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NSC/RMO PROFILE

RECORD ID: 9904342
RECEIVED: 07 JUN 99 16

TO: PRESIDENT

FROM: BOYLE, FRANCIS A

DOC DATE: 27 MAY 99
SOURCE REF: 4357462

KEYWORDS: HUMAN RIGHTS
PRESIDENTIAL CORRESPONDENCE

LEGAL ISSUES

PERSONS: BUSBY

SUBJECT: EO 13107 & RACIAL DISCRIMINATION AT UNIV OF ILLINIOS

ACTION: NO FURTHER ACTION REQUIRED

DUE DATE: 18 JUN 99 STATUS: C

STAFF OFFICER: BUSBY

LOGREF: 9902637

FILES: PA

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

COMMENTS: REFERRED BY SUE SMITH

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DOC 1 OF 1

UNCLASSIFIED

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 9904342

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 BUSBY

Z 99060716 PREPARE MEMO FOR BERGER

001

X 99060813 NO FURTHER ACTION REQUIRED

UNCLASSIFIED

PRESIDENTIAL/NSA CORRESPONDENCE

IMMEDIATE ACTION REQUIRED

ACTION OFFICER:

Dusky

LOG NUMBER:

4342

DUE DATE:

6.18

DATE STAFFED:

6.7

CORRESPONDENCE ADDRESSED TO:

☒

PRESIDENT

☐

NATIONAL SECURITY ADVISOR

FROM:

Boyle

PREPARE A RESPONSE FOR THE PRESIDENT'S OR NATIONAL SECURITY ADVISOR'S SIGNATURE WITHIN 10 DAYS. IF A LETTER DOES NOT REQUIRE A RESPONSE, PLEASE RETURN IT TO RECORDS MANAGEMENT (RM 379) WITH THIS FORM, ANNOTATED ACCORDINGLY.

*No response necessary.
We have already sent three letters to this
man. The last clearly lays out our position on
his complaint.*

SB

6/7/99

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D O C U M E N T D I S T R I B U T I O N

FOR ACTION

BUSBY

FOR CONCURRENCE

BAKER
NAPLAN

FOR INFO

SCHWARTZ
WIPPMAN

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DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

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DOC 1 OF 1

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4342

PD 4357462 ✓
C

THE WHITE HOUSE
WASHINGTON

6/3/99
DATE

MEMORANDUM

FOR: NSC
FROM: SUE J. SMITH *SJS*
DIRECTOR, AGENCY LIAISON
SUBJECT: REFERRAL OF CASEWORK

I am forwarding the attached letter to your office for appropriate action. Please send us a copy of your written response or your telephone report along with the writer's original correspondence and envelope to the following address:

Ms. Sue J. Smith
Director, Agency Liaison
Room 6, OEOB
The White House
Washington, D.C. 20502

If you have any questions, call my office at 202/456-7486.

Thank you for your help.

*John, the computer indicates that
Mr. Berger was also sent a copy.*

2637

4357462

25-1E
NSC

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

College of Law

504 East Pennsylvania Avenue
Champaign, IL 61820



May 27, 1999

President William Jefferson Clinton
The White House
Washington, D.C. 20500

Dear President Clinton:

On 10 December 1998, you promulgated Executive Order 13107 on the Implementation of Human Rights treaties, and established the Inter-Agency Working Group on Human Rights Treaties. Pursuant to your Executive Order, on 14 December 1998 I filed a Complaint with the Inter-Agency Working Group against the University of Illinois for violating the Convention on the Elimination of All Forms of Racial Discrimination (CERD) because of its gross degradation and economic exploitation of an American Indian Chief as the mascot for its sports teams. On 29 March 1999, I received a letter from Acting Assistant Attorney General Bill Lann Lee informing me: "...we have reviewed your complaint and conclude that the allegations cited do not state a cause of action under U.S. law that the Department of Justice has jurisdiction to investigate." In a letter dated 7 April 1999, I informed the Inter-Agency Working Group that I had not filed my Complaint with the Department of Justice, but rather with the Inter-Agency Working Group. I then received a letter dated 19 May 1999 from Mr. Scott Busby, Director of the Office of Multilateral and Humanitarian Affairs, informing me that in accordance with Section 3 of your Executive Order, no further action would be taken on my Complaint.

To the contrary, I clearly filed my Complaint with the Inter-Agency Working Group pursuant to Section 4 of your Executive Order, not Section 3. Section 4(c)(v) states that one of the principal functions of the Inter-Agency Working Group includes "developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths and territories of the United States...including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties,...and the promotion of effective remedial mechanisms." The University of Illinois is an Instrumentality of the State of Illinois that is grossly violating both the CERD and your Executive Order. Pursuant to your Executive Order, I asked the Inter-Agency Working Group to provide "effective remedial mechanisms."

This bureaucratic buck-passing has rendered your Executive Order a legal nullity--a mere scrap of paper. As a fellow Law Professor, I know that is not your intention. Therefore, I most respectfully request that you order your Inter-Agency Working Group to provide "effective remedial mechanisms" against the University of Illinois for violating the CERD as required by your Executive Order. I have attached another copy of my Complaint for your convenience.

Yours very truly,

Francis A. Boyle

Francis A. Boyle
Professor of Law

Board of Directors, Amnesty International USA (1988-92)

JUN 7 1999

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

College of Law
202 Law Building
504 East Pennsylvania Avenue
Champaign, IL 61820

December 14, 1998

Interagency Working Group
on Human Rights Treaties
c/o Mr. Samuel Berger
Assistant to the President
for National Security Affairs
The White House
Washington, D.C. 20504
FAX: 202-456-2461
BY FAX AND MAIL

COMPLAINT AGAINST THE UNIVERSITY OF ILLINOIS FOR VIOLATING THE
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION (CERD)

Dear Mr. Berger:

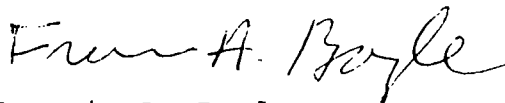
I have read President Clinton's Executive Order of December 10, 1998 on the Implementation of Human Rights Treaties. Pursuant thereto, you have been put in charge of organizing the Interagency Working Group on Human Rights Treaties. One of the "principal functions of the Interagency Working Group shall include: ... (v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States ... including the review of State, Commonwealth and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms ..." Section 1 of President Clinton's Executive Order states: "(a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including ... the CERD."

Pursuant to this pathbreaking Executive Order by President Clinton, I hereby file the first Complaint before your Interagency Working Group against the University of Illinois, an instrumentality of the State of Illinois, for violating the CERD because of its abuse, degradation, and exploitation of a Native American as the mascot for its sports teams and for the quite mercenary and venal purpose of raising over \$1 billion from its alumni. In support of this Complaint, attached you will find a signed Memorandum of Law by me entitled Illiniwak: Racial Discrimination! dated 25

July 1997, that was sent to the Board of Trustees of the University of Illinois. This Memorandum details at great length precisely how the University of Illinois' Chief Illiniwak violates the CERD. I hereby incorporate this Memorandum as an integral part of this Complaint. I hereby repeat, reaffirm, and reallege each and every statement of fact and conclusion of law set forth in my Memorandum.

In addition to grossly violating the CERD, the University of Illinois' Chief Illiniwak has inflicted grave, immediate, and irreparable harm upon the Native American Students, Faculty, and Staff here at the University of Illinois: threats, insults, bullying, harassment, intimidation, and outright terrorization. For these reasons, I ask you and the Interagency Working Group to secure the immediate termination of Chief Illiniwak in order to bring the University of Illinois and the State of Illinois into compliance with the CERD.

Yours very truly,

A handwritten signature in cursive script, reading "Francis A. Boyle".

Francis A. Boyle
Professor of Law
Board of Directors
Amnesty International USA (1988-1992)

Attachment

**Francis A. Boyle
Law Building
504 East Pennsylvania Avenue
Champaign, Illinois 61820
Phone: 217-333-7954
Fax: 217-244-1478
fboyle@law.uiuc.edu**

ILLINIWAK: RACIAL DISCRIMINATION!

by

Francis A. Boyle

Professor of Law

University of Illinois at Urbana-Champaign

Board of Directors, Amnesty International USA (1988-92)

Holder of 2 Football Season Tickets (Since About 1981)

Holder of 2 Basketball Season Tickets (Since About 1982)

In his letter of 16 July 1997 to Ms. Susan Gravenhorst, Chair of the Board of Trustees of the University of Illinois, Professor Mort Winston, Chair of the Board of Directors of Amnesty International USA (AIUSA) and a prominent University of Illinois Alumnus, called "Chief" Illiniwak a "human rights violation," condemned it in no uncertain terms, and demanded the elimination of this racist mascot. Before he joined the AIUSA Board, Professor Winston was the leading AIUSA expert on, and activist against, racism and apartheid in South Africa prior to the Mandela revolution. Professor Winston knows a human rights violation when he sees one.

The same is true for me. In addition to serving four years as a Member of the Board of Directors of Amnesty International USA, I

was the person who single-handedly convinced the ultra-conservative Faculty of the University of Illinois College of Law to introduce a course on International Human Rights Law into the Law School Curriculum as Law 370, and have taught this course for many years to about 30 students per year. Illiniwak is indeed a human rights violation.

The United States government is a contracting party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. Hence, this Racial Discrimination Convention is a "treaty" and thus the "supreme Law of the Land" under the so-called Supremacy Clause of Article VI of the United States Constitution:

Article VI

....

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In other words, the Racial Discrimination Convention absolutely binds the entirety of the State of Illinois, including therein the University of Illinois.

Article 1(1) of the Racial Discrimination Convention defines the term "racial discrimination" as follows: "In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on

an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (Emphasis added.) Obviously, Illiniwak is a "distinction" on the multiple bases of "race," and "colour," and "descent." Illiniwak definitely has the "effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" for Native American Students, Faculty, Staff and Community Members here at the University of Illinois in Urbana-Champaign. In accordance with the terms of this Racial Discrimination Convention to which the United States is a party, Illiniwak constitutes "racial discrimination" by the University of Illinois against Native Americans.

Article 2, paragraph 1 of the Racial Discrimination Convention provides as follows:

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, and promoting understanding among all races, and to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. [Emphasis added.]

Clearly, Illiniwak places the United States of America in breach of these most solemn obligations under Article 2 of the Racial Discrimination Convention. Illiniwak contravenes Racial Discrimination Convention Article 2. The conclusion is inexorable that to be in accordance with the terms of the Racial Discrimination Convention, the University of Illinois must eliminate Illiniwak.

Article 4 of the Racial Discrimination Convention clearly requires the Government of the United States of America to eliminate Illiniwak in no uncertain terms:

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination. [Emphasis added.]

Notice in particular the requirement of Article 4(c) of the Racial Discrimination Convention: "Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination." To the contrary, the University of Illinois deliberately promotes and incites racial discrimination against Native Americans by means of Illiniwak for the quite mercenary purpose of making money!

Article 5 of the Racial Discrimination Convention expressly requires the United States government "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights..." (Emphasis added.) The conclusion is inexorable that Illiniwak contravenes Article 5 of the Racial Discrimination Convention.

Furthermore, Illiniwak also contravenes Article 6 of the Racial Discrimination Convention:

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals

just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Finally, Illiniwak contravenes Article 7 of the Racial

Discrimination Convention:

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

The conclusion is inexorable that to be in accordance with the terms of the International Convention on the Elimination of All Forms of Racial Discrimination the University of Illinois--a Public Institution--must eliminate Illiniwak.

As can be seen from the above analysis, the International Convention on the Elimination of All Forms of Racial Discrimination expressly incorporates by reference the 1948 Universal Declaration of Human Rights (UDHR). No point would be served here by detailing all the provisions of the UDHR that are currently being violated by Illiniwak. But in particular, I wish to draw to your attention UDHR Articles 1 and 2:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or

other opinion, national or social origin, property, birth or other status. (Emphasis added.)

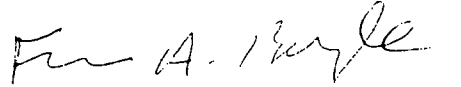
The United States government has been in the vanguard of the worldwide movement to establish that these fundamental provisions of the Universal Declaration of Human Rights, inter alia, constitute customary international law. Customary international law is part of the common law of the United States of America and the common law of all the States of the Union. Customary international law applies to and binds the State of Illinois and the University of Illinois.

Clearly, by means of Illiniwak the University of Illinois refuses to act towards Native Americans "in a spirit of brotherhood" in violation of UDHR Article 1. Similarly, Illiniwak constitutes a "distinction" on the prohibited grounds of race, colour and religion, inter alia, in gross violation of UDHR Article 2. In other words, Illiniwak violates these most fundamental protections of the Universal Declaration of Human Rights, inter alia, and thus violates customary international law and therefore the common law of both the United States and the State of Illinois.

I wish to end this Memorandum by joining those eloquent and powerful words addressed to Trustee Susan Gravenhorst by Professor Mort Winston, Chair of the Board of Directors of Amnesty International, my fellow AIUSA Board Colleague and Comrade-in-Arms in the long but successful struggle against racism and apartheid in South Africa:

In your present position as Chair of the Board of Trustees, you can steer university policy on this issue towards the greater good. I urge you to do so. UIUC's sport's fans and the marching band can find another mascot. Have a contest.

Pick an animal or some culturally neutral symbol. Show some moral leadership so that perhaps the professional sports teams that also dishonor American Indians by debasing their cultural symbols will one day follow suit. But above all stop pretending that keeping "Chief Illiniwek" alive is somehow "honoring" the Native Americans who once roamed the plains where the University of Illinois now stands. In short, "Do the Right Thing -- Get Rid of the Chief!"



F.A.B.
25 July 1997