defects in the Civil Rights Act of 1990, a bill which, in its current form, S. 2104, I am compelled to veto.

As presented to me, S. 2104 would lead employers to adopt quotas for hiring and promotion, and it would prevent or discourage some victims of illegal quotas from seeking legal redress. The harm this would do to the cause of civil rights is potentially profound. Any measure that causes employment decisions to turn on factors of race, sex, ethnicity, or religion -- rather than on qualifications -- is fundamentally unfair, and is at odds with our civil rights tradition. Our war against discrimination is impeded, not advanced, by a bill that encourages the adoption of quotas.

On Monday, I will return S. 2104 to the Congress, along with my objections. It is my hope that the Congress will immediately forward to me a corrected bill for consideration. We cannot shrink from our national commitment to equal protection under the law and equal opportunity for all. Unaltered, S. 2104 would violate that pledge. With the changes that I propose, the Civil Rights Act of 1990 would no longer result in the imposition of quotas, but would be made a true civil rights bill that I would like to see become law.

With the legislative proposal, I also transmit a section-by-section analysis explaining the need for these changes and describing the Civil Rights Act of 1990 as amended by my proposal. I urge speedy action on this measure and hope that it will be adopted so that we may take another step in defending the civil rights of all Americans.



THE WHITE HOUSE,

October 20, 1990.

CLASSIFICATION

UNCLASSIFIED

Thanks,
Jim

Per our conversation, please see that the President gets the attached package ASAP. If questions on any part of it I'm available in the office. We are holding release of statement and transmittal of Hill package till I receive decision.

Sean--

SPECIAL INSTRUCTIONS/REMARKS

INFORMATION ADDRESS/LOCATION/TIME OF RECEIPT

TO/LOCATION/TIME OF RECEIPT
SEAN BYRNE (FOR THE PRESIDENT/CAMP DAVID)

FROM/LOCATION
JIM CIGCONI/THE WHITE HOUSE

ROUTINE

PRIORITY

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Bush Presidential Library Photocopy

THE WHITE HOUSE
WASHINGTON

October 20, 1990

MEMORANDUM FOR THE PRESIDENT

FROM: James W. Cicconi *Jim*
SUBJECT: Civil Rights Package for Transmittal to the Congress

Attached are several items for your approval which would be transmitted to Congress today. These items are meant to fulfill your commitment to forward amendments which, if enacted, would allow you to sign the Civil Rights Act of 1990 (S. 2104).

The materials include:

- o Statement by the President (two versions)
- o Message to the Congress (two versions)
- o Discussion of S. 2104 and Section-by-Section Analysis of our Amendments

The two versions of the Statement and Message are the result of a staff disagreement on the tone and content of what should be sent to the Hill and made public. Governor Sununu felt that you should see both and make the call (he indicated he would discuss the matter with you by phone).

The Two Versions

The version drafted by Fred McClure and I attempts to keep your statement shorter, and consistent with the "one last chance" your decision to send these amendments offers. The tone is more positive, we feel, while yielding nothing on the quota issue. Legislative Affairs feels strongly that this is not the time to throw more unnecessary rhetoric into a complex Hill situation. There is ample time for such rhetoric in the veto statement if it comes to that.

The Counsel's Office version of both documents essentially took the lengthy veto message that had been prepared and put a new heading on it. The tone, you will note, is more combative. It also goes into much more detail about the disputed agreement with Kennedy wording taken from Members of Congress, and other details which are usually not included in a Statement or Message from the President (instead, such details are usually left to subordinates or other non-Presidential documents).

Once I know your preference, we will release the appropriate Statement and send the package to the Hill today as you direct.

Bush Library Photocopy
George Bush Handwriting

P/ 10-20
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McClure / Cicconi
Draft

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 20, 1990

STATEMENT BY THE PRESIDENT

Today I received S. 2104, the Kennedy-Hawkins "Civil Rights Act of 1990." As I have said before, in its current form, this bill is a quota bill. Throughout Congressional consideration of this bill, I have said repeatedly that I want to sign a civil rights bill this year that addresses certain Supreme Court decisions regarding employment discrimination. There are reasonable compromises that I would support that address legitimate issues raised in these cases without resulting in employers adopting quotas.

The legislation as enacted by Congress fails to cure several critical defects I find in the bill. In its present form, the measure remains a quota bill because inescapably it will have the effect of forcing businesses to adopt quotas in hiring and promotion. I want to sign a civil rights bill; but I will not sign a quota bill. Instead of solving problems, quotas foster divisiveness and litigation, and in so doing, do more to promote legal fees than civil rights. The Administration has tried to work with Congress in good faith on these issues, but I cannot accept legislation that turns back the clock on progress that has occurred since passage of the Civil Rights Act of 1964. *Mention AD A*

Because I believe Congress shares my commitment to civil rights and my opposition to quotas -- an opposition that is shared by most Americans -- I believe together we can enact good legislation. During House and Senate consideration of this measure, the Administration supported bipartisan alternatives to S. 2104. These alternatives were known as the Kassebaum-Gorton substitute in the Senate and the Michel-LaFalce substitute in the House.

Since I believe that legislation can be enacted that I can sign before Congress leaves, I will withhold action on S. 2104 for now. In the meantime, I am sending to Congress a joint resolution specifying several specific changes to S. 2104 that will make the bill acceptable. My proposal contains a number of compromises designed to accommodate the concerns of the bill's proponents. It overrules several Supreme Court decisions from last year, and it addresses the so-called "Wards Cove issue" by shifting the burden of proof to the defendant to justify "business necessity" in disparate impact cases. I urge Congress to enact this joint resolution before the expiration of the Constitutional ten days within which I have to act on S. 2104, or adjournment of the Congress, whichever comes first. If Congress can so act, I will then be able to sign the "Civil Rights Act of 1990" together with the accompanying joint resolution, making these important changes. Otherwise, I will be compelled to veto S. 2104 in its current form.

Through the joint resolution process I have spelled out, Congress has the opportunity to cure the defects in this bill. With the changes contained in the joint resolution, together we can produce legislation that will strike a blow against racial bias without institutionalizing quotas.

DRAFT

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

October 20, 1990

STATEMENT BY THE PRESIDENT

This past week, both Houses of Congress passed S. 2104, the Kennedy-Hawkins "Civil Rights Act of 1990." I have said before that the bill is fatally flawed, and I will be compelled to exercise the veto unless Congress acts immediately to cure these flaws. In a final attempt at compromise, I am today sending to Congress a proposal that will correct the most serious problems and make this bill acceptable.

Throughout Congressional consideration of this bill, I have emphasized that I want new legislation to strengthen our employment discrimination laws. I have already signed the Americans with Disabilities Act, which is the most sweeping civil rights bill in 25 years. I want to sign another civil rights bill this year, but I will not sign a quota bill. Nor will I sign a bill that insulates illegal quota schemes from legal challenge, violates fundamental principles of fairness, or creates a lawyers' bonanza.

Instead of solving problems, the pending bill would foster divisiveness and litigation, doing more to promote resentment and legal fees than to protect civil rights. My Administration has worked with the proponents of this legislation in good faith on these issues, but this bill as written is contrary to the whole spirit of the Civil Rights Act of 1964. I cannot accept legislation that turns back the clock on the progress we have made toward equal opportunity during the last quarter of a century.

I continue to believe that Congress shares my commitment to civil rights and my opposition to quotas, just as almost all Americans do. I therefore believe that together we can enact good legislation.

Acceptable compromise legislation can be enacted before Congress adjourns. Today, I am sending to Congress a joint resolution that will make the pending bill acceptable. My proposal contains a number of new compromises designed to accommodate the concerns of the bill's proponents. It overrules several Supreme Court decisions from last year, and it addresses the so-called "Wards Cove issue" by shifting the burden of proof to the defendant to justify "business necessity" in disparate impact cases.

I urge Congress to pass my proposal before the expiration of the period within which I can legally exercise a return veto of S. 2104. I will then be able to sign the "Civil Rights Act of 1990" together with the accompanying joint resolution making these important changes. Otherwise, I will be compelled to return S. 2104 without my approval.

Through the process I have spelled out, Congress has the opportunity to correct the most serious defects in this bill. With the changes contained in the joint resolution, we can produce legislation that will strike a blow for equal opportunity without inducing or protecting racial quotas, and without creating an unjustified explosion of divisive and unproductive litigation.

I must add that this employment discrimination legislation is only half of my civil rights agenda, and there are several other urgent pieces of business that should be completed immediately. The absence of discrimination will have little concrete meaning unless jobs are available and the members of all groups have the skills needed to qualify for those jobs. Nor can we expect that our young people will work hard to obtain those skills if they grow up in a climate of violence and drugs that discourages the deferral of immediate gratification.

My Administration's Educational Excellence Act, which will promote accountability, flexibility, and parental choice in children's education, has sat in Congress for 17 months. The Comprehensive Violent Crime Control Act, which includes significant new protections against the violent criminals and drug dealers who are destroying our inner cities, continues to await final Congressional action. Nor has Congress completed its work on the program we call HOPE: Homeownership and Opportunity for People Everywhere. These and other similar proposals will empower individual Americans and assist them in reclaiming control of their lives and neighborhoods. This will help to make our Nation's promise of equal opportunity more than a mirage. A Congressional session that included action on these legislative items would achieve real advances for the cause of equal opportunity.

* * * * *

McClure / Cicconi
Draft

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit a legislative proposal in the form of a joint resolution which if adopted would make S. 2104 (the "Civil Rights Act of 1990") a bill that I could sign.

As presently drafted, S. 2104 would lead employers to adopt quotas for hiring and promotion, and it would prevent or discourage some victims of illegal quotas from seeking legal redress. The harm this would do to the cause of civil rights is potentially profound. Any measure that causes employment decisions to turn on factors of race, sex, ethnicity, or religion -- rather than on qualifications -- is profoundly at odds with our civil rights tradition. Our war against discrimination is impeded, not advanced, by a bill that encourages the adoption of quotas.

I will be obliged to veto S. 2104 if it is presented to me in its current form. We cannot shrink from our national commitment to equal protection under the law and equal opportunity for all. Unaltered, S. 2104 would violate that pledge. With the changes that I propose, S. 2104 would no longer threaten the imposition of quotas, but would be made a true civil rights bill that I would like to see become law.

With the proposed joint resolution, I also transmit a section-by-section analysis explaining the need for these changes and describing S. 2104 as amended by my proposal. I urge speedy action on this measure and hope that it will be adopted so that we may take another step in defending the civil rights of all Americans.

THE WHITE HOUSE,

TO THE CONGRESS OF THE UNITED STATES:

I cannot in good conscience sign the pending version of S. 2104, the "Civil Rights Act of 1990." I deeply regret having to take this stand with respect to a bill bearing such a title, especially since it contains certain provisions that I strongly endorse. It is still possible, I believe, to enact the worthwhile provisions while correcting those sections that are fatally flawed. Therefore, I am today transmitting a joint resolution that if adopted would make S. 2104 a bill that I would sign. Although this joint resolution takes the form of amendments to S. 2104, my Administration would not oppose a joint resolution that takes the form of a substitute bill incorporating the provisions of S. 2104 as amended by the joint resolution I am transmitting today; in either case, the effect is exactly the same.

As presently drafted, S. 2104 would lead employers to adopt quotas for hiring and promotion, and it would prevent or discourage some victims of illegal quotas from seeking legal redress. The harm this would do to the cause of civil rights is potentially so profound that I cannot allow it to happen. Any measure that causes employment decisions to turn on factors of race, sex, ethnicity, or religion -- rather than on qualifications -- is profoundly at odds with our civil rights tradition. Our war against discrimination is impeded, not advanced, by a bill that encourages the adoption of quotas and closes the courts to some victims of discrimination.

Discrimination, whether on the basis of race, sex, ethnicity, religion, national origin or disability, is not just wrong. It is a fundamental evil that tears at the fabric of our society, and one that I will continue to fight against as I have throughout my life. That means rigorous enforcement of the strong body of anti-discrimination laws already on the books. It also means vigorously promoting appropriate new measures such as this year's Americans with Disabilities Act, a law that was needed because no existing statute adequately protected persons with disabilities against invidious discrimination. Let there be no mistake: my Administration will continue with unrelenting energy to carry on the fight against bigotry and prejudice in all their manifestations.

The temptation to support a bill -- any bill -- simply because its title includes the words "civil rights" is very strong. This impulse is not entirely bad. Presumptions have too often run the other way, and our Nation's history on racial questions cautions against complacency. But when the words "civil rights" and a maze of highly legalistic language are used to slip incentives for quotas into our law, equal opportunity is not advanced but thwarted.

The very commitment to justice that is offered as the reason for signing this bill requires me to veto it. Our country's goal and our promise has been equal opportunity and equal protection under the law. That is a bedrock principle from which we cannot retreat. Too many have sacrificed too much for us now to renounce Martin Luther King's truly American dream of a nation where each individual is judged by the content of his character, not the color of his skin.

In a Rose Garden speech five months ago, I articulated three principles that must guide any revision of our civil rights laws. First and foremost, civil rights legislation must operate to obliterate consideration of factors such as race, color, religion, sex, and national origin from employment decisions. Second, new legislation must reflect fundamental principles of fairness that apply throughout our legal system. Third, federal law should strengthen deterrents against harassment in the workplace based on race, color, religion, sex, national origin,

or disability, without producing a new and unjustified lawyers' bonanza. I also added that Congress should live by the same requirements that it sets for the rest of the country.

I am terribly disappointed that despite enormous efforts by my Administration and many Congressional leaders, S. 2104 in its current form violates every one of these principles. I want to sign a bill containing the worthwhile provisions in S. 2104, but I will not sign a quota bill. Congress can and must do better.

The measure that I am transmitting today with this message preserves the desirable and reasonable features of S. 2104, but does not retain those that are inconsistent with the principles I outlined last May. Major provisions of the revised legislation would enhance the remedies available for intentional discrimination; facilitate challenges to discriminatory seniority systems; and impose on employers the burden of proving the business justification for specific employment practices shown by plaintiffs to cause disparate impact. It would not, however, force employers whose workforces have bottom-line statistical disparities to justify all their employment practices under an unreasonably narrow standard or unreasonably restrictive evidentiary rules. It would not insulate consent decrees that contain quotas from court challenge. It would not remake our civil rights laws in the image of a tort system that is widely acknowledged to be in crisis. And it would not give plaintiffs or their attorneys a host of other unjustified litigation advantages.

My proposal seeks to revive the agreement already reached with Senator Kennedy on disparate impact cases; it also includes contributions from Senator Dole, Senators Nancy Kassebaum and Slade Gorton, and a bipartisan coalition in the House. My proposal contains a number of new compromises designed to accommodate the concerns of the bill's proponents. With these modifications, the bill is acceptable. It will not lead to quotas. It is consistent with the principles set forth in my Rose Garden speech. And I will sign it.

Congress must act on this proposal. In addition, if Congress is truly committed to enhancing equal opportunity, there are several other urgent pieces of business that should be completed immediately. The American dream is a melting pot where people of all races, religions, and nationalities can live together in freedom and prosperity. The elimination of employment discrimination is a vital element in that dream, but it is not enough. The absence of discrimination will have little concrete meaning unless jobs are available and the members of all groups have the education and skills needed to qualify for those jobs. Nor can we expect that our young people will work hard to obtain those skills if they grow up in a climate of violence and drugs that discourages the deferral of immediate gratification.

My Administration's Educational Excellence Act, which will promote accountability, flexibility, and parental choice in children's education, has sat in Congress for 17 months. The Comprehensive Violent Crime Control Act, which includes significant new protections against the violent criminals and drug dealers who are destroying our inner cities, continues to await final Congressional action. Nor has Congress completed its work on the program we call HOPE: Homeownership and Opportunity for People Everywhere. These and other similar proposals will empower individual Americans and assist them in reclaiming control of their lives and neighborhoods. This will help to make our Nation's promise of equal opportunity more than a mirage. A Congressional session that included action on these legislative items would achieve real advances for the cause of equal opportunity. It is not too late to put behind us the divisive, quota- and litigation-generating features of S. 2104 and commit ourselves to this positive civil rights agenda.

Summary of Joint Resolution Amending S. 2104

The joint resolution has four sections:

1. A section removing incentives for employers to adopt quotas. It deals with:
 - o Wards Cove
 - o Anti-quota language and the findings and purposes sections of S. 2104
2. A section assuring fundamental fairness and removing provisions shielding quotas. It deals with:
 - o Martin v. Wilks
 - o Lorance
 - o Retroactivity
3. A section assuring adequate remedies for victims of discrimination. It deals with:
 - o Monetary remedies for sexual harassment
4. A section controlling the incentives for litigation.
 - o Attorneys fees
 - o Rule of construction
 - o Statute of limitation under ADEA.

Mr. President:

Please note in particular
Counsel's Office discussion of
S. 2104 -- The narrative at
front of this document.

jc

Summary of Major Provisions in S. 2104 as Amended by Joint Resolution

- o Wards Cove.
 - o Sununu-Kennedy compromise (with some Hatch/Kennedy-Hawkins modifications in evidentiary section).
 - o "Intended by" is replaced with "defended as."
- o Price Waterhouse. Kennedy-Hawkins version.
- o Patterson. Kennedy-Hawkins version.
- o Lorance. All versions overrule this case on statute of limitations for seniority systems.
- o Wilks. Modified version of the Hatch-Coleman section of Kennedy-Hawkins.
- o Remedies.
 - o Most recent Kassebaum version (more generous to plaintiffs than LaFalce).
 - o Raises the Kassebaum cap from \$100,000 to \$150,000.
 - o We also include a Seventh Amendment severability provision.
- o Anti-Quota language. A version of Senator Dole's proposal.
- o Interest against the Federal government. Kennedy-Hawkins version.
- o Alternative Dispute Resolution. Kennedy-Hawkins version.
- o Congressional coverage. Kennedy-Hawkins version.
- o Expert witness fees (Crawford Fitting). Kennedy-Hawkins version.
- o Retroactivity. Kassebaum version.
- o Zipes (attorneys fees for intervenors). Kassebaum version.
- o Misc. (attorneys fees; statute of limitations; Rule 68 provision; etc.). Kassebaum version.

DISCUSSION OF S. 2104 AND SECTION-BY-SECTION ANALYSIS
OF THE BILL AS REFORMED BY THE PROPOSED JOINT RESOLUTION

Two provisions of S. 2104, Sections 7(b) and 12, make needed changes in the law. The first makes it easier to challenge discriminatory seniority systems; the second enhances the remedies for on-the-job racial harassment. The Administration wholeheartedly endorses these aims of S. 2104. Indeed, on February 21, 1990, the Administration transmitted a bill that would make similar amendments to current law. Senator Dole and Congressman Michel promptly introduced this legislation. Even if no agreement can be reached on other aspects of S. 2104, there is no reason to hold these important measures hostage. At the very least, Congress should enact the Dole/Michel "Civil Rights Protection Act of 1990" before adjournment.

The substantively objectionable provisions of S. 2104 begin with Sections 3 and 4, which are inconsistent with the principle that civil rights laws must obliterate consideration of factors such as race in employment decisions. Although putatively needed to "restore" the law that existed before the Supreme Court's opinion in Wards Cove Packing Co. v. Atonio, these sections actually engage in a sweeping rewrite of the law of employment discrimination.

Before Wards Cove, "disparate impact" cases arose when a plaintiff proved that an employer had a particular selection practice that unintentionally but disproportionately excluded persons of a particular race, sex, ethnicity, or religion. The employer was then permitted to defend the practice by arguing that it was justified by "business necessity." In Wards Cove, the Supreme Court considered whether the plaintiff or the defendant had the burden of proof on the issue of business necessity. The Court resolved an ambiguity in prior law by placing that burden on the plaintiff. Supporters of S. 2104 argue that this rule imposes an unreasonable burden on employees, and have claimed that legislation is needed to redress this imbalance. The Administration does not object to making this change, and our proposed amendments to the bill leave this aspect of S. 2104 untouched.

Sections 3 and 4 of S. 2104, however, go far beyond this shift in the burden of proof. First, the bill effectively creates a new presumption of discrimination whenever a plaintiff shows a sufficiently large statistical disparity in the racial, sexual, ethnic or religious makeup of an employer's workforce, even if the plaintiff fails to identify any employment practice that has caused the disparity. But many imbalances may have causes other than an employment practice used by the defendant. It is fundamentally unjust to discard the obligation of all civil plaintiffs to identify an act of the defendant that allegedly caused the plaintiff's injury.

The bill makes it incumbent on any employer with an unbalanced workforce to keep and be able to point to records showing that one of his or her employment practices could have been challenged as "responsible for" the disparate impact. The defendant is obliged, in effect, to establish the basis for the plaintiff's complaint. An employer who cannot do so (perhaps because the imbalance is caused by something other than the employer's practices) faces the task of defending all of his or her employment practices under the bill's revised business necessity test.

Under S. 2104, the employer next has to prove, using only limited "demonstrable evidence", that each of the challenged selection practices "bears a significant relationship to successful performance of the job" or that it did not contribute to the statistical disparity. Consider, for example, an employer with a statistically unbalanced workforce who required applicants to possess a college degree, a clean criminal record, and a reference from a previous employer, and to undergo an interview. The employer would have to prove to a court that each of these selection criteria is required by business necessity under the difficult standard quoted above. That standard denies that there can be any legitimate and desirable selection practice aimed at objectives other than successful job performance. Current law, by contrast, allows employers to use a wider range of evidence and a much wider range of justifications. Rather than risking a lawsuit conducted under rules rigged against them, employers would instead make sure their workforces did not have significant statistical disparities. In short, they would adopt quotas.

These very serious problems can be cured by three changes in S. 2104. All three changes are entirely consistent with the Supreme Court's decision in the Griggs case, which the bill purports to codify. First, plaintiffs should have to identify the particular practices that they claim have caused exclusion. Second, the range of justifications available to the employer for challenged selection practices should include all significant, non-discriminatory business objectives. Finally, there is no reason for extraordinary restrictions on the type of evidence an employer can rely on to prove that a practice is justified. No Supreme Court decision is to the contrary on any of these three points.

None of the provisions in S. 2104 that the Administration objects to concerns the burden-of-proof issue originally identified as the reason for legislating in the area of disparate impact law: the Administration will accept shifting the burden of proof on business necessity to defendants in disparate impact cases. Rather, all these new provisions, unrelated to the burden of proof on business necessity, are designed not to "restore" Griggs but to constrict it so as to make it very difficult or

impossible for employers with "unbalanced" workforces to defend their business practices. Thus, while Griggs may not have led to quotas, this restriction on Griggs and on almost two decades of subsequent case law will inevitably lead employers to adopt quotas because quotas will be the only way to avoid lawsuits that they cannot win.

The bill as improved by the joint resolution would shift the burden of proof to defendants after the plaintiff has identified an employment practice that causes a disparate impact. Moreover, the proposal specifies that any employment practice defended as measuring job performance must in fact "bear a significant relationship to successful performance of the job" -- that is, for such practices, the standard of S. 2104 would govern. The joint resolution also makes clear, however, that employment practices that are defended not as measuring job performance, but on other legitimate grounds (safety and efficiency concerns, for one example) can be justified so long as they "bear a significant relationship to a significant business objective." This test is a reasonable one, and indeed was agreed to by Senator Kennedy, a principal sponsor of S. 2104.

Senator Kennedy later rescinded his agreement. The Administration understands that some proponents of the bill are concerned about any use of the word "intended" in a statute dealing with unintended discriminatory effects. In order to allay this concern and to speed consideration of the compromise package, the Administration has agreed to strike "intended," replacing it with "defended as."

Other provisions in S. 2104 must also be addressed. The bill in its current form promotes quotas through its treatment of discriminatory consent decrees. It does this by totally denying certain individuals access to the courts to challenge agreements -- in which these individuals had no part -- prescribing quotas that exclude them from employment opportunities.

S. 2104 therefore is indeed wholly inconsistent in its treatment of such decrees and its treatment of discriminatory seniority systems. Section 7(b) of the bill appropriately corrects a defect in current law by allowing a plaintiff to challenge a discriminatory seniority system or practice at the time it is applied to the plaintiff. Current law requires the challenge to be made at the time of the adoption of the seniority system. Agreeing with the Administration, proponents of S. 2104 have rightly argued that this is unreasonable; an employee, for example, who is denied a promotion because of a discriminatory seniority system that was in place ten years before that employee was hired, let alone eligible for promotion, would effectively be denied his or her right to challenge this discriminatory practice. This can and must be corrected.

Section 6 of S. 2104 takes an entirely different approach, however, to discriminatory consent decrees. Although current law permits challenges to a discriminatory consent decree at the time it is applied against the plaintiff, Section 6 would in many circumstances cut off this right. For example, a plaintiff denied a promotion as a result of a discriminatory consent decree in place ten years before the plaintiff was hired can be precluded by Section 6 from challenging the decree. Thus, Section 6 inflicts on plaintiffs injured by discriminatory consent decrees the very same injustice that Section 7(b) cures for plaintiffs injured by discriminatory seniority systems. Far from enhancing civil rights, Section 6 severely abridges them.

S. 2104's sponsors have given no explanation for this inconsistency between Sections 6 and 7(b) of their bill. The effect of it, however, is quite clear: consent decrees have frequently contained provisions establishing hiring and promotion quotas. Section 6 would prevent legal challenges to such quota systems. The creation of unfair obstacles of dubious constitutionality to the vindication of civil rights claims has no place in a civil rights bill. Any legislation that includes such obstacles is a quota bill.

Section 9 of the bill as written contains a provision going hand in hand with the provisions in Section 6. For the first time in our history, our civil rights laws would say that certain civil rights plaintiffs -- those challenging the legality of quotas adopted under a consent decree -- could be required to pay attorneys fees where their action was neither frivolous nor otherwise unreasonable. The clear effect would once again be to discourage many challenges to illegal discrimination.

Proponents of S. 2104 argue that Section 13 of the bill, which states that nothing in the bill "shall be construed to require or encourage an employer to adopt hiring or promotion quotas," is a sufficient answer to these concerns. In fact, however, it is entirely unresponsive to them. The problem with Sections 3 and 4 is not that they require or encourage quotas directly, but rather that employers will in fact choose to adopt quotas in order to avoid having to defend their hiring practices under the unreasonable litigation rules established by the bill. And the problem with Section 6 is not that it requires or encourages quotas, but that it insulates them from challenge. In fact, in its present form, Section 13 has an exception from the anti-quota language (and from all other provisions in the bill) for court-ordered remedies, affirmative action plans, or conciliation agreements. S. 2104's proponents have given no justification for this exception, and it should not be needed if the bill's provisions are otherwise sound.

Federal law should provide an adequate deterrent against harassment in the workplace, and additional remedies are needed

to accomplish this goal. But Section 8 of S. 2104 radically alters the Civil Rights Act of 1964 by making available compensatory and punitive damages, as well as jury trials, for almost all intentional violations of Title VII.

Although S. 2104 imposes a partial cap on punitive damages, thereby setting an important precedent in the area of federal tort remedies, the expansion of remedies contained in Section 8 is excessive. Section 8 is not confined to filling the gap where existing remedies are inadequate, such as in many cases of sexual harassment. Rather, it imports into our employment discrimination laws the entire panoply of tort remedies, punitive damages, and jury trials that are intimately connected with our current liability crisis. This will create unnecessary and counterproductive litigation, serving the interests of lawyers far more than the interests of aggrieved employees.

Other provisions in S. 2104 will also contribute unnecessarily to fostering litigation instead of conciliation. Section 9(3), for example, permits plaintiffs to recover attorney's fees for continuing to litigate even if the judgment they ultimately obtain is less favorable than a settlement they rejected. Similarly, Section 9(4) creates special rules impeding waiver of attorney's fees as part of settlement, which will necessarily discourage settlements.

Several other provisions of this bill also have little to do with promoting civil rights. Rather, they seem principally designed to give plaintiffs special and unwarranted litigation advantages. Section 7(a) gives plaintiffs 2 years, rather than 180 days (or, in certain cases, 300 days), to file discrimination claims. Section 11 creates a special legislative rule of construction for civil rights cases that seems intended to encourage courts to resolve cases in favor of plaintiffs whenever possible. And Section 15 unfairly seeks to apply the changes made by S. 2104 to cases already decided.

These deficiencies are addressed by the proposed joint resolution, however, and if the needed changes are made, S. 2104 would be acceptable to the Administration. The improved bill will allow victims to challenge discriminatory seniority systems, add to the remedies available for intentional discrimination, strengthen certain enforcement provisions, and shift to employers the burden of proving the business justification for specific employment practices shown by plaintiffs to cause disparate impact. At the same time, the bill will also then be consistent with fundamental principles of equal protection and equal opportunity, and it will neither induce nor shield the widespread use of quotas. Nor will it unfairly advantage lawyers at society's expense. It will be a civil rights bill worthy of that title.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1990."

SECTION 2. FINDINGS AND PURPOSE

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in employment. The purpose of this Act is to strengthen existing protections and remedies in order to deter discrimination more effectively and provide meaningful relief for victims of discrimination.

SECTION 3. DEFINITIONS

This section adds definitions to those already in Title VII. It defines a complaining party as the Equal Employment Opportunity Commission (EEOC), the Attorney General, or a person who may bring an action or proceeding under this title.

The definition of "demonstrates" requires that a party bear the burden of production and persuasion when the statute requires that he or she "demonstrate" a fact.

The term "justified by business necessity" is meant to codify the meaning of business necessity as used in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and other opinions of the Supreme Court.

The term "respondent" is clarified to include those entities listed in the bill.

SECTION 4. DISPARATE IMPACT CLAIMS

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular employment practice and demonstrates that the practice has caused disparate impact because of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is justified by business necessity. It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative employment practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the

disparate impact, and the respondent refuses to adopt such alternative.

In identifying the particular employment practice alleged to cause disparate impact, the plaintiff is not required to do the impossible in breaking down an employer's practices to the greatest conceivable degree. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective standards constitutes a single particular employment practice susceptible to challenge.

It is therefore the specific intention of the proponents of this Act to reaffirm the sort of analysis employed on this issue in Sledge v. J.P. Stevens & Co., 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). The court alluded to the difficulty of "delving into the workings of an employment decisionmaker's mind" and noted that the defendant's personnel officers reported having no idea of the basis on which they made their employment decisions. The court held that: "the identification by the plaintiffs of the uncontrolled, subjective discretion of defendant's employing officials as the source of the discrimination shown by plaintiff's statistics sufficed to satisfy the causation requirements of Wards Cove." This Act contemplates that the use of such uncontrolled and unexplained discretion is properly treated as one employment practice and need not be divided by the plaintiff into discrete sub-parts.

If the elements of a decision-making process are demonstrated to be not capable of separation for analysis, therefore, they may be analyzed as one employment practice, just as where the criteria are distinct and separate each must be identified with particularity. See letter of Charles Fried to Senator Edward M. Kennedy, March 21, 1990 at 4 n.2.

It should also be noted that, assuming compliance with all other Title VII procedures, if a plaintiff can make a reasonable good faith allegation that the elements of a decision-making process are not capable of separation for analysis, as described above, he or she may file a complaint and commence discovery on that basis, although this does not affect the plaintiff's burden in making out his or her prima facie case.

Finally, this section provides that it is not a violation of this title for an employer to use a rule barring illegal drug use unless the rule is adopted or applied with an intent to discriminate on the basis of race, color, religion, sex, or national origin.

SECTION 5. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE
CONSIDERATION OF RACE, COLOR, RELIGION, SEX,
OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES

Section 5 of the bill addresses the holding in Price Waterhouse v. Hopkins, 109 S. Ct. 1775 (1989), in which the Court ruled in favor of a woman who alleged that she had been denied partnership by her accounting firm on account of her sex. The Court there faced a case in which the plaintiff alleged that her gender had supplied part of the motivation for her rejection for partnership. The Court held that once she had established by direct evidence that sex played a substantial part in the decision, the employer could still defeat liability by showing that it would have reached the same decision had sex not been considered.

This provision allows the employer to be held liable if invidious discrimination was a motivating factor in causing the harm suffered by the complainant. Thus, such discrimination need not have been the sole cause of the final decision.

The provision also makes clear that if an employer establishes that it would have taken the same employment action absent consideration of race, sex, color, religion, or national origin, the complainant is not entitled to reinstatement, backpay, or additional monetary award. Courts may award other relief, including attorney's fees, consistently with the principles enunciated in other civil rights cases.

SECTION 6. FACILITATING PROMPT AND ORDERLY RESOLUTION
OF CHALLENGES TO EMPLOYMENT PRACTICES
IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS
OR ORDERS

Under specified conditions, Section 6 of the bill would preclude certain challenges to employment practices specifically required by court orders or judgments entered in Title VII cases. This section would bar such challenges by any person who was an employee, former employee, or applicant for employment during the notice period and who, prior to the entry of the judgment or order, received notice of the judgment in sufficient detail to apprise that person that the judgment or order would likely affect that person's interests and legal rights, of the relief in the proposed judgment, that a reasonable opportunity was available to that person to challenge the judgment or order by a future date certain, and that the person would likely be barred from challenging the proposed judgment after that date. The intent of this section is to protect valid decrees from subsequent attack by individuals who were fully apprised of their interest in litigation and given an opportunity to participate, but declined that opportunity.

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

The section modifies the rule of Martin v. Wilks to the extent that it would preclude challenges by individuals who were not parties to the litigation that produced a decree if they were applicants or employees and had adequate actual notice and an adequate opportunity to assert their interests in the litigation prior to adoption of the decree. This rule strikes a balance between the interest in preserving the finality of judgments and the requirement of fundamental fairness that underlies our judicial system, in which individuals are traditionally guaranteed a meaningful opportunity to assert their interests in court before they are bound by judicial action.

This section will work in conjunction with a variety of doctrines that already exist to head off nonmeritorious challenges to decrees. The doctrines of law of the case, res judicata, and stare decisis will allow courts to deal with them summarily at little expense in time or money to the parties. In addition, the rules of joinder and the use of defendant class actions make it relatively easy for parties to ensure that affected people have their day in court in the original action. The threat of an award of attorney fees against the losing party who brings a frivolous suit is a further deterrent to such challenges.

The section states that it would not alter the rules governing intervention in federal courts. Nor would this section apply to parties to the action in which an order was entered, members of a class represented in an action, or members of a group on whose behalf relief was sought by the federal government.

The section would not preclude challenges to judgments based on allegations that the judgment was obtained through collusion, fraud, or lack of subject matter jurisdiction. These are grounds upon which judgments traditionally may be attacked.

SECTION 7. EXPANSION OF RIGHT TO CHALLENGE
DISCRIMINATORY SENIORITY SYSTEMS

Section 7 would reverse the holding in Lorance v. AT&T Technologies, Inc., 109 S. Ct. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system intentionally to alter their contract rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

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

The rule adopted by the Court was contrary to the position taken by the Government and the EEOC. It would shield existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. Moreover, such an application surely focuses the controversy between an employer and an employee more sharply and permits more precise litigation. In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation. Employees will be forced to challenge the system before it has produced any concrete impact or forever remain silent. Given such a choice, employees who might never suffer harm from the seniority system may be forced to choose to file a charge -- an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to. And, finally, the Court's rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

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

This change in the law, therefore, is warranted. Indeed, it is necessary to safeguard the same principles upheld by the Supreme Court in Martin v. Wilks, supra, and discussed in the preceding section.

SECTION 8. PROVIDING FOR ADDITIONAL EQUITABLE RELIEF IN CERTAIN CASES OF INTENTIONAL DISCRIMINATION

This provision is designed to redress an anomaly in current law. Title VII currently prohibits intentional discrimination in the terms and conditions of employment, but provides inadequate remedies for certain unlawful employment practices, including sexual harassment in the workplace, which the Supreme Court has recognized as actionable under Title VII. See Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986). Such harassment frequently will not be so intolerable that an employee subjected to it immediately leaves. In such circumstances, the only remedy the victim of harassment can obtain under Title VII's remedial scheme as currently drafted is declaratory and injunctive relief against continuation of the harassment.

Such a rule is plainly inequitable. It effectively tells employers that the only consequence of creating an environment so hostile to a woman employee that she is forced to sue to obtain relief is a directive to refrain in the future. Additional remedies for this situation are clearly appropriate and warranted.

At the same time, Title VII's existing framework, with its emphasis on conciliation and mediation, has served the country well as a tool for combatting discrimination during its 26-year history. It would be unwise to jettison it in favor of a tort-style approach including compensatory and punitive damages at a time when our tort system is widely recognized to be in crisis.

Section 8 strikes a reasonable balance between these concerns. It allows courts to award a remedy beyond declaratory and injunctive relief. This remedy consists of a monetary award not greater than a total of \$150,000. Courts are authorized to make it available in the exercise of their equitable discretion only where an additional equitable remedy is needed to deter the respondent from engaging in such practices and where such an

award is justified by the equities, is consistent with the purpose of Title VII, and is in the public interest.

This section allows a court to make a monetary award "not to exceed a total of \$150,000." This language is intended to make clear that where there are several related incidents that could arguably be subdivided into distinct unlawful employment practices, or where different claims under Title VII are brought in the same lawsuit, the award that can be obtained under this section for all of them combined is limited to \$150,000. Otherwise, plaintiffs and their lawyers will have incentives to spend resources on hair-splitting litigation over how many unlawful employment practices have occurred. \$150,000 is a large enough amount to be an adequate and effective deterrent to the type of conduct sought to be prevented by this section without lawyers' inventiveness being put to the task of circumventing the limitation it imposes.

The additional remedy this section creates is available only for "intentional discrimination." Nobody has argued that Title VII's existing remedial scheme for disparate impact claims is inadequate. The availability of this remedy (and its limitation to claims based on intentional discrimination) would of course also apply to claims brought under the Americans with Disabilities Act, on account of that Act's section 107, which incorporates section 706 of Title VII by reference.

As new subsection 706 (1) makes clear, it is the intention of the Congress that both liability and remedies under section 706, including the new remedy this section creates, continue to be decided by a judge. Because of the equitable nature of the relief to be awarded, the courts should find this consistent with the Seventh Amendment. See Local No. 391 v. Terry, 110 S. Ct. 1339 (1990); Tull v. United States, 107 S. Ct. 1831 (1987). This provision is important in maintaining to the greatest extent possible the current structure of Title VII's remedies provisions and preventing it from being replaced with a tort-like approach. Because the question of constitutionality is not entirely free from doubt, however, subsection (1) also provides that should a court hold that a jury trial with respect to issues of liability is constitutionally required, it may empanel a jury to hear those issues and no others. This ensures that the additional relief this scheme makes available will not become a dead letter should a court find that the Seventh Amendment requires a jury trial on liability.

Finally, it should be noted that this provision is exclusively remedial. It is not intended to recognize or create any new causes of action under Title VII. Rather, it is merely intended to ensure that as to those unlawful employment practices that Title VII already prohibits, the remedial scheme it establishes is adequate and appropriate.

SECTION 9. ALLOWING THE AWARD OF EXPERT FEES

This section would authorize the recovery of expert witness fees by prevailing parties according to the same standards that govern awards of attorney fees pursuant to Title VII. Under existing law, expert witness fees may not be shifted pursuant to Title VII. See Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987).

SECTION 10. PROVIDING FOR INTEREST AND LENGTHENING FILING PERIOD IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

This section provides that, where the Federal Government is a defendant found to be liable in an action brought under this Title, it is subject to paying the same interest to compensate for delay in payment as in cases involving nonpublic parties. The filing period in such actions is also lengthened.

SECTION 11. PROTECTIONS AGAINST RACIAL DISCRIMINATION IN THE PERFORMANCE OF CONTRACTS

Section 10 would overrule Patterson v. McLean Credit Union, 109 S. Ct. 2363 (1989). In Patterson, an employee sued under 42 U.S.C. 1981, alleging that her employer had harassed her on the job, failed to promote her, and ultimately discharged her, all because of her race. The Court held that Section 1981 is limited by its terms to prohibiting discrimination in "mak[ing] and enforc[ing] contracts," and does not extend to "problems that may arise later from the conditions of continuing employment." Patterson, 109 S. Ct. 2372. Thus, the Court held, the statute prohibits discrimination -- whether governmental or private -- only in the formation of a contract and in the right of access to a legal process that will enforce established contract obligations without regard to race. While the plaintiff's allegation that she had been discriminatorily denied promotion might fall within the prohibition against discrimination in making contracts, her allegations of harassment on the job addressed only conditions of employment. And there was no allegation that she had been discriminatorily denied access to legal process to enforce her contract of employment.

The law as interpreted in Patterson leaves a significant gap in section 1981 coverage that should be filled. This provision would also remove any possible ambiguity for future cases by codifying the holding of Runyon v. McCrary, 427 U.S. 160 (1976), that section 1981 prohibits private, as well as governmental discrimination.

SECTION 12. CONSTRUCTION

This section states that neither this Act nor the laws it amends shall be construed to require, permit, or result in quotas on the basis of race, color, religion, sex, or national origin.

SECTION 13. SEVERABILITY

This section states that if a portion of this Act is found invalid, that finding will not affect the remainder of the Act.

SECTION 14. PROVIDING CIVIL RIGHTS PROTECTIONS TO CONGRESSIONAL EMPLOYEES

This section would extend the anti-discrimination prohibitions of Title VII to all employees of Congress, while establishing a special remedial scheme that does not include a private right of action.

SECTION 15: OTHER STATUTE OF LIMITATIONS; NOTICE OF LIMITATIONS PERIOD.

This section generally conforms procedures for filing charges under the Age Discrimination in Employment Act with those used for other portions of Title VII. In particular, it provides that the EEOC shall notify individuals who have filed charges of the dismissal or completion of the Commission's proceedings with respect to those charges, and allows these individuals to file suit from 60 days after filing the charge until the expiration of 90 days after completion of these proceedings. This avoids the problems created by current law, which imposes a statute of limitations on the filing of suit regardless of whether the Commission has completed its action on an individual's charge.

SECTION 16. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This section would encourage the use of alternative means of dispute resolution in resolving disputes pursuant to the Act.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04a. Memo	From Brent Scowcroft to President Bush (1 pp.)	10/20/90	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: Office of the President
Series: Daily Files
Subseries:
WHORM Cat.:
File Location: Saturday, October 20, 1990

Date Closed: 11/18/2010	OA/ID Number: 90566-002
FOIA/SYS Case #: 2009-0166-S	Appeal Case #:
Re-review Case #:	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

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

Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04b. Memo	From Brent Scowcroft to President Bush (1 pp.)	10/20/90	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: Office of the President
Series: Daily Files
Subseries:
WHORM Cat.:
File Location: Saturday, October 20, 1990

Date Closed: 11/18/2010	OA/ID Number: 90566-002
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AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

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04c. Message	Leadership (2 pp.)	n.d.	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: Office of the President
Series: Daily Files
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Date Closed: 11/18/2010	OA/ID Number: 90566-002
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AR Disposition:	MR Disposition:
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THE WHITE HOUSE
WASHINGTON

Final
Draft
10-22-90

Your Majesty:

One of the most agonizing by-products of this terrible situation in the Gulf has been the strains now placed on the relationship between Jordan and the U. S. I hope I need not tell you that I have always tried to demonstrate the respect I feel for your country, your countrymen and especially for you personally.

As you know, in spite of these strains and difficulties, all caused by Saddam Hussein's brutal aggression against Kuwait, we have been trying to encourage economic support for Jordan. We have been doing this in spite of some concerns that I would now like to call to your personal attention.

The Conference in Amman hurt -- so many known terrorists convening to blast the U. S. joined, I hate to say, by some of your own officials. I tried to understand the pressures that you and the government are under from the more radical left; but you must know that blatant attacks on my country, attacks that assign to us outlandish motives, only make things very difficult. Had a Cabinet member in my government attacked Jordan the way your Prime Minister attacked us, he would have been dismissed. I refer to his public remarks on our motivation in putting forces into Saudi Arabia.

I am determined to keep relations from totally disintegrating. I say this as one who wants our friendship to be strong and intact when all this ends. Thus may I comment on your recent interview with the New York Times. I make the following comments based on the premise that if I don't level with you and you don't level with me it will be more difficult for both countries.

In your recent interview with the New York Times, Your Majesty, it is simply incorrect that the United States decided to send, let alone dispatched, troops to Saudi Arabia before receiving a request from King Fahd. Our only motivation was to deter Iraq and, if necessary, defend a friend; we went when asked and we will leave the same way. It is also deeply troubling to read that an old and close friend "honestly can't tell" if Iraq's invasion was justified, when the entire world is united in condemning this action.

I was also troubled by your apparent acceptance of Saddam the Invader's claim that Saudi Arabia was not threatened by him. The irrefutable evidence, which I thought we had presented to you, shows that the very day he announced he was moving his forces out of Kuwait, vast Iraqi armor was heading south toward the Saudi border.

Now, let me tell you what concerns me a lot. In that entire interview there was no mention of concern about the brutal treatment of the people of Kuwait, and no mention about Saddam Hussein's barbaric policy of detaining innocent foreigners -- holding them as hostages and staking them out near plants and installations so as to avoid retaliation for his brutality. The reports coming out of Kuwait are horrible.

I know how you personally feel about young people -- surely you must be shocked and offended by the documented reports of rape, of shooting children for passing out leaflets (and making their parents watch), of the systematic dismantling of Kuwait from the hospitals to the factories and stores. It is tragic. It is indeed reminiscent of how Hitler behaved in Poland before the rest of the world came to its senses and stood up against him. As I write this I know you, too, care deeply about these atrocities.

Having written the above right from my heart, I simply want to add that I hate it that you and Jordan are in this very difficult situation. I would be no friend at all if I didn't understand

the enormous problems all of this has inflicted upon your wonderful country.

The other day I saw a picture of you and some of your associates receiving yet another delegation. I recognized several of your associates. All of them friends, all of them not historically opposed to the U. S. All of them having worked with us in difficult situations before. I still remain hopeful that it will be that way in the future.

I have a personal feeling that perhaps you don't like it when those wild demonstrators in Baghdad and regrettably Amman attack me in very personal terms.

I know you have tried hard to find peace through dialogue; but the longer this matter goes on, the more I am convinced that there can be no compromise that stops short of the United Nations' demands and universal condemnation.

I have warned Saddam Hussein that any terrorist act against us or our allies will be his responsibility. Further containment and continued brutality against "hostages" (he still refers to them as "guests") will hasten the day of other than a peaceful settlement.

This letter is being conveyed to you in this special channel. I did not want it ricocheting around the corridors at State or anywhere else. It comes from a man who is your friend. It comes from a heart laden with grief and sadness; but it also comes from one who is determined to see the total failure of Saddam's unwarranted aggression.

Barbara enjoyed her visit with Queen Noor and Brent Scowcroft filled me in on every nuance of your distinguished brother's recent visit. I ask you to convey my respects to him.

I pray we will find a way out of this terrible situation; but the longer I think about this it can only come from Saddam Hussein's turning 180 degrees and his trying to undo the horrible offense he has committed against the rule of law.

My sincere best wishes to you and your family.

With respect,

Sincerely,

His Majesty
Hussein I
King of the Hashemite Kingdom of Jordan
Amman

Withdrawal/Redaction Sheet

(George Bush Library)

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05. Memo	From Brent Scowcroft to President Bush (1 pp.)	10/19/90	(b)(1)	S

Collection:

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File Location: Saturday, October 20, 1990

Date Closed: 11/18/2010	OA/ID Number: 90566-002
FOIA/SYS Case #: 2009-0166-S	Appeal Case #:
Re-review Case #:	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
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RESTRICTION CODES

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

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

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

(b)(1) National security classified information [(b)(1) of the FOIA]
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THE WHITE HOUSE
WASHINGTON

October 19, 1990

Mr. President:

Here is the King Hussein interview
you requested.

A handwritten signature in dark ink, appearing to be 'Brent Scowcroft', with a stylized, cursive 'B' and 'S'.

Brent Scowcroft

Attachment

NY Times
Oct 16, 90

King Hussein on Kuwait and Dashed Hope

By JUDITH MILLER

Special to The New York Times

AMMAN, Jordan, Oct. 15 — He is chain-smoking again, and says it is impossible to sleep more than four hours a night. To relieve the pressure, he has taken to riding around his palace on a BMW motorcycle. While his eyes can sparkle at times, he looks at other times as if he is carrying the cares of 200 million Arabs on his shoulders.

Since the Persian Gulf crisis began, King Hussein of Jordan has traveled more than 50,000 miles and met with 15 leaders to avert a war that he warns would be catastrophic not only for his country, but also for this region and the West.

"With or without war, nothing will return to what it was," the King says. "This will be an area of turmoil unless people face up to the need to create new dreams and new realities."

Missed Opportunities

Now, after 10 weeks, he says that war may be imminent, despite statements in Washington indicating that there are still months of waiting to see if the economic sanctions against President Saddam Hussein of Iraq will work.

If war comes, the Jordanian King says, it will be partly because of a failure by President Bush and



King Hussein of Jordan said war might be imminent.

other Western leaders to respond in time to signals from the Iraqi leader, soon after the Kuwait invasion, that he was ready to withdraw from most of the occupied territory.

The 54-year-old King, now in his 38th year on the throne, says that he believes a peaceful end to the Kuwait dispute is possible, but only

if there is a greater willingness to compromise by the United States and its Arab allies, and what he called "an end to the current embargo on dialogue."

"A dialogue across the airwaves is not constructive," he said. If diplomacy fails, he said, his conversations with Saddam Hussein have

Continued on Page A18, Column 1

Mideast Tensions: A Talk With a Weary King

Jordanian Talks of Chances Missed And Trust Betrayed in Kuwait Crisis

Continued From Page A1

convinced him that the Iraqis would fight.

"If it's a question of humiliation and surrender, it won't work," the King said. "Capitulation is unacceptable."

Back at Nadwa, his yellow granite palace in downtown Amman, the King continues his diplomatic campaign with King Hassan II of Morocco and President Chadli Benjedid of Algeria, sending letters and messages back and forth between Baghdad and other Arab capitals, planning his next moves.

In a series of interviews over the weekend, he spoke at length about his efforts to prevent and later to contain the Persian Gulf crisis, the first time he has given a full public accounting of his actions.

He disclosed that on Aug. 2, the day of the Iraqi invasion of Kuwait, he had been given 48 hours by President Bush to secure a commitment from President Hussein to withdraw his troops. He said that President Hussein had promised to begin pulling out troops if the Arab League did not condemn him, something it did do, which he said, led to the collapse of his early efforts.

The King's mood, often frustrated and angry, was lightened by occasional bursts of humor as he mused about happier times, or watched the latest news on CNN. At one point, his spirits darkening, he spoke of thoughts of resigning from a job that many regard among the most dangerous in the Middle East, thoughts he said he has since put firmly out of his mind.

A Favored Land Now Out of Favor

Jordan was once regarded by the United States and other Western countries as the most dependable of the Arab nations. Now, King Hussein showed his distress at the way he and his country have been criticized since the start of the crisis by the United States and its allies. They have deplored what they regard as his hedging on condemning the Iraqi invasion, a stand that the harshest critics say comes close to condoning Baghdad's action.

What made his isolation particularly stressful, he says, is that he and President Bush are friends of long standing. And he went out of his way not to assail the United States. He was more critical of his former Arab allies.

Of all Arab leaders, King Hussein said, President Hosni Mubarak of Egypt has disappointed him the most. The King said he had helped bring Egypt back into the Arab fold, after its peace treaty with Israel in 1979, but that the move seemed not to have assuaged Egyptian anger at having been excluded in the first place. At a Cairo summit meeting in August, the King said he had the feeling that Mr. Mubarak was "trying to pay back Iraq for having led the campaign against Egypt."

Mr. Mubarak has been bitter in turn at President Hussein for deceiving him before the invasion of Kuwait, by telling him that he would not

take military action.

The King repeatedly emphasized that Jordan has supported all the United Nations Security Council resolutions on Kuwait. He has, however, opposed the presence of American forces in Saudi Arabia, something he said was neither anti-Western nor pro-Iraqi.

"I am pro-peace," he declared. "I have backed nobody except my conscience and the interests of all in peace and security in this region."

Nevertheless, in the interviews, he praised Mr. Hussein as "a friend and a new phenomenon in Arab politics."

When he was asked if he believed that President Hussein, his namesake, but no relation, was justified in having invaded part or all of Kuwait, he seemed momentarily uncomfortable.

"I honestly can't tell, but given the leadership of Saddam Hussein, I know it was not easy," he replied. "I can't justify or condone, but the reason must have been pretty substantial to have had it happen. Both sides, I fear, gradually succumbed to a conspiracy theory about the other."

Quashing Rumors Of Lust for Land

The King seemed especially eager to rebut a conspiracy theory that has gained wide credence in Arab circles since the invasion, that Iraq, Jordan and Yemen had been eyeing Kuwait and Saudi Arabia for themselves, and had been planning for months before the invasion to divide up the oil-producing area among themselves.

According to these accounts, Iraq would have taken Kuwait, securing its long-sought free access to the Persian Gulf; Yemen would get part of disputed Saudi territory, and King Hussein, who is revered as a 33d-generation descendant of the prophet Mohammed, would be restored to his family's traditional role as custodian of Islam's most sacred sites in Saudi Arabia.

He said Jordan wanted nothing but peace, and had not been forewarned about the Iraqi invasion.

The King argued, however, that the Iraqi invasion of Kuwait could have been prevented through astute Arab diplomacy, and that American forces would not have been needed if the Arabs had enough time to resolve the problem themselves.

And, he said, the United States' decision to send forces to the Saudi desert was taken before the Riyadh Government formally requested them and, he said, seemed ultimately intended not to defend Saudi Arabia but to destroy President Hussein.

According to the King's account, he received an agreement from President Bush, in a telephone conversation within hours of the Iraqi invasion, that he would be given 48 hours to secure a commitment from Mr. Hussein to withdraw his troops. The King said the commitment was given while he was meeting in Alexandria, Egypt, with Mr. Mubarak.

The King said he told the American and Egyptian leaders that he had talked to President Hussein by phone before flying to Egypt and that the Iraqi had said he was planning to begin withdrawing from Kuwait within days. "Within a week we'll be gone," the King quoted President Hussein as saying. The King told Mr. Bush and

Mr. Mubarak that the Iraqi leader had also warned that he "would not respond positively to threats or intimidation."

Conciliatory Words From Iraqi Quoted

The Arab League foreign ministers were meeting in Cairo, and the King said, Saddam Hussein suspected that the ministers might call for foreign involvement. "Let us not scratch each other's eyes out," the King quoted the Iraqi leader as saying. "If things go that way, we may say Kuwait is part of Iraq and annex it."

Early the next morning, Aug. 3, the King flew to Baghdad, where he found President Hussein "fine and more relaxed than on my previous visit" six days earlier. The Iraqi leader, he said, reiterated that he was willing to withdraw from most of Kuwait — exactly to where he did not say — and to discuss other grievances at a meeting of heads of government in Jidda on Sunday, provided the Arab League did not condemn him or call for foreign intervention.

The King returned to Amman later that day, confident that agreement was possible, but he said he was unable to get either King Fahd or President Mubarak on the phone. While still waiting to convey the results of the Baghdad meeting, he said, he learned that Egypt had just condemned Iraq's invasion, and that the Arab League was preparing to take similar action that night.

King Hussein said he still did not understand why his initiative was undermined. But the condemnations dashed hopes of an early peaceful resolution to the crisis, he said, adding "Suddenly, it was all torn apart."

From the King's version of the crisis, an extraordinary picture emerged of the world of Arab politics — a milieu of secrets and conspiracies; of lies and treachery; of humiliations for him and other, poorer Arabs; of duplicity, revenge and broken promises, and of dashed hopes that, he said, had brought him to consider resignation.

"When you look beyond this," he asked, "what is there for us? I'm proud of what I've done in Jordan, but the reason itself is sitting on a time bomb. So before the crisis, I was thinking of quitting. I won't quit in the middle of this. But I'll never be a burden to my country."

When Baghdad Decided to Strike

Ranging back and forth through his experiences in recent weeks, the King shed fresh light on other aspects of the crisis.

Among other things, he said, after the invasion Mr. Hussein had told him that he had decided only late in July that military action was necessary. The King said the Iraqi leader had told him that he had decided to seize all of Kuwait, instead of the part of the territory long in dispute, because he expected the United States to defend the sheikdom with force, and believed he would be in a stronger position militarily and politically if he could eventually withdraw to a point



Troops and Equipment Continue to Arrive In Saudi Arabia

American troops unloading a Bradley Fighting Vehicle of the First Cavalry Division at a Saudi port.

that left Iraq with the disputed territory only.

The King said Saddam Hussein also told him that he never intended to invade Saudi Arabia, a threat that was originally cited by the United States in sending troops there.

Furthermore, the King said, Prime Minister Margaret Thatcher had told him, during a meeting at her country residence, that the United States troops were "halfway to Saudi Arabia" before they were formally requested. The King said he had confirmed this later through what he described as his own sources.

The King of this small country, flanked on three sides by Iraq, Israel and Saudi Arabia, seemed most agitated when expressing the view that the invasion could have been prevented.

On at least five occasions since the end of the Iran-Iraq war in 1988, he said, he had unsuccessfully tried to persuade Kuwait directly or through gulf intermediaries to resolve the financial and territorial disputes with Baghdad that he said triggered the invasion. Saddam Hussein also made repeated, unsuccessful attempts, he said.

He said he first became concerned about an escalation of the dispute five months ago, at the end of May, at an Arab summit meeting in Baghdad.

"We had a closed meeting and he was very frank," the King said. President Hussein warned that his pettish country was being strangled by economic warfare waged by "the brothers" among Arab leaders, and that these leaders seemed indifferent

to the fact that Iraq had protected them and their people with "the blood of Iraqis" during the just-concluded war with Iran.

Saddam Hussein had already tried to resolve the border issue during the Iran-Iraq war, the King said. Kuwait and Iraq had formed several different levels of joint commissions to resolve it, but with no success.

A Volatile Mixture: Oil and Outrage

The King's "second jolt" came when he learned that Iraq's Foreign Minister, Tariq Aziz, had sent a scathing public memorandum to the Arab League on July 15 accusing Kuwait of violating its oil-production quotas and of stealing Iraqi oil from the Rumaila field, which the two countries shared. Terrible consequences might result, Mr. Aziz warned.

In retrospect, neither Kuwait nor Saudi Arabia seemed to have trusted him, the King said. But he added that relations with Kuwait had never been easy. An assistant to the King described his visits to Jaber al-Ahmed al-Sabah, the Kuwaiti Emir, for discussions of financial matters, as a "tug-of-war exercise," and said that they had become increasingly humiliating.

By 1988, the gulf states had stopped making payments that had continued for 10 years under a 1978 pledge to support Arab countries threatened by Israel. Some had not made full payments. Jordan had a \$6 billion deficit. After 1988, the payments abruptly ended. "They were putting the squeeze on us and I realized we were going to have severe internal problems," the King said.

In the spring of 1989, as he had feared, severe food rioting erupted in Jordan. Kuwait ultimately paid Jordan a modest sum, for which the King said he was grateful.

He said his final effort to warn Kuwait about the potential consequences of its deteriorating relationship with Iraq came late in July. On July 29, he visited Mr. Hussein in Baghdad.

"They were bitter," the King recalled, speaking of the Iraqis. They recalled with fury, for example, that after Iranian-backed terrorists had tried to assassinate the Emir, "Iraq had blasted Iran with everything they had — ground to ground missiles, the works." Iran had retaliated, causing 1,500 civilian casualties, but Kuwait

would not write off its debt, or end the border dispute, or stop stealing oil.

"I realized then that the situation was really very serious," the King said. "I knew they were hurting badly. The atmosphere was tense; the troops were on the border."

On July 30, the King visited the Emir in Kuwait and expressed hope that a special meeting in Jidda between Kuwait and Iraq, scheduled to open the next day, would succeed. And he warned that the meeting was critical.

"I pleaded with them," he said. "They were warm and cordial, unusually so. But there was no commitment, just hopes that it would not fail."

A View of Doom In Soldiers' Eyes

Before boarding his plane, he said, he had a premonition. "I looked at some Kuwaiti soldiers on the tarmac. I suddenly had a deep sense of sadness. Sometimes, leaders' failures can cost these young people's lives."

On the plane back to Jordan, the King said his aides told him that they, too, had failed to detect true concerns in their meetings with the Kuwaiti Foreign Minister. "They said their Constitution does not permit us to give up an inch of territory. We won't give in. If they attack us, we would call the Americans." The Kuwaitis' only concern, the King said he was told, seemed to be that relying on American military backing would be "embarrassing" because of American support for Israel.

He said he had learned of the invasion at 6 A.M. on Aug. 2, when King Fahd telephoned him and urged him to call Saddam Hussein and ask the Iraqi leader to withdraw to the disputed territory. "It's all Kuwait's fault," King Hussein said, quoting King Fahd. "They would be this adamant. They've brought this about."

The King spoke to King Fahd rarely after that. On Aug. 6, the Saudi ruler invited "friendly forces" to assist in his country's defense. The next day, he sent an envoy to assure King Hussein that relations between Riyadh and Baghdad were fine, that there was no evidence of a hostile Iraqi buildup on the border, and that despite American assertions, there was no truth to reports that Iraq planned to invade Saudi Arabia. Later that night, the presence of U.S. forces in the Saudi desert was announced.

Gulf Involvement

ge relations with other Arab countries and strengthen the military position of the United States in the region.

"The direct involvement of Soviet troops in military activity against Iraq will result in increased activity of the opposition inside the country," he said. And in the first order, that activity will be aimed at the army.

He ridiculed the foreign ministry for confusing the public by turning against Iraq after many years of supplying it with arms and proclaiming him a loyal ally.

"We army political workers cannot keep pace with the reorientation of the official course of the foreign ministry," he said.

Efegeny Kogan, a deputy from Esto-

THE WHITE HOUSE

WASHINGTON

Your Majesty,

One of the most agonizing by products of this terrible situation in the Gulf has been the strains now placed on the relationship between Jordan and the United States of America. I hope I need not tell you that I have always tried to demonstrate the respect I feel for your country, your countrymen and especially for you personally.

As you know, in spite of these strains and difficulties, all caused by Saddam Hussein's brutal aggression against Kuwait, we have been trying to encourage economic support for Jordan. We have been doing this in spite of some concerns that I would now like to call to your personal attention.

The Conference in Amman hurt -- so many known terrorists convening to blast the United States of America, joined, I hate to say, by some of your own officials. I try to understand the pressures that you and the government are under from the more radical left; but you must know that blatant attacks on my country, attacks that assign to us outlandish motives, only make things very difficult. Had a Cabinet Member in my government attacked Jordan the way your Prime Minister attacked us, he would have been dismissed. I refer to his public remarks on our motivation in putting forces into Saudi Arabia.

I am determined to keep relations from totally disintegrating. I say this as one who wants our friendship to be strong and in tact when all this ends. Thus, may I comment on your recent interview with the New York Times. I make the following comments based on the premise that if I

don't level with you and you don't level with me, it will be more difficult for both countries.

In your recent interview with the New York Times, Your Majesty, it is simply incorrect that the United States decided to send, let alone dispatched troops to Saudi Arabia, before receiving a request from King Fahd. Our only motivation was to deter Iraq and if necessary, defend a friend; we went when asked and we will leave the same way. It is also deeply troubling to read that an old and close friend "honestly can't tell" if Iraq's invasion was justified, when the entire world is united in condemning this action.

I was also troubled by your apparent acceptance of Saddam the Invader's claim that Saudi Arabia was not threatened by him. The irrefutable evidence, which I thought we had presented to you, shows that the very day he announced he was moving his forces out of Kuwait, vast Iraqi armor was heading south toward the Saudi border.

Now, let me tell you what concerns me a lot. In that whole interview there was no mention of concern about the brutal treatment of the people of Kuwait, and no mention about Saddam Hussein's barbaric policy of detaining innocent foreigners; holding them as hostages; staking them out near plants and installations so as to avoid retaliation for his brutality. The reports coming out of Kuwait are horrible.

I know how you personally feel about young people. Surely you must be shocked and offended by the documented reports of rape, of shooting kids for passing out leaflets, (and making their parents watch), of the systematic dismantling of Kuwait - from the hospitals to the factories and stores. It is tragic. It is indeed reminiscent of how Hitler behaved in Poland before the rest of the world came to its senses and stood up against him. As I write this I know you, too, must care deeply about these atrocities.

Having written the above, right from my heart, I simply want to add that I hate it that you and Jordan are in this very difficult situation. I would be no friend at all if I didn't understand the enormous problems all of this has inflicted upon your wonderful country.

The other day I saw a picture of you and some of your associates receiving yet another delegation. I recognized several of your associates. All of them friends; all of them not historically opposed to the U.S.A.; all of them having worked with us in difficult situations before. I still remain hopeful that it will be that way in the future.

I have a personal feeling that perhaps you don't like it when those wild demonstrators in Baghdad and, regrettably, Amman attack me in very personal terms. I know you have tried hard to find peace through dialogue; but the longer this matter goes on, the more I am convinced that there can be no compromise that stops short of the United Nations' demands and universal condemnation.

I have warned Saddam Hussein that any terrorist act against us or our allies will be his responsibility. Further containment and continued brutality against "hostages" (he still refers to them as "guests") will hasten the day of other than a peaceful settlement.

This letter is being conveyed to you in this special channel. I did not want it ricocheting around the corridors at the Department of State or anywhere else. It comes from a man who is your friend. It comes from a heart laden with grief and sadness; but it also comes from one who is determined to see the total failure of Saddam's unwarranted aggression.

Barbara enjoyed her visit with Queen Nor, and Brent Scowcroft filled me in on every nuance of your distinguished brother's recent visit. I ask you to convey my respects to him.

I pray we will find a way out of this terrible situation; but the longer I think about this, it can only come from Saddam Hussein turning 180 degrees and his trying to undo the horrible offense he has committed against the rule of law.

My sincere best wishes to you and your family.

With respect,

His Majesty
Hussein I
King of the Hashemite Kingdom of Jordan
Amman

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My sincere best wishes to you and your family.

With respect,

His Majesty
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King of the Hashemite Kingdom of Jordan
Amman

From the desk of

George Bush

fyi -- we are finalizing
this one right now

Document Originally
Attached to
Following Page

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
06a. Note	From George Bush to Brent [Scowcroft] (1 pp.)	10/20/[90]	(b)(1)	

Collection:

Record Group: Bush Presidential Records
Office: Office of the President
Series: Daily Files
Subseries:
WHORM Cat.:
File Location: Saturday, October 20, 1990

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06b. Letter	Draft Letter from George Bush to King Hussein (6 pp.)	n.d.	(b)(1)	

Collection:

Record Group: Bush Presidential Records
Office: Office of the President
Series: Daily Files
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