

Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Thursday, September 20, 2001 9:49 AM  
**To:** 'Kavanaugh, Brett'  
**Subject:** Comments on Title IV of draft bill

A handful of comments:

1. (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED].

One simple fix would be (b) (5). E.g.:

(b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

2. (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If you want me to draft language to address (b) and (c), let me know.

3. (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

4. (b) (5) [REDACTED]. E.g.:

(b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]."

5. (b) (5) [REDACTED]  
[REDACTED].

Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Thursday, October 4, 2001 3:10 PM  
**To:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Cc:** Whelan, M Edward III; Jay\_P.\_Lefkowitz@omb.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic05304.pcx

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Brett M. Kavanaugh  
10/04/2001 02:58:04 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Helgard C. Walker)

Yes. We were told by OLC on the morning of Friday the 21st that (b) (5). Joel and I so informed the congressional staffs and some Members. We were not involved in the negotiations about this specific issue, however. The negotiations entailed the 4 leaders (Daschle, Lott, Hastert, Gephardt) sitting in a room with 2 staff members each during lunch on the 21st. Gephardt apparently still insisted on (b) (5). The compromise apparently reached among these 4 leaders -- who were apparently aware of the OLC advice and Administration position -- was to (b) (5).

---

Ed advises (b) (5)

Let me know if you have further questions.

Helgard C. Walker  
10/04/2001 02:46:18 PM

Record Type: Record

To: "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>, Brett M.  
Kavanaugh/WHO/EOP@EOP  
cc: Jay P. Lefkowitz/OMB/EOP@EOP, Rebecca A. Beynon/OMB/EOP@EOP, Joel D.  
Kaplan/WHO/EOP@EOP, Steven D. Aitken/OMB/EOP@EOP bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Brett M. Kavanaugh)

Brett, do you remember dealing with/thinking about this issue during the legislative process?

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 01:50:28 PM  
pic05304.pcx)

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP, Rebecca A. Beynon/OMB/EOP  
cc: Helgard C. Walker/WHO/EOP, Joel D. Kaplan/WHO/EOP, Steven D.  
Aitken/OMB/EOP  
Subject: RE: OLC: (b) (5) Airline Board

I haven't had time to review it with care yet, but (b) (5)

One solution might be to (b) (5)

-----Original Message-----

From: Jay\_P.\_Lefkowitz@omb.eop.gov [mailto:Jay\_P.\_Lefkowitz@omb.eop.gov]

Sent: Thursday, October 04, 2001 1:33 PM

To: Rebecca\_A.\_Beynon@omb.eop.gov

Cc: Whelan, M Edward III; Jay\_Lefkowitz@dc.kirkland.com;

Helgard\_C.\_Walker@who.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;

Steven\_D.\_Aitken@omb.eop.gov

Subject: Re: OLC: (b) (5) Airline Board

This was an issue that came up during the drafting and I thought (b) (5) solved the problem.

Is that not correct?

From: Rebecca A. Beynon on 10/04/2001 01:28:35 PM

Record Type: Record

To: Jay Lefkowitz, Helgard C. Walker/WHO/EOP@EOP, Joel D. Kaplan/WHO/EOP@EOP,  
Steven D. Aitken/OMB/EOP@EOP

cc: M.edward.whelan@usdoj.gov

Subject: OLC: (b) (5) Airline Board

Ed Whelan from OLC has just raised with me the point that (b) (5)

. He hasn't formed a definite opinion yet, but wanted to bring the issue to our attention. Ed, could you supply a little more information? Thanks very much.



Message Copied To: \_\_\_\_\_

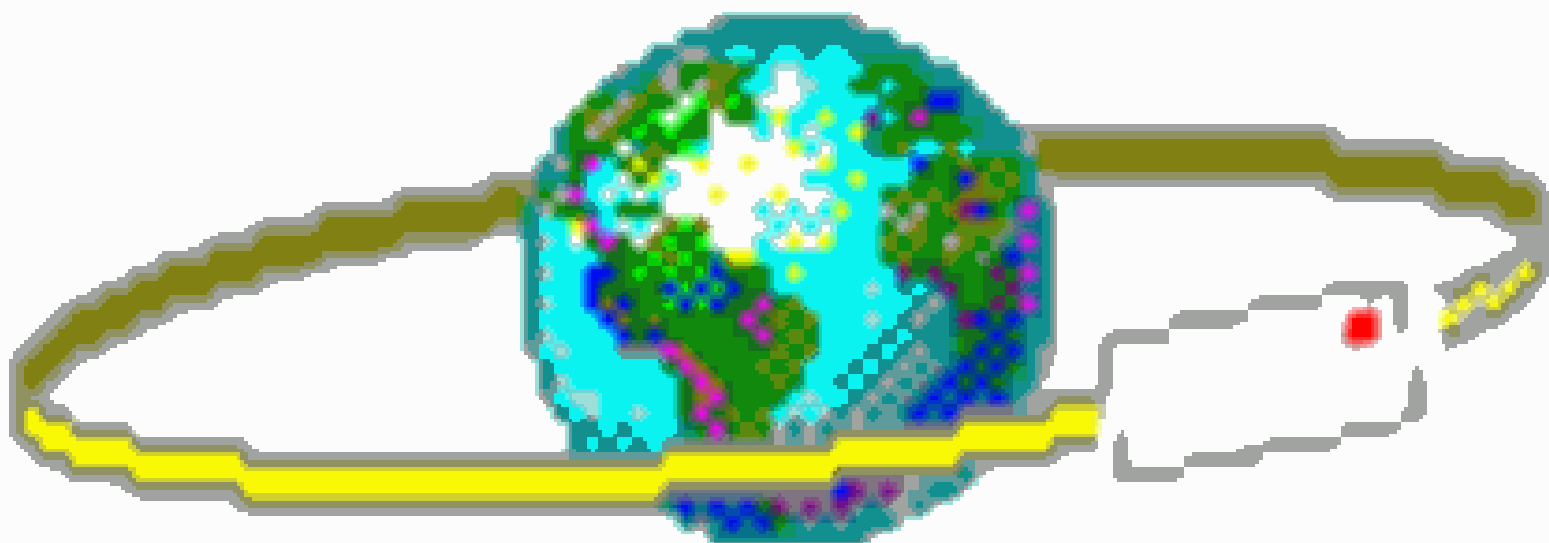
"whelan, m edward iii" <m.edward.whelan@usdoj.gov>

jay p. lefkowitz/omb/eop@eop

rebecca a. beynon/omb/eop@eop

joel d. kaplan/who/eop@eop

steven d. aitken/omb/eop@eop



Jay\_P.\_Lefkowitz@omb.eop.gov

---

**From:** Jay\_P.\_Lefkowitz@omb.eop.gov  
**Sent:** Thursday, October 4, 2001 3:19 PM  
**To:** Helgard\_C.\_Walker@who.eop.gov  
**Cc:** Whelan, M Edward III; Brett\_M.\_Kavanaugh@who.eop.gov;  
Helgard\_C.\_Walker@who.eop.gov; Jay\_P.\_Lefkowitz@omb.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic03867.pcx

(b) (5)

(b) (5)

Helgard C. Walker  
10/04/2001 03:11:55 PM

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Jay P. Lefkowitz)

As you can see from the email that I just sent out, (b) (5)

Jay P. Lefkowitz  
10/04/2001 02:59:04 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Helgard C. Walker)

Helgi:

Can you give us a hand with an insert to (b) (5)

thanks very much

Brett M. Kavanaugh  
10/04/2001 02:58:04 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Jay P. Lefkowitz)

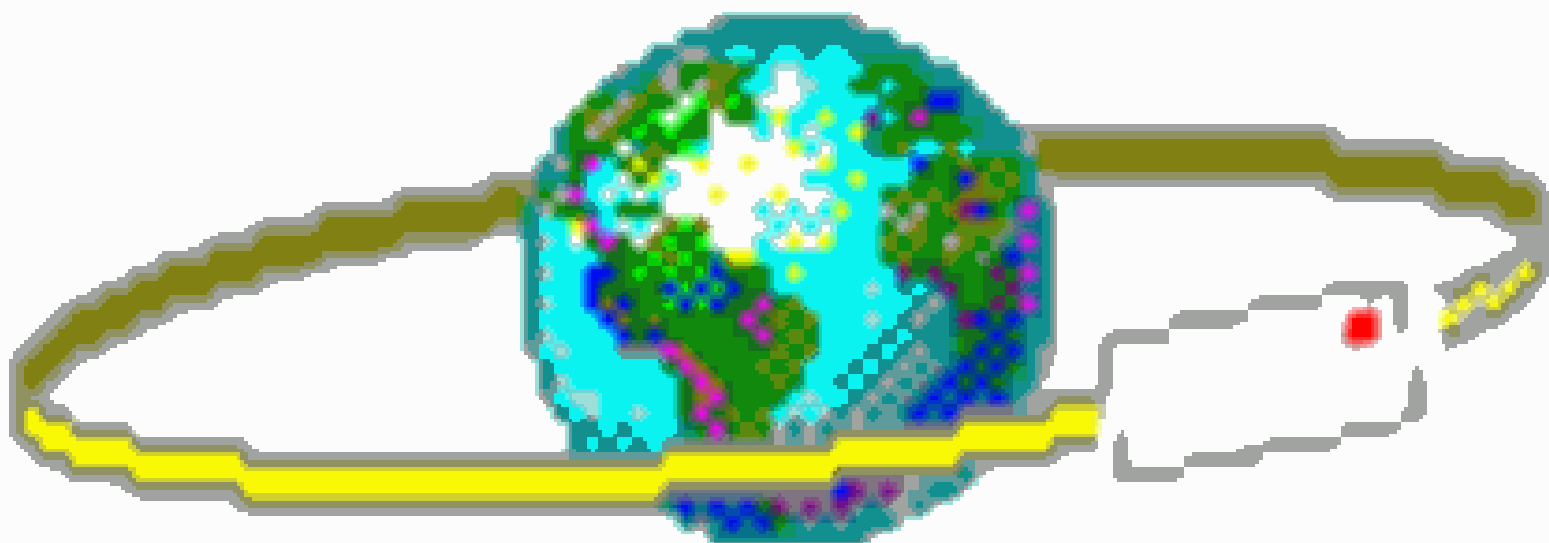
# duplicate

# duplicate

# duplicate



# duplicate



Joel\_D.\_Kaplan@who.eop.gov

---

**From:** Joel\_D.\_Kaplan@who.eop.gov  
**Sent:** Thursday, October 04, 2001 3:58 PM  
**To:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Cc:** Whelan, M Edward III; Helgard\_C.\_Walker@who.eop.gov;  
Jay\_P.\_Lefkowitz@omb.eop.gov; Rebecca\_A.\_Beynon@omb.eop.gov;  
Joel\_D.\_Kaplan@who.eop.gov; Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board

(b) (5)

?

(b) (5)

?

Jay\_P.\_Lefkowitz@omb.eop.gov

---

**From:** Jay\_P.\_Lefkowitz@omb.eop.gov  
**Sent:** Thursday, October 04, 2001 4:04 PM  
**To:** Helgard\_C.\_Walker@who.eop.gov  
**Cc:** Whelan, M Edward III; Brett\_M.\_Kavanaugh@who.eop.gov;  
Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Helgard\_C.\_Walker@who.eop.gov; Rebecca\_A.\_Beynon@omb.eop.gov;  
Joel\_D.\_Kaplan@who.eop.gov; Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic23291.pcx

I talked with Walker's GC who is sensitive to the issue, and I will be speaking with him and Walker at 5:30.

(b) (5)

Helgard C. Walker  
10/04/2001 03:50:18 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Jay P. Lefkowitz)

I think that is an excellent suggestion -- (b) (5)  
(b) (5) In the meantime, I'll try and come up with some language. If OLC has any ideas as a starting point, I'd love to hear them.

Brett M. Kavanaugh  
10/04/2001 03:42:49 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message bcc:

Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Helgard C. Walker)

(b) (5)

One way to do this is

(b) (5)

Helgard C. Walker

10/04/2001 03:11:55 PM

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP

cc: See the distribution list at the bottom of this message bcc:

duplicate

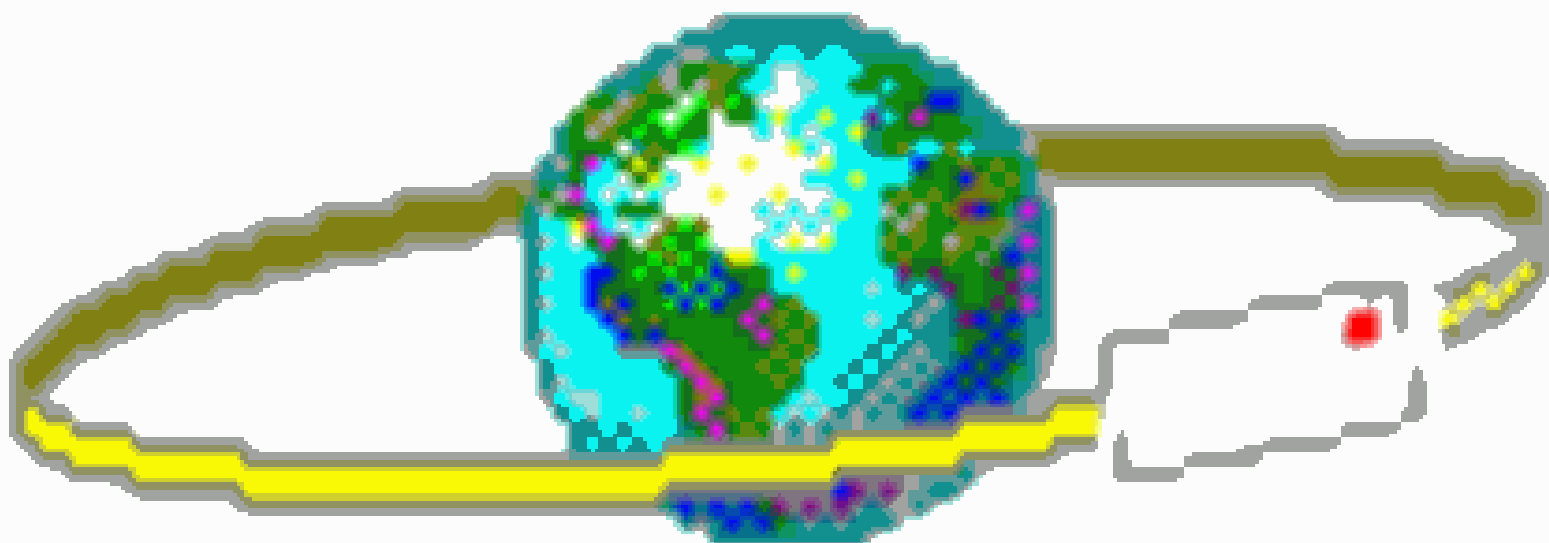
# duplicate



# duplicate

# duplicate

# duplicate



Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Thursday, October 04, 2001 4:16 PM  
**To:** Whelan, M Edward III  
**Cc:** Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic18686.pcx

Interesting point. I think, however, that (b) (5)

Other views?

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whehan@usdoj.gov>  
to file: 10/04/2001 04:01:53 PM  
pic18686.pcx)

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message Subject: RE: OLC: (b) (5) :  
(b) (5) Airline Board

An additional comment: It is not at all clear to me that (b) (5)  
(b) (5). As I read the Act, (b) (5)  
(b) (5) I don't mean to argue this point here.  
Rather, I simply want to point out (b) (5)  
(b) (5)

(b) (5)

-----Original Message-----

From: Jay\_P.\_Lefkowitz@omb.eop.gov [mailto:Jay\_P.\_Lefkowitz@omb.eop.gov]

Sent: Thursday, October 04, 2001 3:52 PM

To: Helgard\_C.\_Walker@who.eop.gov

Cc: Whelan, M Edward III; Brett\_M.\_Kavanaugh@who.eop.gov;

Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;

Helgard\_C.\_Walker@who.eop.gov; Rebecca\_A.\_Beynon@omb.eop.gov;

Joel\_D.\_Kaplan@who.eop.gov; Steven\_D.\_Aitken@omb.eop.gov

Subject: RE: OLC: (b) (5) Airline Board

I have already put in a call.

I'll let you know as soon as I speak with Walker.

Helgard C. Walker

10/04/2001 03:50:18 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message bcc:

duplicate



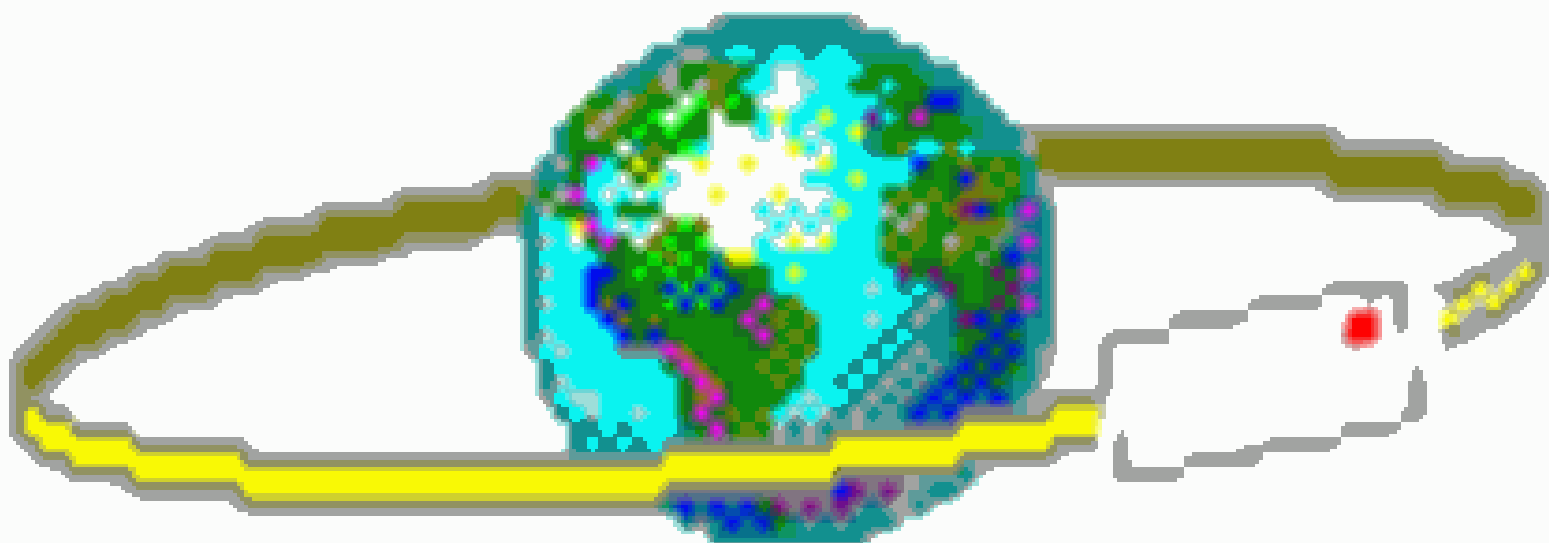
# duplicate

# duplicate

# duplicate

# duplicate

# duplicate





Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Thursday, October 04, 2001 4:17 PM  
**To:** 'Jay\_P.\_Lefkowitz@omb.eop.gov'  
**Cc:** 'Helgard\_C.\_Walker@who.eop.gov'; 'Brett\_M.\_Kavanaugh@who.eop.gov'; 'Rebecca\_A.\_Beynon@omb.eop.gov'; 'Joel\_D.\_Kaplan@who.eop.gov'; 'Steven\_D.\_Aitken@omb.eop.gov'  
**Subject:** RE: OLC: (b) (5) Airline Board

I think (b) (5) ought to be something like the following:

(b) (5)  
."

-----Original Message-----

**From:** Jay\_P.\_Lefkowitz@omb.eop.gov [mailto:Jay\_P.\_Lefkowitz@omb.eop.gov]  
**Sent:** Thursday, October 04, 2001 4:08 PM  
**To:** Whelan, M Edward III  
**Cc:** Helgard\_C.\_Walker@who.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov; Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov; Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board

If Ed's suggestion is the consensus view, then I don't believe I will have a hard time selling that to Walker. (b) (5).

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 04:01:53 PM  
pic09837.pcx)

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP, Helgard C. Walker/WHO/EOP

duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

duplicate



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Thursday, October 4, 2001 5:45 PM  
**To:** Whelan, M Edward III  
**Cc:** Helgard\_C.\_Walker@who.eop.gov; Jay\_P.\_Lefkowitz@omb.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic27339.pcx

(b) (5)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 05:13:30 PM  
pic27339.pcx)

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message Subject: RE: OLC: (b) (5) :  
(b) (5) Airline Board

(b) (5)

(b) (5)

(b) (5)

-----Original Message-----

From: Helgard\_C.\_Walker@who.eop.gov  
[mailto:Helgard\_C.\_Walker@who.eop.gov]

Sent: Thursday, October 04, 2001 4:39 PM

To: Whelan, M Edward III

Cc: Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov

Subject: RE: OLC: (b) (5) Airline Board

Yes, I think that's good. Here's a somewhat tweaked version, (b) (5)

:  
(b) (5)

(b) (5)  
"  
(b) (5)

(b) (5)  
(b) (5)  
(b) (5)  
(b) (5)  
(b) (5)  
(b) (5)  
(b) (5)  
(b) (5)  
(b) (5)

On a housekeeping note, I would add this language (b) (5)

(b) (5)

One last thing to keep in mind -- though I don't see how we can avoid it, given this pickle that we're in -  
- is that (b) (5)

(b) (5). But again, it's unavoidable, I think.

HCW

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> to file: 10/04/2001 04:17:07  
PM pic00788.pcx)

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP

# duplicate

# duplicate

# duplicate

# duplicate

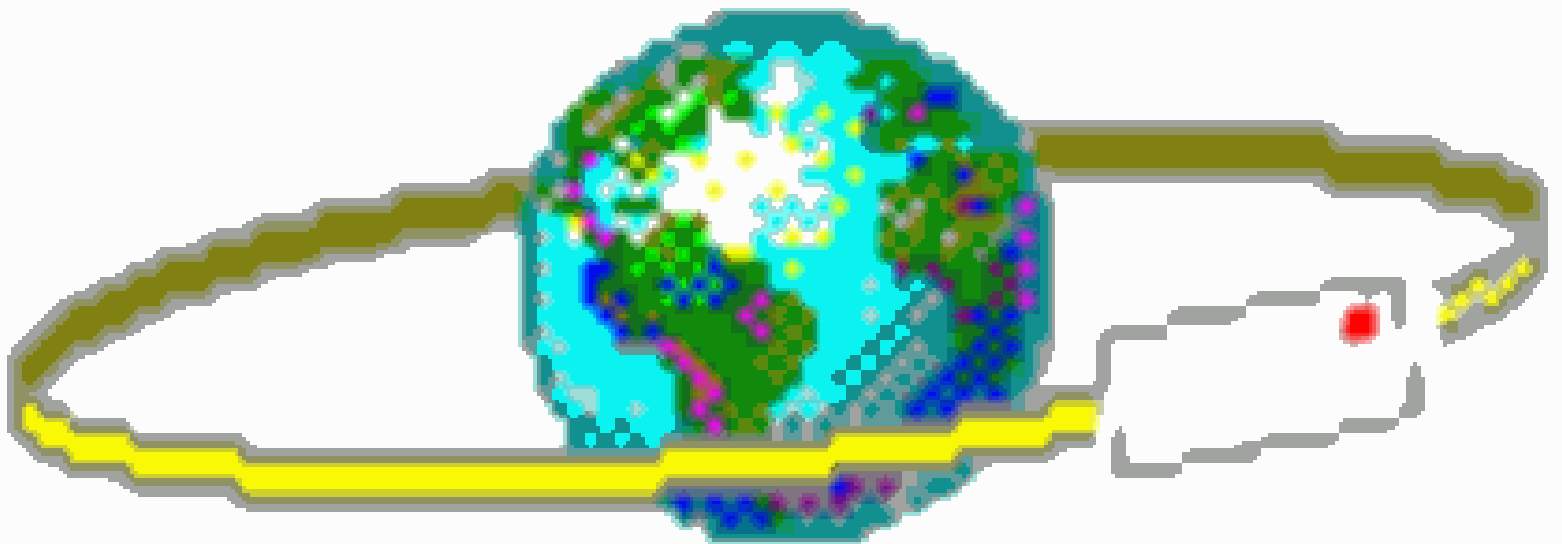
# duplicate

# duplicate



# duplicate

# duplicate



Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Thursday, October 04, 2001 6:03 PM  
**To:** 'Helgard\_C.\_Walker@who.eop.gov'; 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Subject:** Airline Board: (b) (5)

FYI: Tim Flanigan spoke briefly with me about (b) (5)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) (5)  
[REDACTED] I'll have some more specific ideas on this in the morning.

Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Thursday, October 04, 2001 6:05 PM  
**To:** Whelan, M Edward III  
**Cc:** Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic22174.pcx

Another interesting tidbit is that (b) (5)

This suggests to me that, (b) (5)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 05:55:56 PM  
pic22174.pcx)

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message Subject: RE: OLC: (b) (5) :  
(b) (5) Airline Board

I'm fine on the draft language.

In case it's useful to pass along, (b) (5)

-----Original Message-----

From: Helgard\_C.\_Walker@who.eop.gov  
[mailto:Helgard\_C.\_Walker@who.eop.gov]  
Sent: Thursday, October 04, 2001 5:47 PM

# duplicate

# duplicate

# duplicate



# duplicate

# duplicate

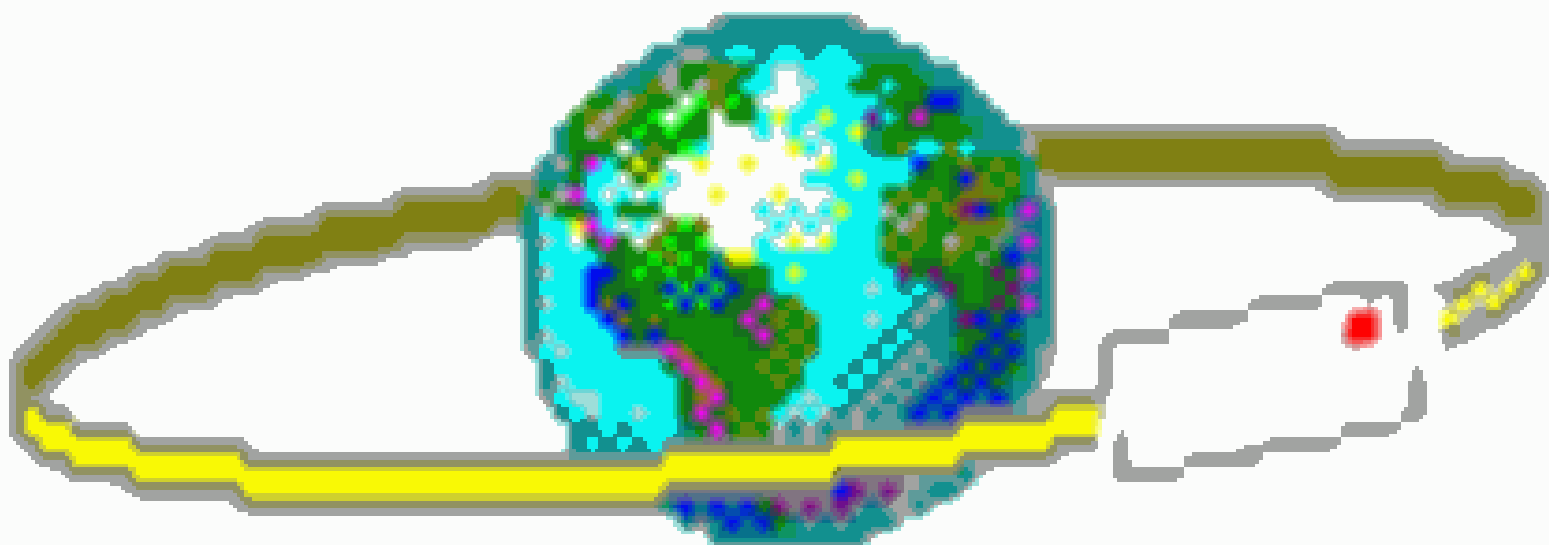
# duplicate

# duplicate

# duplicate

# duplicate

# duplicate





Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Thursday, October 4, 2001 6:21 PM  
**To:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Cc:** Whelan, M Edward III; Helgard\_C.\_Walker@who.eop.gov  
**Subject:** Re: Airline Board: (b) (5)  
**Attachments:** pic09048.pcx

I agree with Ed that (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Brett M. Kavanaugh  
10/04/2001 06:13:21 PM

Record Type: Record

To: "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> cc: helgard c. walker/who/eop@eop bcc:  
Subject: Re: Airline Board: (b) (5) (Document link: Helgard  
C. Walker)

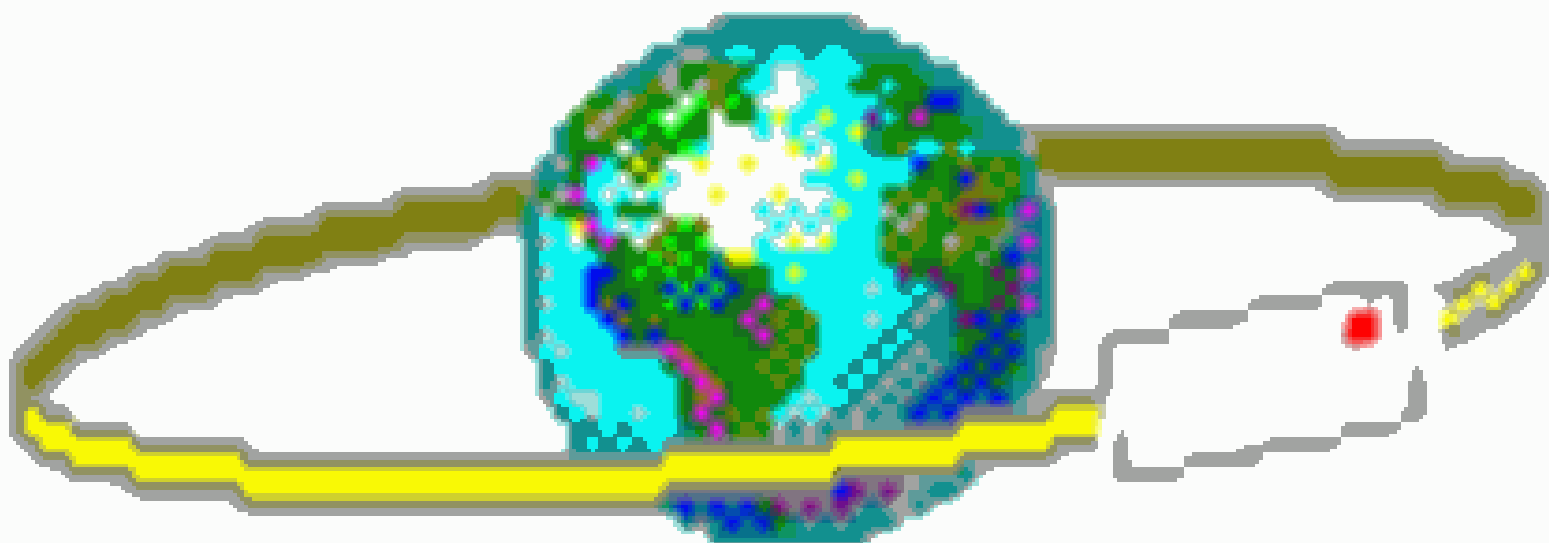
I think (b) (5).

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 06:02:36 PM  
pic09048.pcx)

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

# duplicate



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Thursday, October 4, 2001 6:26 PM  
**To:** Jay\_P.\_Lefkowitz@omb.eop.gov  
**Cc:** Whelan, M Edward III; Helgard\_C.\_Walker@who.eop.gov;  
Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic30385.pcx

Duly considered. (b) (5) .

Jay P. Lefkowitz  
10/04/2001 06:23:40 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Brett M. Kavanaugh)

(b) (5)

Brett M. Kavanaugh  
10/04/2001 06:18:08 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: P (b) (5) Airline Board (Document  
link: Jay P. Lefkowitz)

seems simple and right to me

Helgard C. Walker  
10/04/2001 06:14:24 PM

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Brett M. Kavanaugh)

Here's a version based on our prior language:

" (b) (5)  
"  
"

(b) (5)  
"

Jay P. Lefkowitz  
10/04/2001 06:04:27 PM

Record Type: Record

To: "Whelan, M Edward III" <M.Edward.Whehan@usdoj.gov> cc: See the distribution list at the bottom  
of this message bcc:  
Subject: RE: OLC: P (b) (5) Airline Board (Document  
link: Helgard C. Walker)

Ed:

Just had a long talk with David Walker and (b) (5)  
"  
"

Can you improve on this?

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 05:55:56 PM  
pic30385.pcx)

Record Type: Record

# duplicate

# duplicate

# duplicate



# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

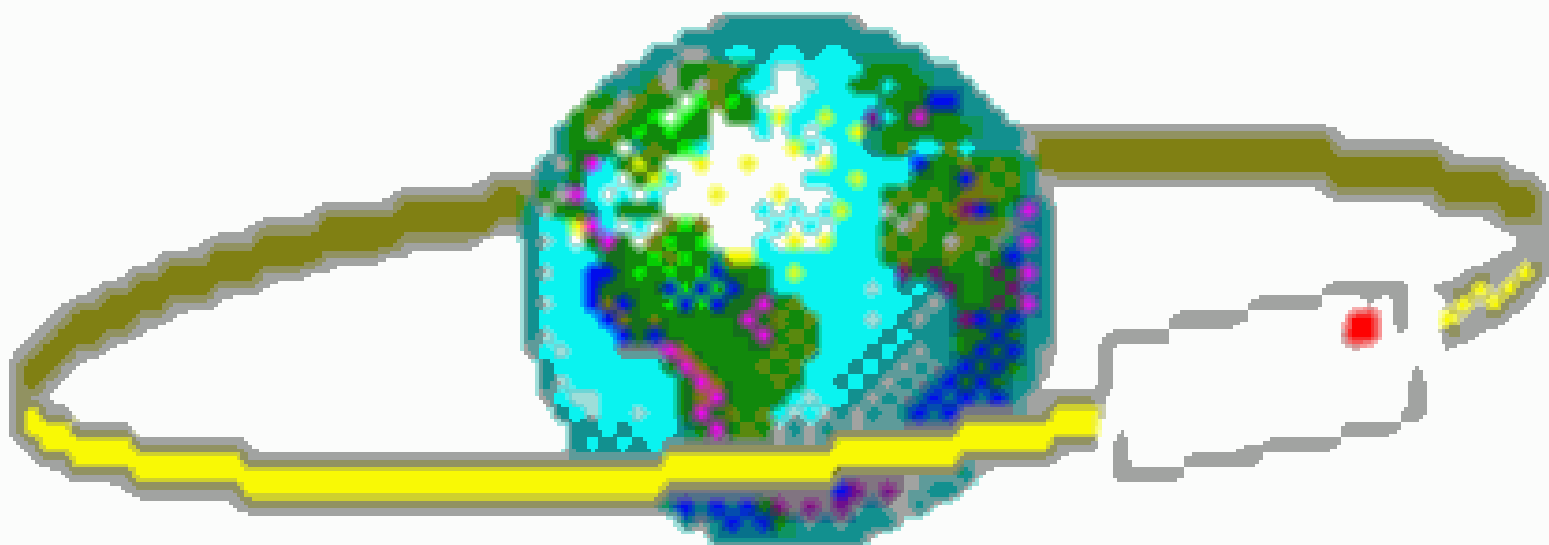
# duplicate

# duplicate

# duplicate



duplicate



Jay\_P.\_Lefkowitz@omb.eop.gov

---

**From:** Jay\_P.\_Lefkowitz@omb.eop.gov  
**Sent:** Thursday, October 4, 2001 6:30 PM  
**To:** Helgard\_C.\_Walker@who.eop.gov  
**Cc:** Whelan, M Edward III; Brett\_M.\_Kavanaugh@who.eop.gov;  
Helgard\_C.\_Walker@who.eop.gov; Jay\_P.\_Lefkowitz@omb.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic10945.pcx

Agree completely. I just sent it around to "consult"

Helgard C. Walker  
10/04/2001 06:28:50 PM

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: RE: OLC: (b) (5) Airline Board (Document  
link: Jay P. Lefkowitz)

My opinion is (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Jay P. Lefkowitz  
10/04/2001 06:23:40 PM

Record Type: Record

---

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate



# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

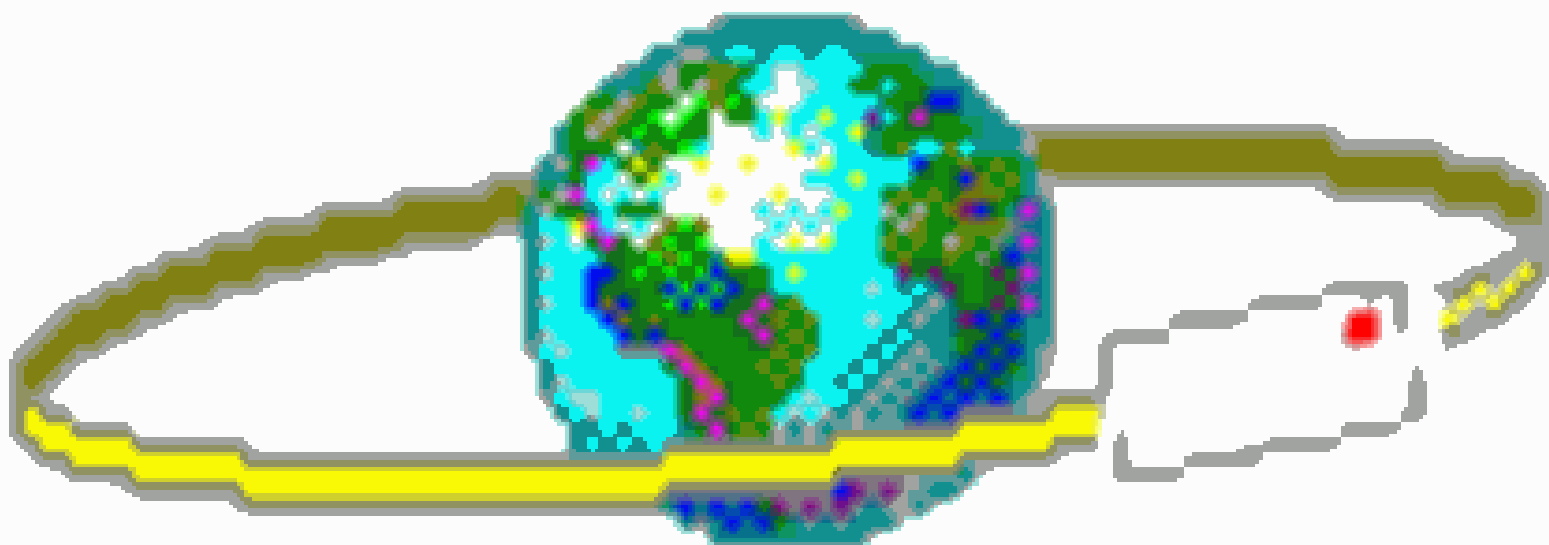
duplicate

N

N

N





Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Thursday, October 04, 2001 6:35 PM  
**To:** Whelan, M Edward III  
**Cc:** Jay\_P.\_Lefkowitz@omb.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic31661.pcx

I think, (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 06:28:27 PM  
pic31661.pcx)

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP, Brett M. Kavanaugh/WHO/EOP

cc: Helgard C. Walker/WHO/EOP, Rebecca A. Beynon/OMB/EOP, Joel D.

Kaplan/WHO/EOP, Steven D. Aitken/OMB/EOP Subject: RE: OLC: (b) (5)  
Airline Board

(b) (5)

-----Original Message-----

From: Jay\_P.\_Lefkowitz@omb.eop.gov [mailto:Jay\_P.\_Lefkowitz@omb.eop.gov]  
Sent: Thursday, October 04, 2001 6:25 PM

duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate



# duplicate

# duplicate

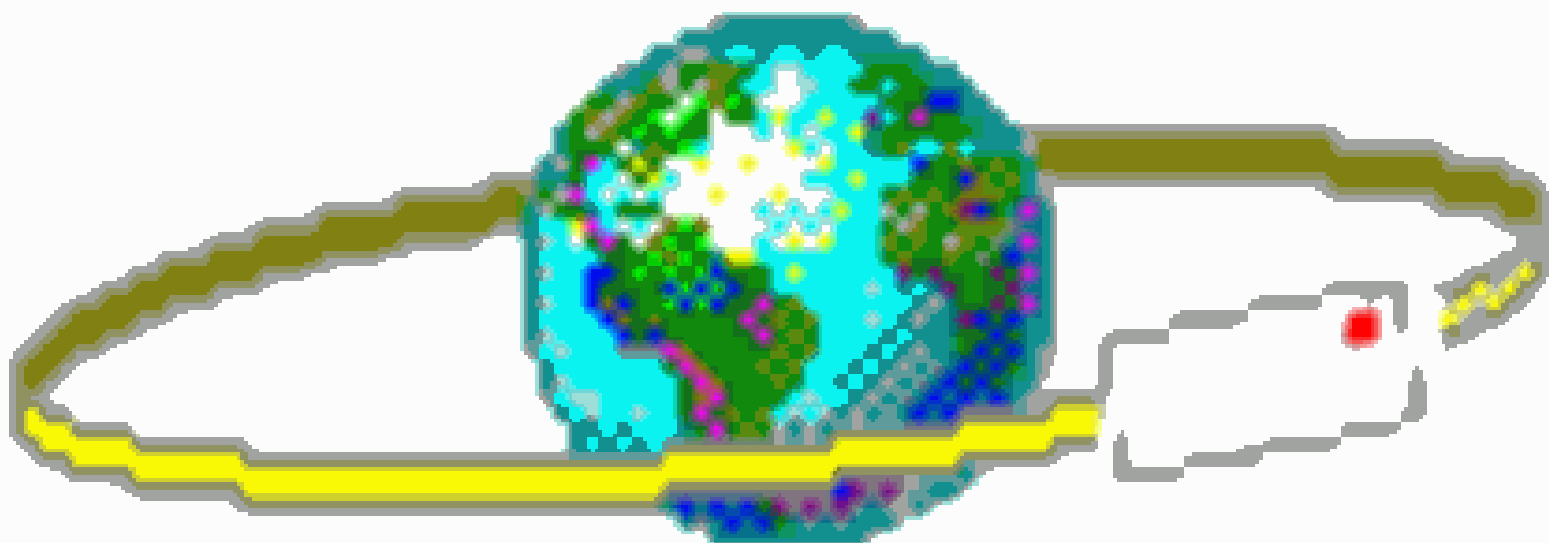
# duplicate

# duplicate

# duplicate

# duplicate

# duplicate





Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Thursday, October 04, 2001 6:42 PM  
**To:** Whelan, M Edward III  
**Cc:** Brett\_M.\_Kavanaugh@who.eop.gov; Jay\_P.\_Lefkowitz@omb.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
**Subject:** RE: OLC: (b) (5) Airline Board  
**Attachments:** pic26691.pcx

Great idea. So here's the current version:

" (b) (5) :  
:  
:  
."

(Sentence got unwieldy so I had to break it up.)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/04/2001 06:27:01 PM  
pic26691.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Helgard C. Walker/WHO/EOP@EOP

cc: Jay P. Lefkowitz/OMB/EOP@EOP, Rebecca A. Beynon/OMB/EOP@EOP, Joel D.  
Kaplan/WHO/EOP@EOP, Steven D. Aitken/OMB/EOP@EOP Subject: RE: OLC: (b) (5) :  
(b) (5) Airline Board

I like Helgi's language, too. We might add " (b) (5) :  
(b) (5) at the end.

-----Original Message-----

From: Brett\_M.\_Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Thursday, October 04, 2001 6:21 PM  
To: Helgard\_C.\_Walker@who.eop.gov  
Cc: Whelan, M Edward III; Jay\_P.\_Lefkowitz@omb.eop.gov;  
Helgard\_C.\_Walker@who.eop.gov; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov; Joel\_D.\_Kaplan@who.eop.gov;  
Steven\_D.\_Aitken@omb.eop.gov  
Subject: RE: OLC: (b) (5) Airline Board

seems simple and right to me

Helgard C. Walker  
10/04/2001 06:14:24 PM

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate

# duplicate



# duplicate

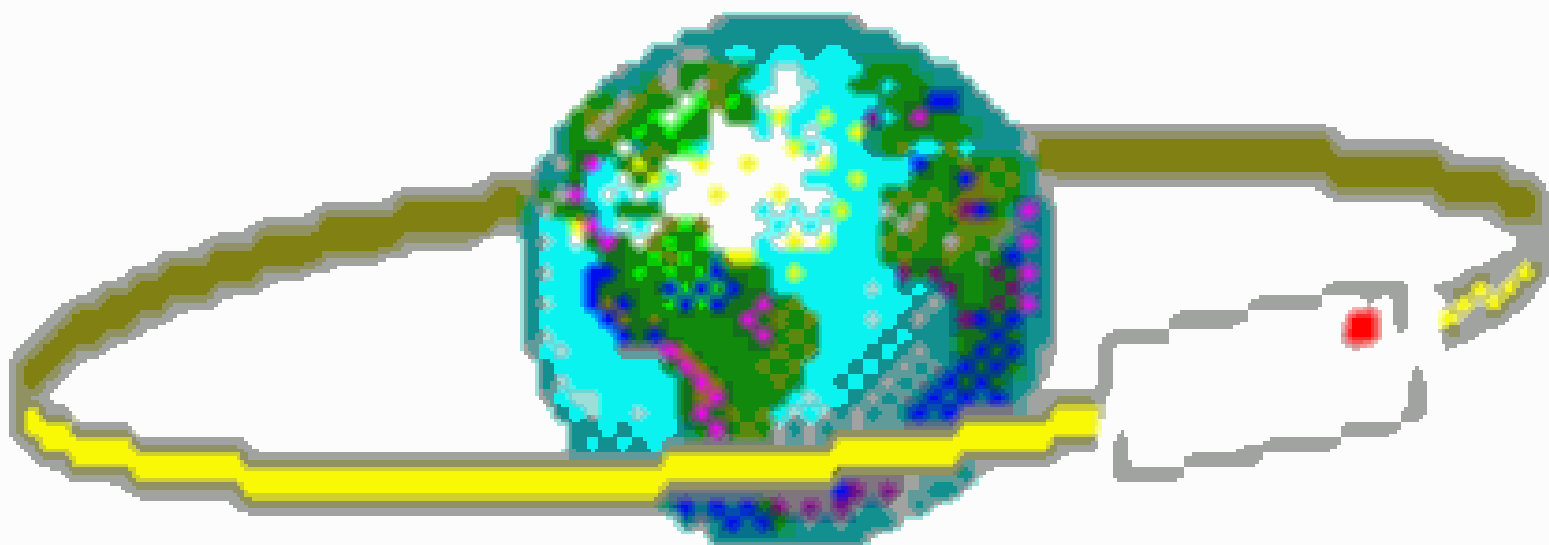
# duplicate

# duplicate

# duplicate

---

# duplicate



Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Thursday, October 04, 2001 8:27 PM  
**To:** 'Helgard\_C.\_Walker@who.eop.gov'; 'Jay\_P.\_Lefkowitz@omb.eop.gov'  
**Cc:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Subject:** RE: Proposed Language

(b) (5)

-----Original Message-----

From: Helgard\_C.\_Walker@who.eop.gov  
[mailto:Helgard\_C.\_Walker@who.eop.gov]  
Sent: Thursday, October 04, 2001 7:31 PM  
To: Jay\_P.\_Lefkowitz@omb.eop.gov  
Cc: Whelan, M Edward III; Brett\_M.\_Kavanaugh@who.eop.gov  
Subject: Re: Proposed Language

(b) (5)

. What's your view, Ed?

PS I think you had Brett's old email, so I've copied him.

Jay P. Lefkowitz  
10/04/2001 07:27:22 PM

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP  
cc: brett\_kavanaugh@dc.kirkland.com  
bcc:  
Subject: Re: Proposed Language (Document link: Helgard C. Walker)

It's a good question, but I don't think it's a problem.

However, I'll look into it a little more.

Helgard C. Walker  
10/04/2001 07:22:41 PM

Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP  
cc: brett\_kavanaugh@dc.kirkland.com  
bcc:  
Subject: Re: Proposed Language (Document link: Jay P. Lefkowitz)

(b) (5)

A large rectangular area of the email body is completely redacted with black ink, obscuring several lines of text.

Jay P. Lefkowitz  
10/04/2001 07:16:35 PM

Record Type: Record

To: Brett\_Kavanaugh@dc.kirkland.com, Helgard C. Walker/WHO/EOP@EOP

cc:  
Subject: Proposed Language

GAO's negotiating with us now. Here's their bid, followed by my counterproposal, which I haven't sent yet.

----- Forwarded by Jay P. Lefkowitz/OMB/EOP on 10/04/2001 07:14 PM -----  
--

(Embedded  
image moved Anthony H Gamboa <GamboaA@gao.gov>  
to file: 10/04/2001 06:48:19 PM  
pic30604.pcx)



Record Type: Record

To: Jay P. Lefkowitz/OMB/EOP@EOP

cc:

Subject: Proposed Language

(f) For purposes of any operational and decisionmaking functions, the "Board" means the voting members of the Air Transportation Stabilization Board established under Section 102 of the Act. The voting members of the Board are the Chairman of the Board of Governors of the Federal Reserve System (who is the Chairman of the Board), the Secretary of the Treasury and the Secretary of Transportation, or their designees. The Comptroller General, who is a nonvoting member, will not participate in the review, operations, or deliberations of the Board but will provide such audit and evaluation support as the Board may request.

(f) (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Helgard\_C.\_Walker@who.eop.gov

---

**From:** Helgard\_C.\_Walker@who.eop.gov  
**Sent:** Friday, October 05, 2001 6:18 PM  
**To:** Whelan, M Edward III  
**Cc:** Hart, Rosemary; Brett\_M.\_Kavanaugh@who.eop.gov;  
Rebecca\_A.\_Beynon@omb.eop.gov  
**Subject:** RE: Airline Loan Guarantees  
**Attachments:** pic32468.pcx

I think it's too late, as the regs have already gone out the door, but I'll copy Rebecca so that we can lay a marker on this point as possible action in any supplemental regs issued by the Board.

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/05/2001 05:10:11 PM  
pic32468.pcx)

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP

cc: "Hart, Rosemary" <Rosemary.Hart@usdoj.gov> (Receipt Notification  
Requested), Brett M. Kavanaugh/WHO/EOP@EOP Subject: RE: Airline Loan Guarantees

Sorry -- one additional suggestion: Changing "(b) (5)" in the last line to "(b) (5)" would be even better.

-----Original Message-----

From: Whelan, M Edward III  
Sent: Friday, October 05, 2001 5:06 PM  
To: 'Helgard\_C.\_Walker@who.eop.gov'  
Cc: Hart, Rosemary; 'Brett\_M.\_Kavanaugh@who.eop.gov'  
Subject: RE: (b) (5)

I'm fine on (b) (5).

With respect to (b) (5)

-----Original Message-----

From: Helgard\_C.\_Walker@who.eop.gov  
[mailto:Helgard\_C.\_Walker@who.eop.gov]  
Sent: Friday, October 05, 2001 4:25 PM  
To: Whelan, M Edward III  
Cc: Hart, Rosemary; Brett\_M.\_Kavanaugh@who.eop.gov  
Subject: RE: Airline Loan Guarantees

Ed, here's the language we wound up with on (b) (5) :

(b) (5)

Since you were satisfied with prior, similar versions of this, I take it you also think this language is (b) (5) . Is that correct? I just wanted to nail this down, since you felt (b) (5)

(b) (5)

Brett, I am copying you to see if you know anything about (b) (5)

HCW  
HCW

(Embedded

image moved "Whelan, M Edward III" <M.Edward.Whehan@usdoj.gov> to file: 10/05/2001 01:31:43 PM pic15212.pcx)

Record Type: Record

To: Helgard C. Walker/WHO/EOP@EOP

cc: "Hart, Rosemary" <Rosemary.Hart@usdoj.gov> (Receipt Notification Requested)

Subject: RE: Airline Loan Guarantees

Helgi: Rosemary advises that (b) (5)  
-- Ed

-----Original Message-----

From: Whelan, M Edward III

Sent: Thursday, October 04, 2001 5:20 PM

To: 'Helgard\_C.\_Walker@who.eop.gov'

Cc: Hart, Rosemary

Subject: RE: Airline Loan Guarantees

Helgi:

I suspect that the issues are intertwined: (b) (5)

I think (b) (5), but I look forward to Rosemary's insights on this.

Ed

-----Original Message-----

From: Helgard\_C.\_Walker@who.eop.gov

[mailto:Helgard\_C.\_Walker@who.eop.gov]

Sent: Thursday, October 04, 2001 4:42 PM

To: Yoo, John C

Cc: Whelan, M Edward III; Hart, Rosemary

Subject: RE: Airline Loan Guarantees

Thanks, John. Ed and I have been in heavy email traffic on a related matter, (b) (5). But I could still use some quick and dirty advice on this separate question, (b) (5).

(Embedded  
image moved "Yoo, John C" <John.C.Yoo@usdoj.gov> to file: 10/04/2001 01:09:12 PM pic03958.pcx)

Record Type: Record

To: Helgard C. Walker/WHO/EOP

cc: "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>, "Hart, Rosemary"

<Rosemary.Hart@usdoj.gov>

Subject: RE: Airline Loan Guarantees

Helgi:

I am going to refer this to Ed Whalen, who worked on the airline bailout, and Rosemary Hart, who does executive orders. They should be able to give you an answer pretty quick.

John

-----Original Message-----

From: Helgard\_C.\_Walker@who.eop.gov [mailto:Helgard\_C.\_Walker@who.eop.gov]

Sent: Thursday, October 04, 2001 12:50 PM

To: Yoo, John C

Subject: Re: Airline Loan Guarantees

John -

(b) (5)

Any problems with this? What's the best vehicle? If you could give me a quick read on this, I would greatly appreciate it.

Thanks



Helgi

----- Forwarded by Helgard C. Walker/WHO/EOP on 10/04/2001 12:46 PM -----

Helgard C. Walker  
10/04/2001 12:45:29 PM

Record Type: Record

To: Rebecca A. Beynon/OMB/EOP@EOP  
cc: Jay P. Lefkowitz/OMB/EOP@EOP, Joel D. Kaplan/WHO/EOP@EOP bcc: Records Management@EOP  
Subject: Re: Airline Loan Guarantees (Document link: Helgard C. Walker)

I have looked at this quickly, and my assessment is that (b) (5)

Does DOT have a proposal for us to look at? I also need to talk with my bosses to see how we think (b) (5), as well as get advice from OLC.

I will try and get this done ASAP because I always like to have matters nailed down, although I don't think it's critical that (b) (5) occur by Friday.

None of (b) (5) are going out the door anywhere for quite a while.

HCW

From: Rebecca A. Beynon on 10/04/2001 08:51:24 AM

Record Type: Record

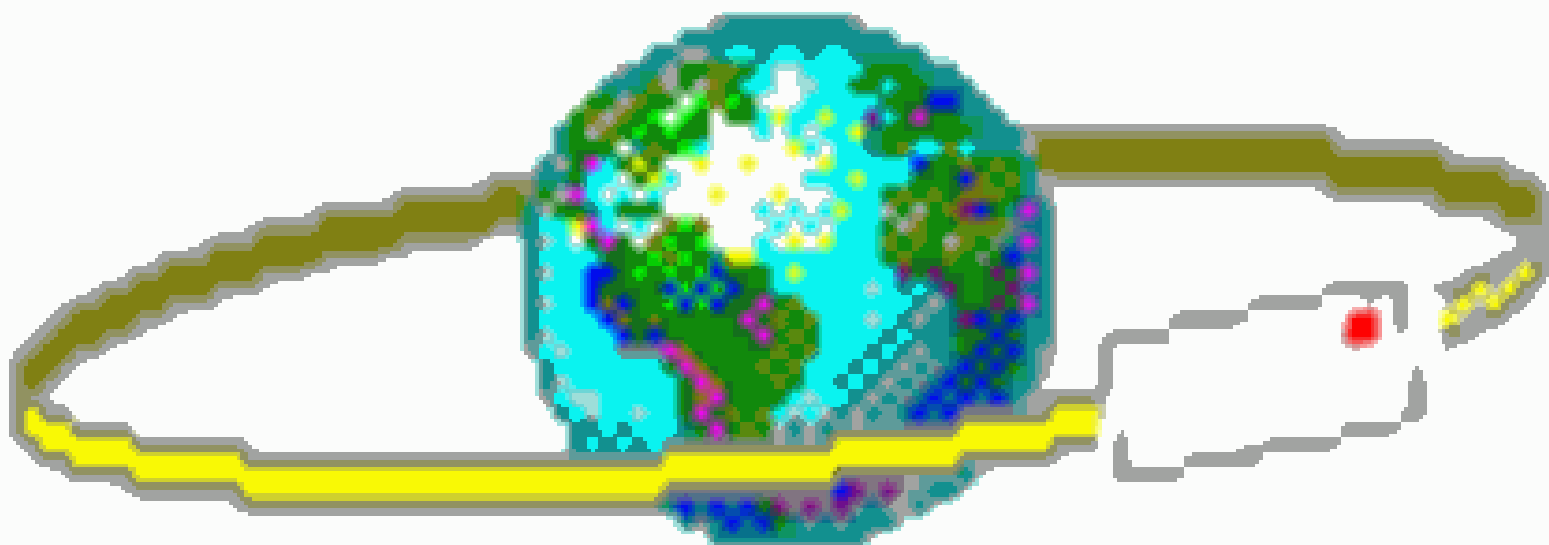
To: Helgard C. Walker/WHO/EOP@EOP

cc: Jay Lefkowitz  
Subject: Airline Loan Guarantees

Helgi - As we discussed yesterday, (b) (5)

(b) (5)

Let me know what you think about this, and what steps, if any, you think are needed to be sure that (b) (5).





Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Wednesday, October 10, 2001 10:25 AM  
**To:** 'Jay\_P.\_Lefkowitz@omb.eop.gov'; 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** 'Rebecca\_A.\_Beynon@omb.eop.gov'  
**Subject:** RE: Victim's Compensation Fund  
**Attachments:** airline 101001.wpd

I attach a draft opinion on this matter. My apologies if the haste shows.

I expect to be unreachable (at the Supreme Court) from around 11:00 to 12:45.

-----Original Message-----

From: Jay\_P.\_Lefkowitz@omb.eop.gov [mailto:Jay\_P.\_Lefkowitz@omb.eop.gov]  
Sent: Tuesday, October 09, 2001 8:57 PM  
To: Brett\_M.\_Kavanaugh@who.eop.gov  
Cc: Whelan, M Edward III; Rebecca\_A.\_Beynon@omb.eop.gov;  
Jay\_P.\_Lefkowitz@omb.eop.gov; michborek@aol.com  
Subject: Re: Victim's Compensation Fund

(b) (5)

thanks

Brett M. Kavanaugh  
10/09/2001 06:47:42 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP  
cc: See the distribution list at the bottom of this message bcc:  
Subject: Re: Victim's Compensation Fund (Document link: Jay P. Lefkowitz)

Just to be clear, (b) (5).

Record Type: Record

(b) (5)

Record Type: Record

I'll talk to you soon. Thanks very much.

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Message Copied To: \_\_\_\_\_

m.edward.whelan@usdoj.gov @ inet  
john.yoo@usdoj.gov @ inet  
jonathan.cedarbaum@usdoj.gov @ inet  
Jay P. Lefkowitz/OMB/EOP@EOP  
michborek@aol.com @ inet

Message Copied To: \_\_\_\_\_

rebecca a. beynon/omb/eop@eop  
m.edward.whelan@usdoj.gov @ inet  
john.yoo@usdoj.gov @ inet  
jonathan.cedarbaum@usdoj.gov @ inet  
jay p. lefkowitz/omb/eop@eop  
michborek@aol.com @ inet

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Monday, October 15, 2001 7:22 PM  
**To:** Whelan, M Edward III  
**Subject:** RE: Presidential Libraries Act  
**Attachments:** pic24954.pcx

No.

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/15/2001 05:35:40 PM  
pic24954.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

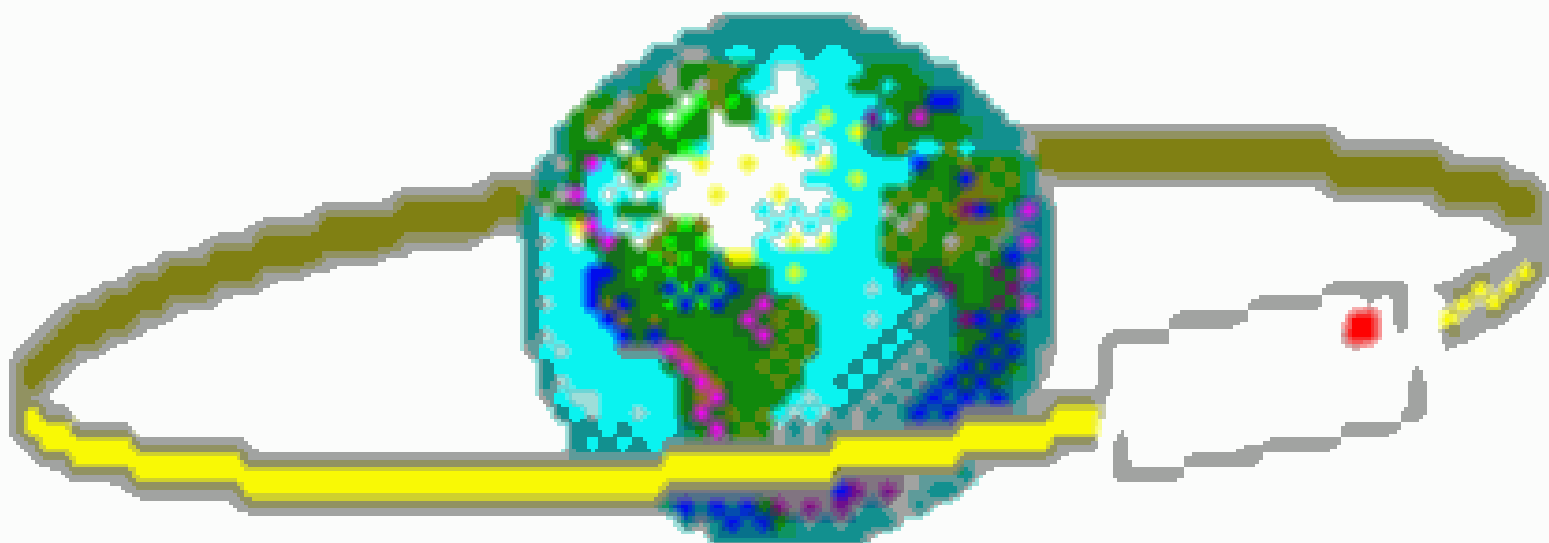
Subject: RE: Presidential Libraries Act

May Paul consult with the Archivist's office on this?

-----Original Message-----

From: Whelan, M Edward III  
Sent: Monday, October 15, 2001 3:37 PM  
To: 'Kavanaugh, Brett'  
Subject: [REDACTED] (b) (5)

We don't have anything in the can on this. I've asked Paul Colborn to prepare [REDACTED] (b) (5)  
[REDACTED]. Let me know your deadline.



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Monday, October 15, 2001 9:00 PM  
**To:** Whelan, M Edward III  
**Subject:** Re: Presidential Libraries Act  
**Attachments:** pic07731.pcx

this week, if possible, thanks (no on Archives consultation)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/15/2001 03:36:40 PM  
pic07731.pcx)

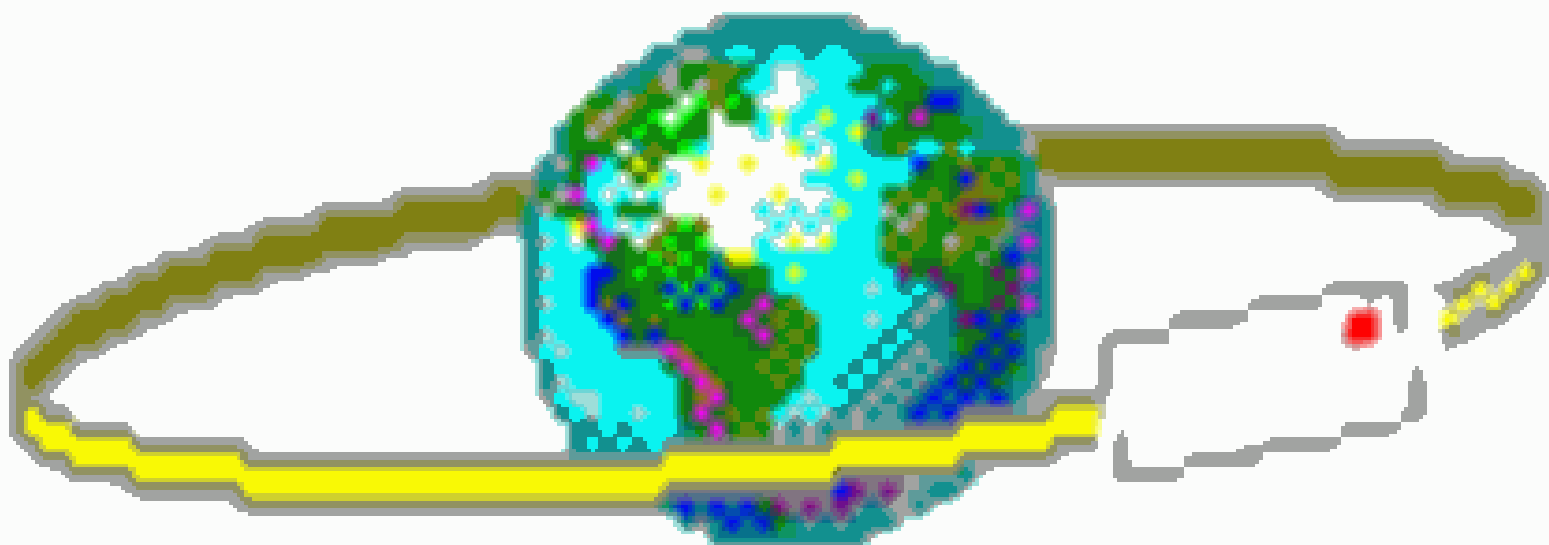
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Presidential Libraries Act

We don't have anything in the can on this. I've asked Paul Colborn to prepare (b) (5)  
. Let me know your deadline.





Colborn, Paul P

---

**From:** Colborn, Paul P  
**Sent:** Wednesday, October 17, 2001 10:05 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** FW: (b) (5) OA  
**Attachments:** (b) (5).doc

Brett: Could you please fax me (at 305-8524) the (b) (5) and (b) (5) referred to in the attached email? I already have the materials sent to Dawn Johnsen in 1994. Thanks.

-- Paul

cc: Ed

-----Original Message-----

From: Whelan, M Edward III  
Sent: Tuesday, October 16, 2001 5:14 PM  
To: Colborn, Paul P  
Subject: FW: (b) (5) OA

-----Original Message-----

From: Brett\_M.\_Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Tuesday, October 16, 2001 5:11 PM  
To: Whelan, M Edward III  
Subject: (b) (5) OA

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/16/2001 05:10 PM -----  
-----

Catherine S. Anderson  
10/16/2001 05:09:15 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP



cc:

Subject: (b) (5) OA

Brett: I am sending you the following materials in response to OLC's request:

(See attached file: (b) (5) .doc)

(b) (5)

[The following text is redacted with black bars]

[REDACTED]  
[REDACTED] (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] In any event, to the extent that OLC does not already have copies, the materials may be helpful.

Let me know if you need any additional information. After OLC has an opportunity to review the materials, it may be helpful to meet with them to discuss further. Kate

Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Wednesday, October 17, 2001 3:00 PM  
**To:** 'Kavanaugh, Brett'  
**Subject:** FW: Hatch Act question

Brett:

Your question whether (b) (5) is proving more complicated than expected. Here's a brief overview of OLC's current thinking:

1. On the one hand: (b) (5)  
[Redacted text block]
2. On the other hand: (b) (5)  
[Redacted text block]

I'm not sure that this is readily amenable to oral resolution. Let's discuss at your convenience.

Ed

Dinh, Viet

---

**From:** Dinh, Viet  
**Sent:** Friday, October 19, 2001 5:42 PM  
**To:** Whelan, M Edward III; Newstead, Jennifer  
**Cc:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Subject:** RE: legislative tweak to 13 USC 9

No. But good idea. Should we consider [REDACTED] (b) (5)  
[REDACTED] ?

-----Original Message-----

**From:** Whelan, M Edward III  
**Sent:** Friday, October 19, 2001 4:53 PM  
**To:** Dinh, Viet; Newstead, Jennifer  
**Subject:** RE: legislative tweak to 13 USC 9

Does the approved legislative package do anything on 13 USC 9?

-----Original Message-----

**From:** Whelan, M Edward III  
**Sent:** Thursday, October 04, 2001 1:12 PM  
**To:** Dinh, Viet; Newstead, Jennifer  
**Subject:** legislative tweak to 13 USC 9  
**Importance:** High

Viet and Jennifer:

Brett Kavanaugh has asked me to pass along the following: [REDACTED] (b) (5)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Here's my first stab at a legislative fix:

[REDACTED] (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]

Ed

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Tuesday, October 23, 2001 9:48 AM  
**To:** Whelan, M Edward III  
**Subject:** Re: OPM reg question  
**Attachments:** pic26953.pcx

no, (b) (5) and (b) (5) as applied to the people identified in (b) (5)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 10/23/2001 09:32:26 AM  
pic26953.pcx)

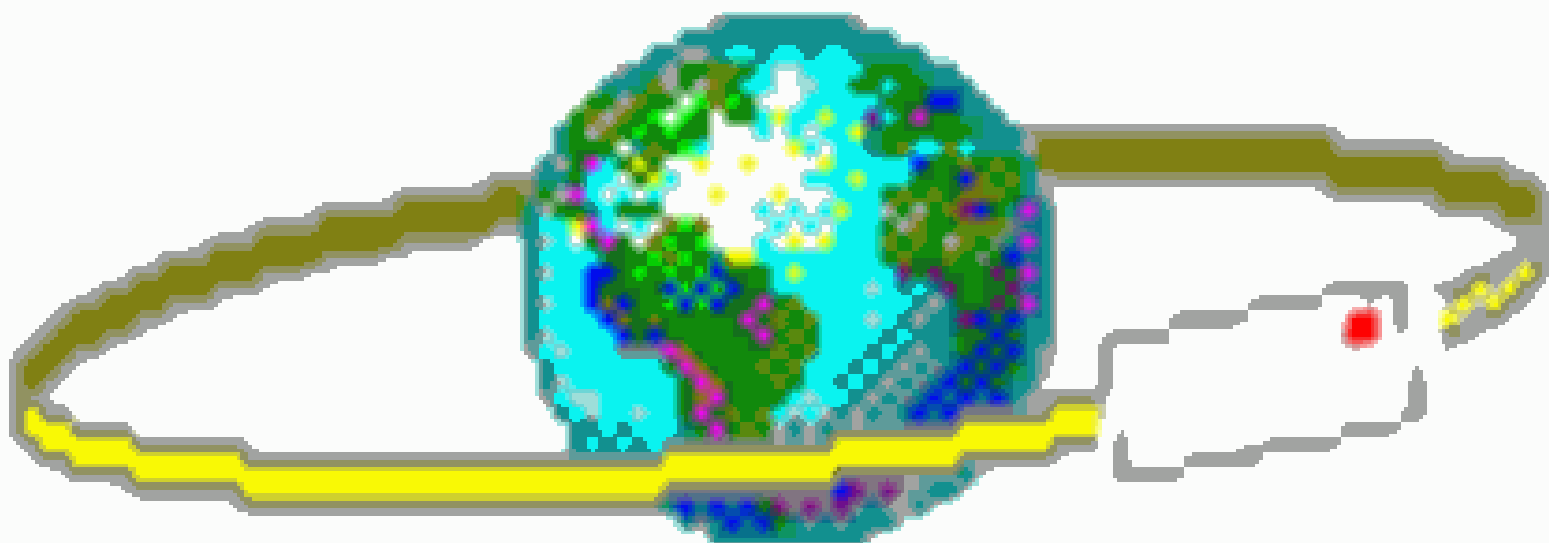
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP

cc:

Subject: OPM reg question

Is the reg that you were asking about (b) (5) ? Or is there some separate OPM reg that addresses the same matter?



Huntington, Clare

---

**From:** Huntington, Clare  
**Sent:** Tuesday, October 23, 2001 6:27 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III; Bradshaw, Sheldon  
**Subject:** (b) (5) Transportation Secretary (b) (5)

Brett,

As I mentioned on the phone this afternoon, (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Please let me know if you have any questions.

Thanks,

Clare Huntington  
514-4487

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Wednesday, October 31, 2001 9:02 AM  
**To:** Whelan, M Edward III  
**Subject:** aviation security

Any thoughts?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 10/31/2001 07:59 AM -----  
-----

Elizabeth S. Dougherty  
10/30/2001 09:29:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: Joel D. Kaplan/WHO/EOP@EOP  
Subject: aviation security

Hi Brett!

I don't know if you have seen (b) (5)

[REDACTED]

We are not sure what this means (and neither are the policy or leg folks at DOT). So we were hoping that you might look into it (with OLC and DOT's help, of course) to see just what it means to (b) (5) [REDACTED] Would you mind looking into this? Please let me know if you have any questions. Thanks very much!



Huntington, Clare

---

**From:** Huntington, Clare  
**Sent:** Wednesday, October 31, 2001 11:35 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** Aviation security proposed amendment  
**Attachments:** Sky Marshalls memo.doc

Brett--

We have looked at the proposed amendment, "Deputization of airport screening personnel," and agree that on it's face it is unclear what the amendment would achieve. In the attached memorandum, you will see that OLC has advise [REDACTED] (b) (5)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

For your convenience, I have set forth the relevant statutory provisions below and have attached the OLC memorandum mentioned above, which was not published or distributed publicly. If you have any questions, please feel free to call me a [REDACTED] (b) (6).

Thanks -- Clare

[REDACTED] (b) (5)  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Friday, November 02, 2001 9:58 AM  
**To:** Whelan, M Edward III  
**Subject:** Addington

Addington was (b) (5); you should call him if you can to explain; thanks

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Friday, November 02, 2001 12:58 PM  
**To:** Whelan, M Edward III  
**Subject:** Re: Tuesday committe hearing  
**Attachments:** pic23170.pcx

John would be great if you cannot do it. House Subcommittee on Government Efficiency. Horn is chair.

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 11/02/2001 11:04:43 AM  
pic23170.pcx)

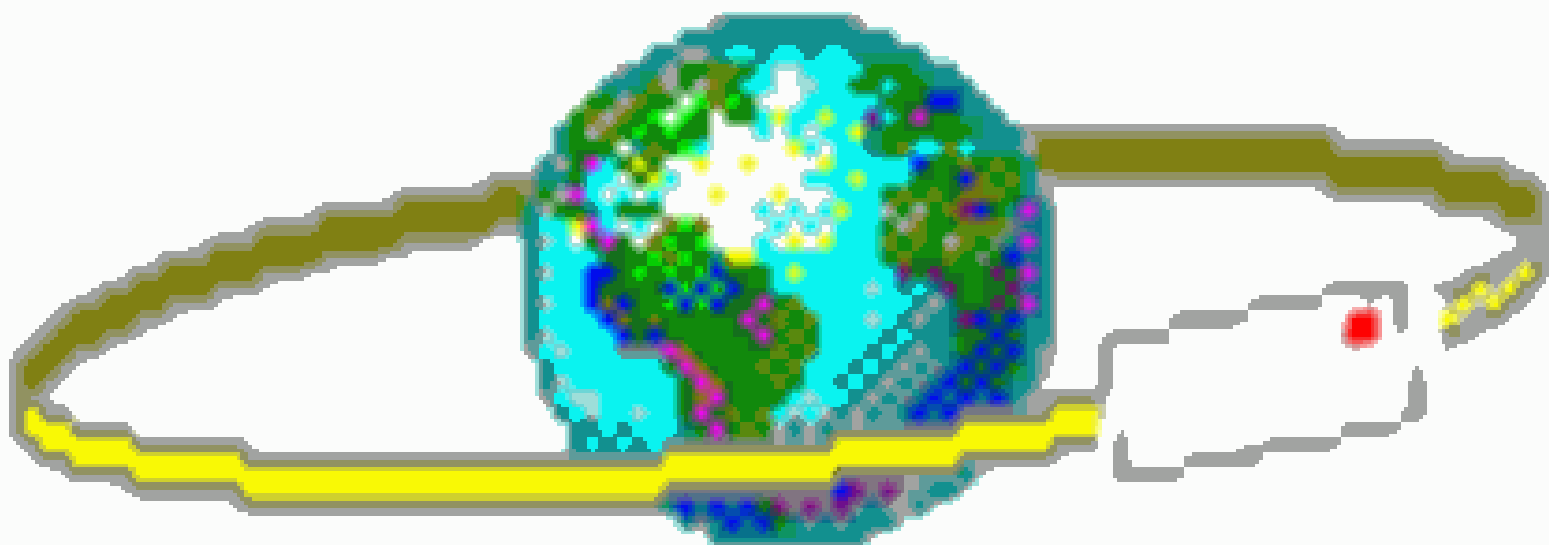
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP

cc:  
Subject: Tuesday committe hearing

If you remain of the view that I might be asked to testify on behalf of the Administration, please give me more info on this hearing (which committee, what time, precise topic, etc.) so that I can get ready.

I'll also need to have a backup plan (b) (6). I'll check with John Yoo. If you have anyone else in mind, let me know.



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Friday, November 02, 2001 4:25 PM  
**To:** Whelan, M Edward III  
**Subject:** PRA  
**Attachments:** presidential records -- letter to Horn.doc; Presidential Records Act talking points November 1.doc

(See attached file: presidential records -- letter to Horn.doc)(See attached file: Presidential Records Act talking points November 1.doc)

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Monday, November 5, 2001 9:10 AM  
**To:** Whelan, M Edward III  
**Subject:** Horn Testimony  
**Attachments:** housepra.doc; pic03985.doc

FYI; [REDACTED] (b) (5)

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/05/2001 09:09 AM -----  
-----

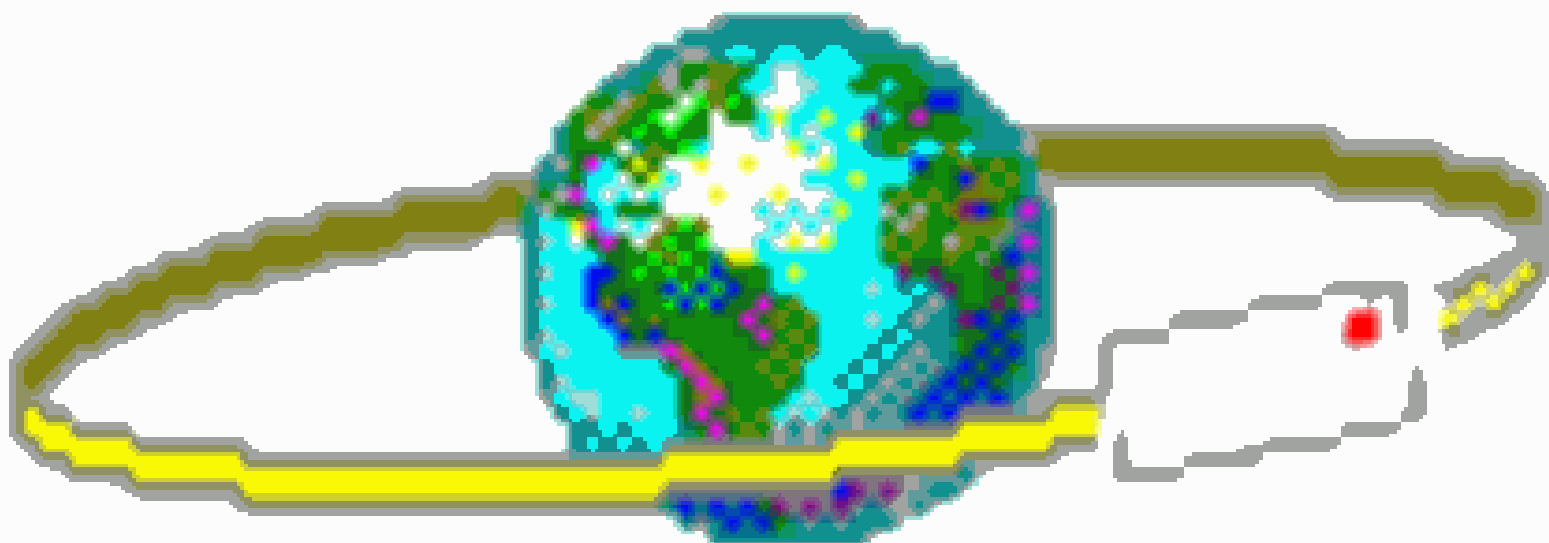
(Embedded  
image moved GaryM Stern <garym.stern@nara.gov>  
to file: 11/02/2001 04:24:24 PM  
pic03985.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP

cc:  
Subject: Horn Testimony

As we discussed, here is the current, final version of the testimony, which includes all of the OLC changes, except that, as we discussed, [REDACTED] (b) (5). Please advise us asap if you want any additional changes in light of the OLC testimony.



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Monday, November 05, 2001 10:10 AM  
**To:** Whelan, M Edward III  
**Subject:** Re: Judge's letter to Congressman Horn  
**Attachments:** Nov 2 letter to Rep Horn re Pres Records.doc

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 11/05/2001 10:09 AM -----  
-----

Elizabeth N. Camp  
11/05/2001 10:06:49 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP  
cc:  
bcc:  
Subject: Re: Judge's letter to Congressman Horn (Document link: Brett M. Kavanaugh)

(See attached file: Nov 2 letter to Rep Horn re Pres Records.doc)

Brett M. Kavanaugh  
11/05/2001 10:02:20 AM

Record Type: Record

To: Elizabeth N. Camp/WHO/EOP@EOP  
cc:  
Subject: Judge's letter to Congressman Horn (Document link: Elizabeth N. Camp)

can you e-mail final version so that I have a computer-file copy; thanks





November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. See *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13<sup>th</sup> or 15<sup>th</sup> or 20<sup>th</sup> year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

The Honorable Steve Horn  
November 2, 2001  
Page Two

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales  
Counsel to the President

The Honorable Steve Horn  
United States House of Representatives  
Washington, DC 20515

cc: The Honorable Janice Schakowsky

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Monday, November 05, 2001 10:24 AM  
**To:** 'Kavanaugh, Brett'  
**Subject:** PRA redraft  
**Attachments:** pra testimony.doc

Brett, attached is a slight redraft. A few comments:

1. [REDACTED] (b) (5)  
[REDACTED]  
[REDACTED]  
[REDACTED]. I have made revisions in several places to [REDACTED] (b) (5)  
[REDACTED].
2. On your comment on [REDACTED] (b) (5)": [REDACTED] (b) (5), I prefer my phrasing. [REDACTED] (b) (5).
3. [REDACTED] (b) (5) [REDACTED]  
[REDACTED].
4. I've added a sentence at the end of the next-to-last paragraph.
5. If you have [REDACTED] (b) (5) handy, could you fax it to me? I want to know [REDACTED] (b) (5)  
[REDACTED].

I've left a message with Maggs.

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Monday, November 05, 2001 3:31 PM  
**To:** 'Kavanaugh, Brett'  
**Subject:** PRA question

(b) (5)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]. Any other thoughts?

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Monday, November 05, 2001 3:42 PM  
**To:** Whelan, M Edward III  
**Subject:** Re: PRA question  
**Attachments:** pic02683.pcx

(b) (5)

just met with Horn et al;

(b) (5)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 11/05/2001 03:30:45 PM  
pic02683.pcx)

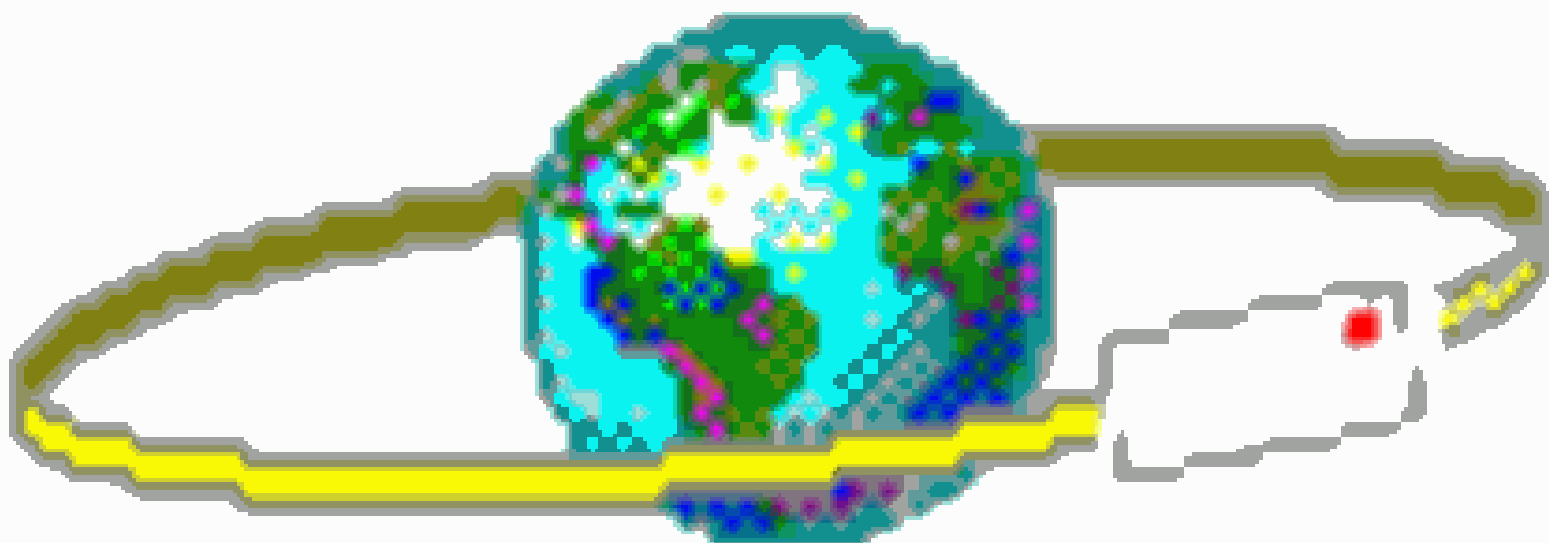
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:  
Subject: PRA question

duplicate

duplicate





**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Monday, November 05, 2001 4:27 PM  
**To:** 'Kavanaugh, Brett'  
**Subject:** FW: Tomorrow's hearing on the Presidential Records Act, Executive Order

FYI

-----Original Message-----

**From:** Burton, Faith  
**Sent:** Monday, November 05, 2001 4:26 PM  
**To:** Whelan, M Edward III; Colborn, Paul P; Thorsen, Carl  
**Subject:** Tomorrow's hearing on the Presidential Records Act, Executive Order

Henry Ray of the Horn Subcommittee just got back to me about this hearing, which he expects will be especially well attended because of the "controversial" Executive Order. He expects that, in addition to Subcommittee Chairman Horn, RMM Schakowsky, Members Ose and Maloney will attend, as well as Chairman Burton and Full Committee RMM Waxman will attend, reportedly because they are concerned that the new EO is inconsistent with the PRA and possibly unconstitutional. The panels are planned as follows:

- I. Archivist Carlin and Anna Nelson, as historian, to explain the EO and provide a policy perspective, respectively;
- II. AU political science professor Mark Roselle; Ed; Peter Shane of Univ. of Pittsburgh law school and Carnegie Mellon, and possibly Scott Nelson, of the Public Citizen Litigation Group. This panel is expected to talk about the legal issues presented by the EO, although he mentioned that Roselle could be moved to the first panel.

Henry expects that Ed will likely get lots of questions about whether the EO is constitutional and consistent with the PRA. Ed and Paul (b) (5) ? They would like to get the prepared statement as soon as it's available.

I mentioned to Henry that this line-up is inconsistent with the usual protocol that all Administration witnesses appear on the first panel, but he thinks this makes more sense. (Actually, protocol is that Admin. witnesses appear on the first panel and only with other Admin. witnesses, although there have been exceptions in special situations). Please let me know (b) (5).

Faith

Brett\_M.\_Kavanaugh@who.eop.gov

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Tuesday, November 06, 2001 8:06 AM  
**To:** Whelan, M Edward III  
**Subject:** Re: PRA question  
**Attachments:** pic28589.pcx

(b) (5)

(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 11/06/2001 07:58:17 AM  
pic28589.pcx)

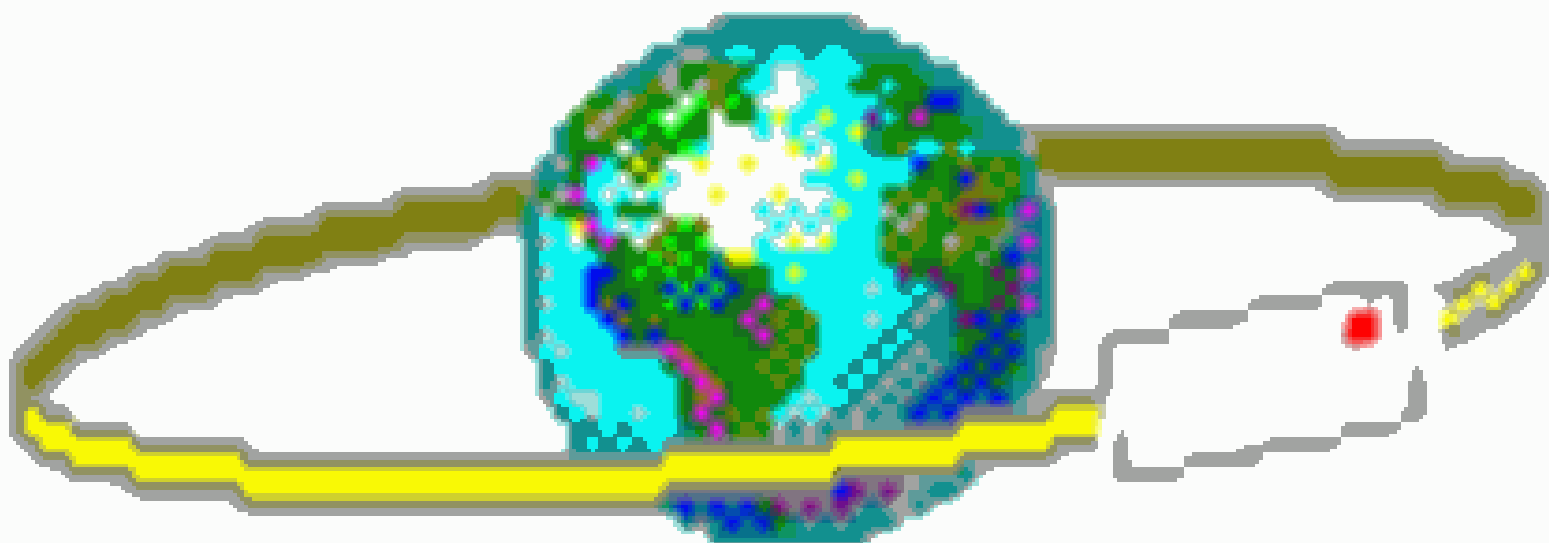
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:  
Subject: PRA question

I need to understand (b) (5)

. Is it accurate to say (b) (5)



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Tuesday, November 06, 2001 8:07 AM  
**To:** Whelan, M Edward III  
**Attachments:** Letter to Horn final.doc

Do you have Judge's letter to Horn? That probably should be part of the package DOJ OLA sends up to Hill and publicly releases. We will FAX over a signed copy if you agree with that assessment (letter is attached below). Have your assistant call Elizabeth Camp at 456-2632 to get the signed copy FAXed over.

(See attached file: Letter to Horn final.doc)

November 2, 2001

Dear Chairman Horn:

I have learned that on November 6 the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations will hold its previously postponed hearing on the Presidential Records Act. In advance of that hearing, we wanted to inform you of a recent development.

President Bush yesterday signed an executive order implementing section 2204(c) of the Presidential Records Act, the provision of the Act that states: "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President." That statutory provision is necessary, of course, to the Act's constitutionality, for the Supreme Court held in 1977 that both former and current Presidents retain the constitutional right to assert privileges over the records of a former President, including after expiration of a 12-year period of presumptive non-disclosure. See *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). Furthermore, Congress contemplated that such constitutional privileges would be available and could be asserted, even after expiration of the 12-year period: At the time the Act was enacted, Senator Percy stated that if a President "believe[d] that the 12-year closure period does not suffice, that President could object to the release of some document in the 13<sup>th</sup> or 15<sup>th</sup> or 20<sup>th</sup> year." Cong. Record S36844 (Oct. 13, 1978).

The Act and its legislative history, as well as the Supreme Court's decision in *Nixon v. Administrator of General Services*, obviously necessitate procedures for former and current Presidents to review Presidential records of a former President and, if they choose, to assert constitutional privileges. President Bush's order responds to that need by establishing clear and sensible procedures for former and current Presidents to exercise their rights and responsibilities in a timely manner. The order replaces an earlier executive order (Executive Order 12667 of January 18, 1989) that had established some skeletal procedures for assertion of privileges over Presidential records and had provided that the *current* President would have the primary responsibility for asserting privileges over the records of a former President. President Bush's new order supercedes that prior order both to set forth clearer procedures and to establish, consistent with the Supreme Court's decision in *Nixon v. Administrator of General Services* and with what the Administration believes to be sound policy and procedure, that *former* Presidents are to have the primary responsibility for asserting privileges over their records. Indeed, section 4 of President Bush's order, which is its most critical component, provides that the current President will defer, absent compelling circumstances, to the decisions of the former President regarding the former President's records. In sum, therefore, the new executive order grants the current President *less* relative authority over the records of a former President than did the prior executive order. We believe this point is critical to a proper understanding of the executive order, and has been largely overlooked in public commentary thus far.

The Honorable Steve Horn  
November 2, 2001  
Page Two

In addition, President Bush's order does not purport to guide former Presidents as to their privilege assertions. Section 9 of the order provides that the order does not purport to indicate "whether and under what circumstances a former President should assert or waive any privilege." Indeed, it would have been improper, if not illegal, for President Bush to attempt to limit or override the constitutional rights and privileges of former Presidents -- rights that have been guaranteed by the Supreme Court. But it also bears mention that Section 2 of the order refers to the historical practice before enactment of the Presidential Records Act by which former Presidents, over time, have released a vast majority of their records even though under no legal obligation to do so. We anticipate that this historical practice will continue. At a minimum, contrary to the claims of some commentators, there is no logical basis for assuming that former Presidents will exercise their constitutional and statutory authority to seek withholding of *privileged* records more aggressively than earlier Presidents -- from President Washington to President Carter -- exercised their plenary and far broader authority to withhold *all* records.

Finally, you should know that the Administration consulted extensively with the National Archives and Records Administration, the Department of Justice, and former Presidents' representatives before President Bush issued this order. We benefited greatly from that consultation.

Please do not hesitate to contact me if you have any questions about the order.

Sincerely,

Alberto R. Gonzales  
Counsel to the President

The Honorable Steve Horn  
United States House of Representatives  
Washington, DC 20515

cc: The Honorable Janice Schakowsky

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Tuesday, November 06, 2001 9:18 AM  
**To:** 'Kavanaugh, Brett'  
**Subject:** FW: protocol

-----Original Message-----

**From:** Burton, Faith  
**Sent:** Tuesday, November 06, 2001 9:16 AM  
**To:** Thorsen, Carl; Whelan, M Edward III  
**Subject:** RE: protocol

Good. The current one panel plan will still leave Ed in the fray with non-governmental witnesses; Henry Ray just reported that they think Brett is OK with the current plan. FB

-----Original Message-----

**From:** Thorsen, Carl  
**Sent:** Tuesday, November 06, 2001 9:13 AM  
**To:** Burton, Faith; Whelan, M Edward III  
**Subject:** RE: protocol

Brett is on the phone with Russell George right now. I'm going to call him directly. Will get back asap.

-----Original Message-----

**From:** Burton, Faith  
**Sent:** Tuesday, November 06, 2001 8:59 AM  
**To:** Whelan, M Edward III; Thorsen, Carl  
**Subject:** RE: protocol

Ed, I agree with your sens (b) (5); I'm happy to pursue this with the Committee but WH participation in this issue will be important. I'll call Kirsten. FB

-----Original Message-----

**From:** Whelan, M Edward III  
**Sent:** Tuesday, November 06, 2001 7:27 AM  
**To:** Burton, Faith; Thorsen, Carl  
**Subject:** protocol

Any further word on the panel structure? The White House (per Kavanaugh) as (b) (5).

The legislative contact at the White House is Kirsten Chadwick.

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Wednesday, November 07, 2001 9:37 AM  
**To:** 'Kavanaugh, Brett'  
**Subject:** postscript

1. Any reactions to the Post story? Would it be worthwhile for someone t (b) (5)  
[REDACTED]?
2. Gary Stern commented after the hearing that he think (b) (5)  
[REDACTED].



**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Friday, November 09, 2001 10:15 AM  
**To:** Whelan, M Edward III  
**Cc:** Colborn, Paul P  
**Subject:** Re: Ose questions  
**Attachments:** pic23275.pcx

(b) (5) . for #2, make sure to cite (b) (5)  
(b) (5) . will you draft up  
answers? let me know what you want me to do and when. thanks again.

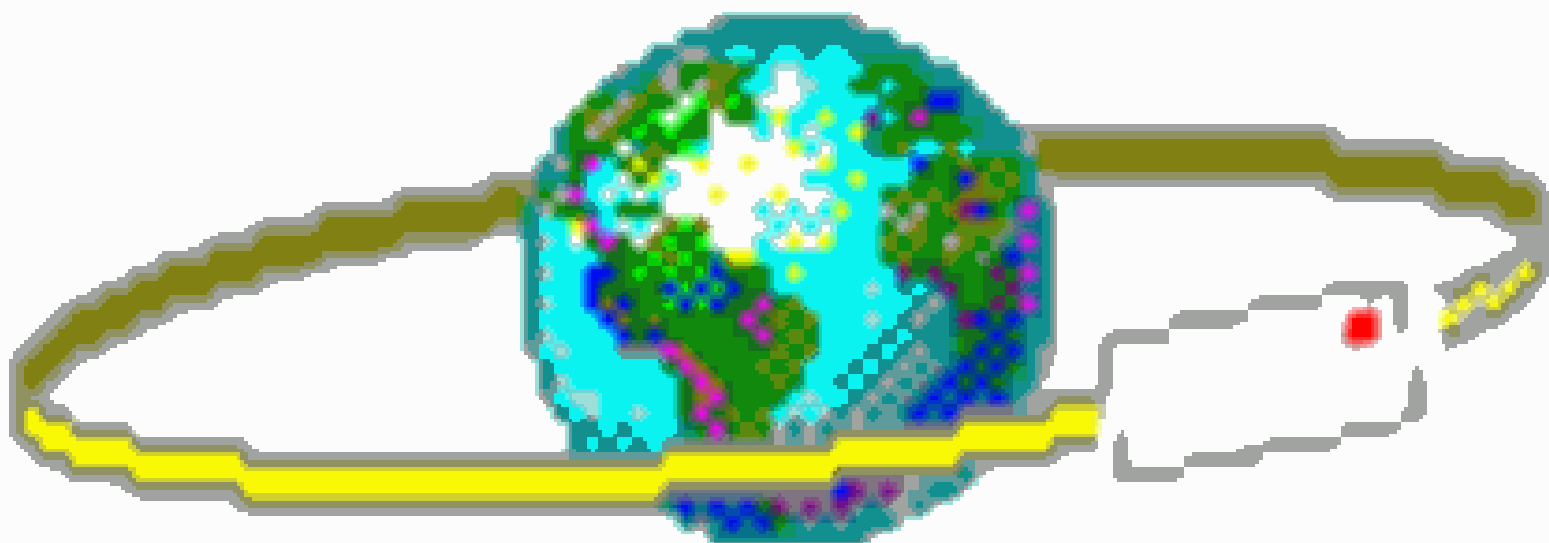
(Embedded  
image moved "Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>  
to file: 11/09/2001 10:08:30 AM  
pic23275.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP

cc: "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> (Receipt Notification  
Requested) (IPM Return Requested)  
Subject: Ose questions

I received follow-up questions from Ose and am sending them to you. Deadline for response is 11/30.



## Whelan, M Edward III

---

**From:** Whelan, M Edward III  
**Sent:** Friday, November 09, 2001 5:36 PM  
**To:** 'Kavanaugh, Brett'  
**Subject:** Clinton

Just in case you haven't already seen it:

Ex-President Clinton Resigns From  
Supreme Court Bar

By James Vicini

WASHINGTON (Reuters) - Former President Bill Clinton, facing the possibility of being barred from practicing law before the U.S. Supreme Court (news - web sites) because of the Monica Lewinsky scandal, has resigned instead, his lawyer said on Friday.

"Former President Clinton (news - web sites) hereby respectfully requests to resign from the bar of this court," his lawyer, David Kendall, said in a two-page letter to the high court's clerk. Kendall did not elaborate on why Clinton decided to resign.

Clinton's resignation from the Supreme Court bar will have little practical impact. Clinton has not practiced before the Supreme Court and was not expected to argue any cases in the future.

On Oct. 1, the Supreme Court suspended Clinton from practicing before the court and gave him 40 days to show why he should not be disbarred.

On Jan. 19, the day before leaving office, Clinton admitted giving false, evasive statements about his relationship with Lewinsky, the former White House intern. As part of a deal with the independent counsel, Clinton accepted a five-year suspension of his license to practice law in Arkansas and a \$25,000 fine.

The Arkansas suspension triggered the high court case entitled, "In the matter of discipline of Bill Clinton."

Kendall had said in October that Clinton would fight disbarment.

In the letter filed on Friday, Kendall said Clinton had been a member in "good standing" of the Arkansas bar for more than 25 years and had never had public or private professional discipline imposed by any bar.

He said Clinton cooperated fully with the Arkansas Supreme Court Committee on Professional Conduct, furnishing all requested information in a timely manner.

Kendall said Clinton's conduct did not relate to a criminal conviction or to the practice of law. It occurred as a private party in a civil

proceeding, he said.

The suspension stemmed from Clinton's answers in response to questions about his relationship with Lewinsky during questioning by lawyers for Paula Jones, who had filed a sexual harassment suit against Clinton.

Kendall said Clinton agreed to the suspension and fine ``to avoid the burden of litigation for all parties, to achieve an expeditious and definite resolution and in acknowledgment that his actions merited censure."

Kendall cited statistics showing that only four of the 570 aution, but did not impose suspension or disbarment, Kendall said.

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Wednesday, November 14, 2001 9:26 AM  
**To:** 'Kavanaugh, Brett'  
**Cc:** Colborn, Paul P  
**Subject:** PRA questions

FYI: I received, and am sending you, two more sets of questions from Chairman Horn. The requested response date is Nov. 20. We'll try to have draft responses for your review by the end of the week.

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Thursday, November 15, 2001 4:56 PM  
**To:** 'Kavanaugh, Brett'  
**Cc:** Colborn, Paul P  
**Subject:** RE: Horn questions

[Please also take a good look at 63.](#)

-----Original Message-----

**From:** Whelan, M Edward III  
**Sent:** Wednesday, November 14, 2001 2:55 PM  
**To:** 'Kavanaugh, Brett'  
**Cc:** Colborn, Paul P  
**Subject:** Horn questions

The questions from Chairman Horn that I'd ask you to take a first cut at are 1-4, 14-15, 58-59, and 69.  
Thanks.

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Wednesday, November 28, 2001 9:31 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** Letter to Congress explaining why Gov. Ridge won't testify

Brett: I'd be happy to draft the letter you requested. Could you email me the latest draft of the generic letter you prepared earlier this year? Thanks.

-- Paul

cc: Ed

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Wednesday, December 05, 2001 2:48 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III; Bybee, Jay  
**Subject:** FW: Assertion of executive privilege on prosecutorial decisionmaking documents  
**Attachments:** conrad.potus4.wpd

[It has come to my attention that I neglected to attach the attachment. Here it is.](#)

-----Original Message-----

**From:** Colborn, Paul P  
**Sent:** Tuesday, December 04, 2001 5:01 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III; Bybee, Jay  
**Subject:** Assertion of executive privilege on prosecutorial decisionmaking documents

Brett: Attached is the current draft of the AG letter to the President. As we discussed, I'm running the traps here to make certain tha (b) (5)

. But all indications so far are tha (b) (5)  
. As we also discussed, I'll prepare a log of the documents. I'll try to do that tomorrow.

-- Paul

cc: Jay, Ed



Brett\_M.\_Kavanaugh@who.eop.gov

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Monday, December 10, 2001 9:53 AM  
**To:** Whelan, M Edward III  
**Cc:** Colborn, Paul P  
**Subject:** Memo

Can you all today prepare a draft memo addressed to Judge Gonzales making clear (b) (5) :

. Any such memo also should make clear, of course, that (b) (5)

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Monday, December 10, 2001 1:51 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Bybee, Jay; Whelan, M Edward III  
**Subject:** executive privilege claim  
**Attachments:** conrad.potus4.wpd; conrad.documentlist.wpd

Brett, fyi, we've submitted the letter to the AG's office for his signature and expect to get it back today some time. Attached are the latest versions of the letter and list of documents.

-- Paul

cc: Jay, Ed

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Monday, December 10, 2001 5:09 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Bybee, Jay; Whelan, M Edward III  
**Subject:** AG letter to President on executive privilege claim

Brett: The AG has signed the letter and it is being faxed to you now. How would you like me to deliver the original? And when can we expect to get a presidential decision? The hearing is currently scheduled for Thursday morning.

-- Paul

cc: Jay, Ed

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Monday, December 10, 2001 5:24 PM  
**To:** 'Kavanaugh, Brett'  
**Subject:** OLC applicant

At your convenience, I would like to speak to you regarding (b) (6).

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Monday, December 10, 2001 5:35 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Bybee, Jay; Whelan, M Edward III  
**Subject:** FW: Current draft of the prepared statement for Thursday.  
**Attachments:** ep.statement.wpd

Brett: [Any comments on the attached?](#)  
-- Paul

-----Original Message-----

**From:** Burton, Faith  
**Sent:** Monday, December 10, 2001 5:28 PM  
**To:** Horowitz, Michael-CRM; Bunnell, Steve; Colborn, Paul P  
**Cc:** Rybicki, James E  
**Subject:** Current draft of the prepared statement for Thursday.

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Tuesday, December 11, 2001 9:19 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Bybee, Jay; Whelan, M Edward III  
**Subject:** executive privilege claim  
**Attachments:** conrad.documentlist.wpd

Brett, per your request I'm faxing you right now the final document list. It's the same as the one I emailed you yesterday. It's also attached here.

You'll notice at the end of the draft testimony I forwarded you yesterday that there is a paragraph about the President's assertion of privilege. Legislative Affairs here has requested th (b) (5)

Although an alternative o (b) (5) is also a possibility, I recommen (b) (5). Let me know your thoughts about this.

-- Paul

cc: Jay, Ed

Brett\_M.\_Kavanaugh@who.eop.gov

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Tuesday, December 11, 2001 12:44 PM  
**To:** Colborn, Paul P  
**Cc:** Bybee, Jay; Whelan, M Edward III  
**Subject:** RE: Executive privilege claim  
**Attachments:** burton memo from president.doc; burton subpoena ARG memo.doc; pic17911.doc

(b) (5) ?

(Embedded  
image moved "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov>  
to file: 12/11/2001 12:36:36 PM  
pic17911.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Bybee, Jay" <Jay.Bybee@usdoj.gov> (Receipt Notification Requested),  
"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov> (Receipt Notification  
Requested)  
Subject: RE: Executive privilege claim

Brett: I have revised your drafts to conform them to changes I made to the AG letter from September.  
The changes reflect (b) (5)

. Because the latter memos included (b) (5)

Also, I emailed you yesterday of Legislative Affairs' preference for (b) (5)  
. I've now learned that their preference has become (b) (5)  
. Let's talk about this when you have a moment. You might want to discuss it directly  
with Dan Bryant or Carl Thorsen. This question may affect how you word (b) (5)

-- Paul

cc: Jay, Ed

-----Original Message-----

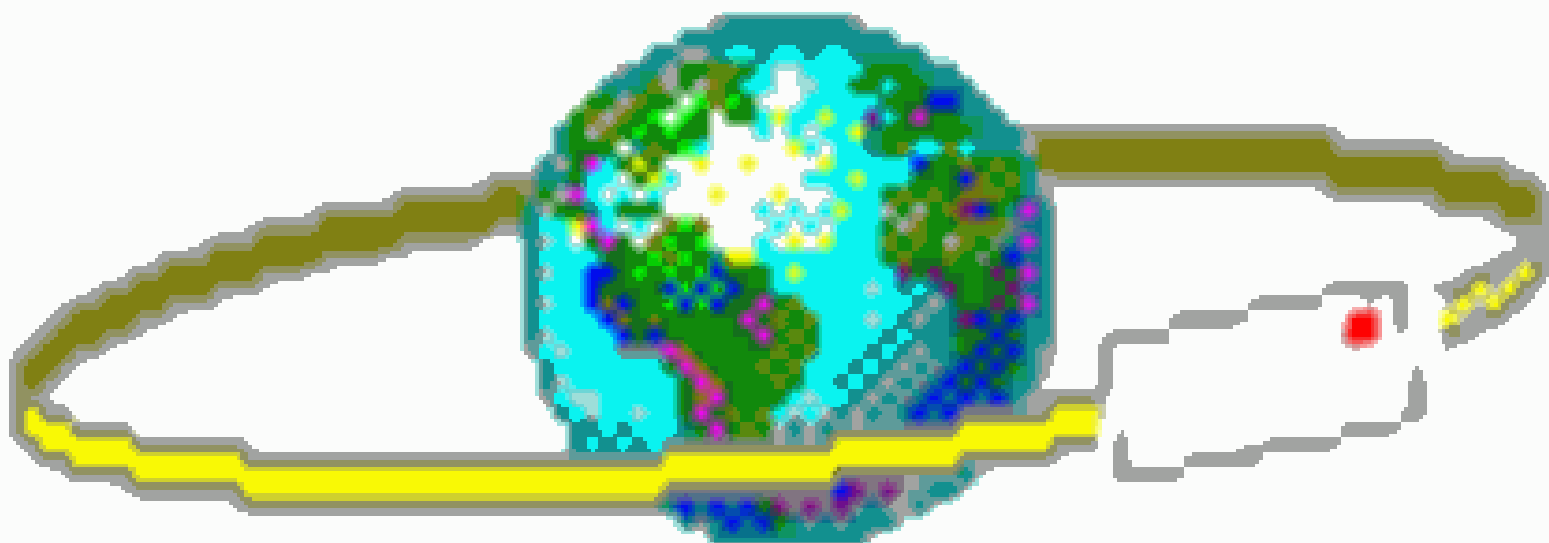
From: Brett\_M.\_Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Tuesday, December 11, 2001 11:52 AM  
To: Colborn, Paul P  
Cc: Bybee, Jay; Whelan, M Edward III  
Subject: Executive privilege claim

Please review as soon as possible the following draft memos from Judge Gonzales to the President and from the President to the Attorney General.

Thanks.

(See attached file: burton memo from president.doc)(See attached file: burton subpoena ARG memo.doc)





Rachel\_L.\_Brand@who.eop.gov

---

**From:** Rachel\_L.\_Brand@who.eop.gov  
**Sent:** Wednesday, December 12, 2001 10:32 AM  
**To:** Whelan, M Edward III; Jan\_E.\_Williams@who.eop.gov  
**Cc:** /DDV=H.\_Christopher\_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/;  
Bradford\_A.\_Berenson@who.eop.gov; Robert\_W.\_Cobb@who.eop.gov;  
Courtney\_S.\_Elwood@who.eop.gov; Noel\_J.\_Francisco@who.eop.gov;  
Brett\_M.\_Kavanaugh@who.eop.gov; Helgard\_C.\_Walker@who.eop.gov;  
Rachel\_L.\_Brand@who.eop.gov; Kyle\_Sampson@who.eop.gov;  
Timothy\_E.\_Flanigan@who.eop.gov; Alberto\_R.\_Gonzales@who.eop.gov  
**Subject:** Chicago Tribune asks for Wilson to step down/LA Times profiles Berry  
**Attachments:** att1.htm; ATTACHMENT.TXT; pic16199.htm

----- Forwarded by Rachel L. Brand/WHO/EOP on 12/12/2001 10:31 AM -----  
---

Anne Womack  
12/12/2001 10:12:50 AM

Record Type: Record

To: Rachel L. Brand/WHO/EOP@EOP

cc:

Subject: Chicago Tribune asks for Wilson to step down/LA Times profiles Berry

Chi Trib is good, LAT is total in the bag for Berry...

----- Forwarded by Anne Womack/WHO/EOP on 12/12/2001 10:12 AM -----  
-

(Embedded  
image moved KArriaga@aol.com  
to file: 12/12/2001 09:37:23 AM  
pic16199.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message Subject: Chicago Tribune asks for Wilson to step down/LA Times profiles Berry

Copyright 2001 Chicago Tribune Company  
Chicago Tribune

December 12, 2001 Wednesday, NORTH SPORTS FINAL EDITION

SECTION: Editorial; Pg. 30; ZONE: N

LENGTH: 353 words

HEADLINE: Berry versus Bush

BODY:

Things haven't been very civil of late at the U. S. Commission on Civil Rights.

The Bush administration wants to replace Commissioner Victoria Wilson with Peter Kirsanow, a Cleveland labor lawyer. The administration says Wilson's term is up. Commission Chairman Mary Frances Berry says it is not. Think this is a genteel dispute? Think again. Last Friday, Berry dared the Bush team to send in federal marshals to seat Kirsanow.

Instead of sending in the marshals, the administration sent Justice Department lawyers to file suit. The administration is asking the federal court to remove Wilson so that Kirsanow can replace her. Wilson was appointed by President Bill Clinton to fill in for Judge A. Leon Higginbotham, who died in December 1998.

The administration quite reasonably figured that Wilson would leave when Higginbotham's term ended on Nov. 29. Board members always have had uniform staggered terms. Four are appointed by the president and four by Congress.

Wrong, says Berry. In a little-publicized move, Congress in October 1994 changed the term of office of each commission member to six years, eliminating provisions that allowed for interim or acting terms. In a letter, Reps. John Conyers, Jr., (D.-Mich.) and Jerrold Nadler (D.-N.Y.), who helped draft the change, say they wanted to uphold the independence of the body from the whims of any particular president or party.

Berry says that's her concern, too. But her resoluteness happens to be blocking a Republican vote that would evenly split the panel.

With the panel in a continuing dispute with Florida Gov. Jeb Bush over undercounts of the state's black voters in the 2000 presidential election, it is hard to believe this feud is free of partisanship. Nor is this an "independent" body. It is a body appointed by the president and Congress.



The law may now be silent on succession, but the spirit of the law suggests its time for Wilson to step aside. Chairman Berry's credibility is at stake.

The commission can be a valuable watchdog in helping Americans to get along, but it should learn to get along with the White House.

Copyright 2001 / Los Angeles Times  
Los Angeles Times

December 12, 2001 Wednesday Home Edition

SECTION: Part A; Part 1; Page 26; National Desk

LENGTH: 953 words

HEADLINE: The World & Nation;  
;  
Civil Rights Chief Shows Equality in Bedeviling Critics

BYLINE: JOHANNA NEUMAN, TIMES STAFF WRITER

DATeline: WASHINGTON

BODY:

Most politicians sit up straighter when the White House calls--an unseen but perceptible salute to power.

Mary Frances Berry is not most politicians.

Outspoken, passionate, tenacious, she is at the moment fighting President Bush's decision to select a new member of the U.S. Commission on Civil Rights, which she chairs. In fact, she told White House Counsel Alberto R. Gonzales that if he wanted to seat a new commissioner, he had better send the U.S. marshals. The case is now in court, but the controversy has revived interest in the 63-year-old Berry, who has served on the commission for nearly half its 44-year history and has angered every administration, Republican and Democrat, since she came on board.

President Carter appointed her in 1980, and she promptly criticized him for repatriating Haitian refugees.

President Reagan tried to fire her, but she took the dismissal to court--and won.

President Clinton took a lashing from her when he withdrew his nomination of Lani Guinier to be assistant attorney general for civil rights.

And Bush saw her accuse his brother, Florida Gov. Jeb Bush, of a pattern of "injustice, ineptitude and inefficiency" that disenfranchised minority voters in the 2000 election.

Critics say her take-no-prisoners style (the online publication Salon.com has called her "a vitriolic brawler") dilutes her effectiveness and that of the commission, which has a \$9-million annual budget and 80 employees but no enforcement powers.

The National Journal's Stuart Taylor says she runs the commission "as a propaganda mill for the victimology wing of the Democratic Party." Berry's fellow commissioner Abigail Thernstrom thinks that the commission's reputation is "in the basement."

But Berry, a historian and writer who was born in segregationist Nashville and survived an early childhood that she says was worthy of Charles Dickens, delights in the specter of being a proud black woman talking truth to power.

"It never occurs to me to worry about whether a president disagrees," she said in an interview. "I wish I could be more diplomatic, more measured. I'm not trying to figure out every day how to be a lightning rod. It's just that I have the courage of my convictions."

If she is rough on opponents, some might argue she has earned the privilege.

Placed in an orphanage by her mother after her father deserted the family, she says her earliest memory is hearing her brother wail for more food. She was 4 years old when her mother reclaimed the children, raising them alone while working as a beautician. Berry deduced that to get what you wanted in life, you had to fight.

She credits teachers at every level for encouraging her to achieve, especially one high school history teacher, Minerva Hawkins, who was a mother figure and friend until she died last year. "She used to say that I was a diamond in the rough, and she was still trying to rub off my rough edges," Berry said.

Perhaps as a result, there are bachelor's and master's degrees from Howard University and a doctorate in history and a law degree from the University of Michigan. Currently the Geraldine R. Segal Professor of American Social Thought at the University of Pennsylvania, Berry is a former chancellor at the University of Colorado at Boulder, where she was also a professor of history and law.

In her academic writings, as in her political appointments (she worked as an education official before being named to the commission), Berry is above all a contrarian. It seems it's not just presidents she enjoys skewering.

She was the lead author in a 1992 book, "Long Memory: The Black Experience in America," which argued that for blacks in the 1960s, "the threat of genocide was real. It was roughly comparable to the threat faced by the Jews in the 1930s."

She is proudest of a book called "Why the ERA Failed," which criticized the feminist movement for a flawed political strategy. "It's all about how the women's movement was outfoxed by [conservative] Phyllis Schlafly," she said.

She wriggles out of labels, saying she is no Democrat, not necessarily a liberal--a thorn by any other name.

And she enraged many listeners of Berkeley's KPFA-FM when, as Pacifica Foundation chairwoman, she initiated management changes that she said were aimed at wresting control of the station from "white male hippies over 50." One broadcaster was arrested on the air, accused of violating her ban on discussing the controversy on the air.

The General Accounting Office, in a 1997 audit, criticized the commission as "an agency in disarray, with limited awareness how its resources are used." Berry's defenders said the GAO was doing the bidding of Republican opponents of affirmative action.



...ing of republican opponents of affirmative action.

Her defense is Arthur S. Flemming. One of the grand old men of Republican politics, who served presidents from Herbert Hoover to Richard Nixon, Flemming was there at the creation, when President Eisenhower decided to create the commission as a means of defusing the civil rights movement that was simmering across the South.

When Carter named Berry to the commission in 1980, Flemming took her under his wing. He would take her to breakfast at the hushed Hay-Adams Hotel and school her on the ways, big and small, of Washington power. Mostly, he told her about the commission's history, about Eisenhower's table-pounding insistence that it get the facts (which is why the panel has subpoena power) and that it maintain its independence.

"No White House, no Justice Department, tells us what to do," Berry said.

"When the day comes and I'm no longer on the commission, I'll know I did what Arthur Flemming taught me: to protect the integrity of the commission."

GRAPHIC: PHOTO: "I wish I could be more diplomatic. . . . It's just that I have the courage of my convictions," says Mary Frances Berry. PHOTOGRAPHER: Associated Press

Copyright 2001 Chicago Tribune Company  
Chicago Tribune

December 12, 2001 Wednesday, NORTH SPORTS FINAL EDITION

SECTION: Editorial; Pg. 30; ZONE: N

LENGTH: 353 words

HEADLINE: Berry versus Bush

BODY:

Things haven't been very civil of late at the U. S. Commission on Civil Rights.

The Bush administration wants to replace Commissioner Victoria Wilson with Peter Kirsanow, a Cleveland labor lawyer. The administration says Wilson's term is up. Commission Chairman Mary Frances Berry says it is not. Think this is a genteel dispute? Think again. Last Friday, Berry dared the Bush team to send in federal marshals to seat Kirsanow.

Instead of sending in the marshals, the administration sent Justice Department lawyers to file suit. The administration is asking the federal court to remove Wilson so that Kirsanow can replace her. Wilson was appointed by President Bill Clinton to fill in for Judge A. Leon Higginbotham, who died in December 1998.

The administration quite reasonably figured that Wilson would leave when Higginbotham's term ended on Nov. 29. Board members always have had uniform staggered terms. Four are appointed by the president and four by Congress.

Wrong, says Berry. In a little-publicized move, Congress in October 1994 changed the term of office of each commission member to six years, eliminating provisions that allowed for interim or acting terms. In a letter, Reps. John Conyers, Jr., (D-Mich.) and Jerrold Nadler (D-N.Y.), who helped draft the change, say they wanted to uphold the independence of the body from the whims of any particular president or party.

Berry says that's her concern, too. But her resoluteness happens to be blocking a Republican vote that would evenly split the panel.

With the panel in a continuing dispute with Florida Gov. Jeb Bush over undercounts of the state's black voters in the 2000 presidential election, it is hard to believe this feud is free of partisanship. Nor is this an "independent" body. It is a body appointed by the president and Congress.

The law may now be silent on succession, but the spirit of the law suggests its time for Wilson to step aside. Chairman Berry's credibility is at stake. The commission can be a valuable watchdog in helping Americans to get along, but it should learn to get along with the White House.

Copyright 2001 / Los Angeles Times  
Los Angeles Times

December 12, 2001 Wednesday Home Edition

SECTION: Part A; Part 1; Page 26; National Desk

LENGTH: 953 words

HEADLINE: The World & Nation;

Civil Rights Chief Shows Equality in Bedeviling Critics

BYLINE: JOHANNA NEUMAN, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

Most politicians sit up straighter when the White House calls—an unseen but perceptible salute to power.

Mary Frances Berry is not most politicians.

Outspoken, passionate, tenacious, she is at the moment fighting President Bush's decision to select a new member of the U.S. Commission on Civil Rights, which she chairs. In fact, she told White House Counsel Alberto R. Gonzales that if he wanted to seat a new commissioner, he had better send the U.S. marshals. The case is now in court, but the controversy has revived interest in the 63-year-old Berry, who has served on the commission for nearly half its 44-year history and has angered every administration, Republican and Democrat, since she came on board.

President Carter appointed her in 1980, and she promptly criticized him for repatriating Haitian refugees.

President Reagan tried to fire her, but she took the dismissal to court—and won.

President Clinton took a lashing from her when he withdrew his nomination of Lani Guinier to be assistant attorney general for civil rights.

And Bush saw her accuse his brother, Florida Gov. Jeb Bush, of a pattern of "injustice, ineptitude and inefficiency" that disenfranchised minority voters in the 2000 election.



Critics say her take-no-prisoners style (the online publication Salon.com has called her "a vitriolic brawler") dilutes her effectiveness and that of the commission, which has a \$9-million annual budget and 80 employees but no enforcement powers.

The National Journal's Stuart Taylor says she runs the commission "as a propaganda mill for the victimology wing of the Democratic Party." Berry's fellow commissioner Abigail Thernstrom thinks that the commission's reputation is "in the basement."

But Berry, a historian and writer who was born in segregationist Nashville and survived an early childhood that she says was worthy of Charles Dickens, delights in the specter of being a proud black woman talking truth to power.

"It ne ver occurs to me to worry about whether a president disagrees," she said in an interview. "I wish I could be more diplomatic, more measured. I'm not trying to figure out every day how to be a lightning rod. It's just that I have the courage of my convictions."

If she is rough on opponents, some might argue she has earned the privilege. Placed in an orphanage by her mother after her father deserted the family, she says her earliest memory is hearing her brother wail for more food. She was 4 years old when her mother reclaimed the children, raising them alone while working as a beautician. Berry deduced that to get what you wanted in life, you had to fight.

She credits teachers at every level for encouraging her to achieve, especially one high school history teacher, Minerva Hawkins, who was a mother figure and friend until she died last year. "She used to say that I was a diamond in the rough, and she was still trying to rub off my rough edges," Berry said.

Perhaps as a resu lt, there are bachelor's and master's degrees from Howard University and a doctorate in history and a law degree from the University of Michigan. Currently the Geraldine R. Segal Professor of American Social Thought at the University of Pennsylvania, Berry is a former chancellor at the University of Colorado at Boulder, where she was also a professor of history and law.

In her academic writings, as in her political appointments (she worked as an education official before being named to the commi ssion), Berry is above all a contrarian. It seems it's not just presidents she enjoys skewering.

She was the lead author in a 1992 book, "Long Memory: The Black Experience in America," which argued that for blacks in the 1980s, "the threat of genocide was real. It was roughly comparable to the threat faced by the Jews in the 1930s."

She is proudest of a book called "Why the ERA Failed," which criticized the feminist movement for a flawed political strategy. "It's all about how the wo men's movement was outfoxed by [conservative] Phyllis Schlafly," she said.

She wiggles out of labels, saying she is no Democrat, not necessarily a liberal—a thorn by any other name.

And she enraged many listeners of Berkeley's KPFA-FM when, as Pacifica Foundation chairwoman, she initiated management changes that she said were aimed at wresting control of the station from "white male hippies over 50." One broadcaster was arrested on the air, accused of violating her ban on discussin g the controversy on the air.

The General Accounting Office, in a 1997 audit, criticized the commission as "an agency in disarray, with limited awareness how its resources are used." Berry's defenders said the GAO was doing the bidding of Republican opponents of affirmative action.

Her defense is Arthur S. Flemming. One of the grand old men of Republican politics, who served presidents from Herbert Hoover to Richard Nixon, Flemming was there at the creation, when President Eisenhower decided to create the commission as a means of defusing the civil rights movement that was simmering across the South.

When Carter named Berry to the commission in 1980, Flemming took her under his wing. He would take her to breakfast at the hushed Hay-Adams Hotel and school her on the ways, big and small, of Washington power. Mostly, he told her about the commission's history, about Eisenhower's table-pounding insistence that it get the facts (which is why the panel has subpoena power) and tha t it maintain its independence.

"No White House, no Justice Department, tells us what to do," Berry said. "When the day comes and I'm no longer on the commission, I'll know I did what Arthur Flemming taught me: to protect the integrity of the commission."

GRAPHIC: PHOTO: "I wish I could be more diplomatic. . . . It's just that I have the courage of my convictions," says Mary Frances Berry.  
PHOTOGRAPHER: Associated Press



Message Sent To: \_\_\_\_\_

Anne Womack/WHO/EOP@EOP  
hfbelmar@yahoo.com  
bblomquist@nationalpress.com  
CKMarshall@sidley.com  
Dorothy.Taft@mail.house.gov  
gfeld@nrsc.org  
kgambrell@upi.com  
mhosen@newsweek.com

Message Copied To: \_\_\_\_\_

Barbara\_Ledeen@src.senate.gov (Barbara Ledeen)  
cloparo@sos.state.oh.us  
crochester@kairos-inc.com  
dkong@ap.org  
thomas.ferraro@reuters.com

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Wednesday, December 12, 2001 10:40 AM  
**To:** Thorsen, Carl; Whelan, M Edward III  
**Cc:** Bryant, Dan; Burton, Faith; Horowitz, Michael-CRM; Bunnell, Steve; 'brett\_m.\_kavanaugh@who.eop.gov'; Dryden, Susan  
**Subject:** RE: Thursday's Hearing  
**Attachments:** burton.issue3.wpd

Issue paper 3 (attached), which we prepared for the AG in early September, presents the approach I favor regarding (b) (5). Slight revisions would be necessary for (b) (5).

-----Original Message-----

**From:** Thorsen, Carl  
**Sent:** Wednesday, December 12, 2001 10:22 AM  
**To:** Thorsen, Carl; Colborn, Paul P; Whelan, M Edward III  
**Cc:** Bryant, Dan; Burton, Faith; Horowitz, Michael-CRM; Bunnell, Steve; 'brett\_m.\_kavanaugh@who.eop.gov'; Dryden, Susan  
**Subject:** RE: Thursday's Hearing

I just spoke with Wilson.

We're on for tomorrow morning @ 10 am. He says the Chairman's focus for this hearing will remain on the Boston docs subpoenaed, our apparent refusal to turn them over, and how to reconcile our position with the Department's history of providing "review" accommodations. (b) (5)

One panel, Horowitz is the only witness.

Also, just fyi, Jim implied that he will not be surprised if exec privilege has been asserted by tomorrow.

It would be great if by today @ 3 pm we have already nailed down (b) (5). We may want (b) (5), but I leave that to comm. experts.

-----Original Message-----

**From:** Thorsen, Carl  
**Sent:** Tuesday, December 11, 2001 5:16 PM  
**To:** Colborn, Paul P; Whelan, M Edward III  
**Cc:** Bryant, Dan; Burton, Faith; Horowitz, Michael-CRM; Bunnell, Steve; 'brett\_m.\_kavanaugh@who.eop.gov'  
**Subject:** Thursday's Hearing

Ed, Paul -

Brett and I just discussed the logistics of (b) (5). I suggested that it might be beneficial to (b) (5), if its appropriate to do so. (Paul, I understood from our conversation that this has been done in the past?) Brett wanted to discuss this

with you and Ed. Could you please get in touch with him to discuss tactical options?

Also, Brett will be there from 3-4 tomorrow for the moot, so let's plan to cover this topic through discussion and q&a during that first hour. Thanks.

Carl Thorsen  
Deputy Assistant Attorney General  
Office of Legislative Affairs  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

**Steve Bunnell**

---

**From:** Steve Bunnell  
**Sent:** Wednesday, December 12, 2001 10:50 AM  
**To:** Colborn, Paul P; Thorsen, Carl; Whelan, M Edward III; Martens, Matthew  
**Cc:** brett\_m.\_kavanaugh@who.eop.gov; Burton, Faith; Bryant, Dan; Dryden, Susan; Horowitz, Michael-CRM  
**Subject:** RE: Thursday's Hearing  
**Attachments:** MEH2.test.wpd

Date: 12/12/2001 10:52 am -0500 (Wednesday)

From: Steve Bunnell

To: "PColborn".WTGATE2.CRMGW; "wCThorsen".WTGATE2.CRMGW;  
"wMWhelan".WTGATE2.CRMGW; Martens, Matthew

CC: "brett\_m.\_kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;  
"FBurton".WTGATE2.CRMGW; "wDBryant".WTGATE2.CRMGW;  
"wSDryden".WTGATE2.CRMGW; Horowitz, Michael-CRM

Subject: RE: Thursday's Hearing

Per the discussion yesterday, attached for your review and comments is my attempt at a (b) (5) version of Michael's prepared statement. For discussion at today's 3 pm meeting.

>>> Thorsen, Carl 12/12/01 10:21AM >>>

duplicate

---

# duplicate

Thorsen, Carl

---

**From:** Thorsen, Carl  
**Sent:** Wednesday, December 12, 2001 12:41 PM  
**To:** Whelan, M Edward III  
**Cc:** Bryant, Dan; 'brett\_m.\_kavanaugh@who.eop.gov'  
**Subject:** RE: Hearing

Ok. However, in our vie [REDACTED] (b) (5)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Thanks for considering this.

-----Original Message-----

**From:** Whelan, M Edward III  
**Sent:** Wednesday, December 12, 2001 12:30 PM  
**To:** Thorsen, Carl  
**Subject:** RE: Hearing

Thanks. We're discussing this now. [REDACTED] (b) (5).

-----Original Message-----

**From:** Thorsen, Carl  
**Sent:** Wednesday, December 12, 2001 12:21 PM  
**To:** Whelan, M Edward III  
**Subject:** Hearing

Ed, a heads-up, Dan just spoke with Jay. He feels very strongly tha [REDACTED] (b) (5)

[REDACTED]  
[REDACTED]

Carl Thorsen  
Deputy Assistant Attorney General  
Office of Legislative Affairs  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Steve Bunnell

---

**From:** Steve Bunnell  
**Sent:** Wednesday, December 12, 2001 6:33 PM  
**To:** Colborn, Paul P; Thorsen, Carl; Whelan, M Edward III; Martens, Matthew  
**Cc:** brett\_m.\_kavanaugh@who.eop.gov; Burton, Faith; Bryant, Dan; Dryden, Susan; Horowitz, Michael-CRM  
**Subject:** RE: Thursday's Hearing  
**Attachments:** MEH3.wpd

Date: 12/12/2001 06:35 pm -0500 (Wednesday)

From: Steve Bunnell

To: "PColborn".WTGATE2.CRMGW; "wCThorsen".WTGATE2.CRMGW;

"wMWhelan".WTGATE2.CRMGW; Martens, Matthew

CC: "brett\_m.\_kavanaugh@who.eop.gov@inetgw".WTGATE2.CRMGW;

"FBurton".WTGATE2.CRMGW; "wDBryant".WTGATE2.CRMGW;

"wSDryden".WTGATE2.CRMGW; Horowitz, Michael-CRM

Subject: RE: Thursday's Hearing

Attached is what should be essentially the final draft of Michael's testimony. Please note I have added

(b) (5)

...

>>> Thorsen, Carl 12/12/01 01:15PM >>>

My comments:

(b) (5)

.

(b) (5)

-- suggest this sentence:

(b) (5)

"

(b) (5)

-- add

(b) (5)

(b) (5)

"

(b) (5)

-----Original Message-----

From: Steve Bunnell

Sent: Wednesday, December 12, 2001 10:50 AM

To: Colborn, Paul P; Thorsen, Carl; Whelan, M Edward III; Martens,

Matthew

Cc: brett\_m.\_kavanaugh@who.eop.gov; Burton, Faith; Bryant, Dan; Dryden, Susan; Horowitz, Michael-CRM  
Subject: RE: Thursday's Hearing

Date: 12/12/2001 10:52 am -0500 (Wednesday)

From: Steve Bunnell

# duplicate



# duplicate

**Thorsen, Carl**

---

**From:** Thorsen, Carl  
**Sent:** Friday, December 14, 2001 3:19 PM  
**To:** Whelan, M Edward III; Horowitz, Michael-CRM; Long, Linda E  
**Cc:** Bryant, Dan; Burton, Faith; 'brett\_m.\_kavanaugh@who.eop.gov'; Wray, Chris; Herbert, James; Durham, John  
**Subject:** Monday and Tuesday Meetings on Boston/Burton/Exec Priv Issues

Yes.

Linda, pls. schedule in OLA conf room: Monday @ 10 am - AAG's Bryant, Chertoff, and Bybee (w/staff) and PDAG Chris Wray or his designee (we'll probably patch in Herbert and possibly Durham by conf. call for that meeting). Same group for Tuesday @ 8 am but include Tim Flannigan and Brett Kavanaugh from WH Counsel (contact Alison @ 456-2632).

Thanks.

-----Original Message-----

From: Whelan, M Edward III  
Sent: Friday, December 14, 2001 3:03 PM  
To: Thorsen, Carl; Horowitz, Michael-CRM  
Subject: RE: Pre-meeting on Boston issue

Just to confirm my understanding: The DOJ-only pre-meeting will occur Monday at 10:00. The meeting with the White House folks will occur Tuesday at 8:00. Both meetings will occur in the OLA conference room.

-----Original Message-----

From: Thorsen, Carl  
Sent: Friday, December 14, 2001 3:01 PM  
To: Horowitz, Michael-CRM; Whelan, M Edward III  
Subject: RE: Pre-meeting on Boston issue

sorry to create confusion. i'm trying to speed skate through my 465 unopened emails.

-----Original Message-----

From: Michael-CRM Horowitz  
Sent: Friday, December 14, 2001 2:51 PM  
To: Whelan, M Edward III  
Cc: Thorsen, Carl; Bybee, Jay  
Subject: Re: Pre-meeting on Boston issue

Date: 12/14/2001 02:53 pm -0500 (Friday)

From: Michael-CRM Horowitz

To: "wMWhelan".WTGATE2.CRMGW

CC: "wCThorsen".WTGATE2.CRMGW; "wJBybee".WTGATE2.CRMGW

Subject: Re: Pre-meeting on Boston issue

I am available and will have Val put it on my schedule and Mike's.

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Friday, December 14, 2001 4:43 PM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** RE: Committee interest in Boston documents  
**Attachments:** Bostondocs.tp3.wpd

Brett, here's the expanded version.

-----Original Message-----

From: Brett\_M.\_Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Friday, December 14, 2001 2:55 PM  
To: Colborn, Paul P  
Subject: RE: Committee interest in Boston documents

yes, that too, thanks; left you a voice mail

(Embedded  
image moved "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov>  
to file: 12/14/2001 02:50:01 PM  
pic18247.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:  
Subject: RE: Committee interest in Boston documents

But my draft does not contain discussion of DOJ's Boston investigation and how the documents relate to that. Carl says you want that addressed too. Do you or don't you?

-----Original Message-----

From: Brett\_M.\_Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Friday, December 14, 2001 2:46 PM  
To: Colborn, Paul P  
Subject: Re: Committee interest in Boston documents

bingo; let me know when final; thanks!

(Embedded  
image moved "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov> to file: 12/14/2001 01:49:40  
PM pic23717.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:  
Subject: Committee interest in Boston documents

Brett: Here's my first draft of the talking points you asked for. I'm having it reviewed now for accuracy.  
Is this what you had in mind?  
-- Paul

Colborn, Paul P

---

**From:** Colborn, Paul P  
**Sent:** Tuesday, December 18, 2001 11:17 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** RE: important: need review of draft PRA letter  
**Attachments:** (b) (5).wpd

Brett, per our conversation, here are the paragraphs I wrote awhile ago on (b) (5)

\_\_\_\_\_  
-- Paul  
cc: Ed

-----Original Message-----

(b) (5)

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Tuesday, December 18, 2001 11:29 AM  
**To:** Colborn, Paul P  
**Cc:** Whelan, M Edward III  
**Subject:** RE: important: need review of draft PRA letter  
**Attachments:** (b) (5).wpd; pic25277.pcx

thanks; I changed that and incorporated your material

(Embedded  
image moved "Colborn, Paul P" <Paul.P.Colborn@usdoj.gov>  
to file: 12/18/2001 11:17:07 AM  
pic25277.pcx)

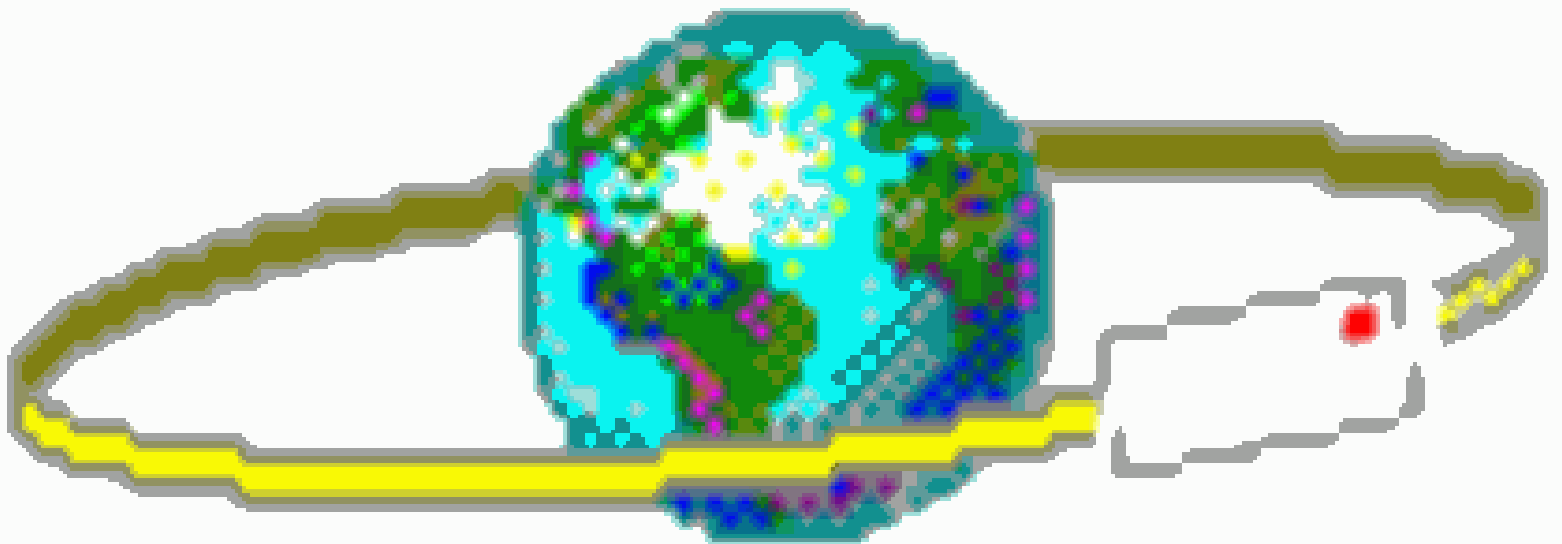
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

duplicate

# duplicate





Colborn, Paul P

---

**From:** Colborn, Paul P  
**Sent:** Tuesday, December 18, 2001 11:51 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** RE: important: need review of draft PRA letter

Brett, in addition to the substantive comments Ed and I have given you by phone, here are a few nits:

Add full cite to Nixon v. GSA in 3rd para.

In para. 7, add "whether" after "former President" in 3rd line, and change "Presidentiecards" to "Presidential records" in 3rd-to-last line.

In para. 9 ("First"), dehyphenate "long-standing"

In para. 12 ("There also"), add "to" before "take" in line 10.

-----Original Message-----

(b) (5)

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Tuesday, December 18, 2001 2:08 PM  
**To:** 'Kavanaugh, Brett'  
**Subject:** FW: important: need review of draft PRA letter

FYI

-----Original Message-----

From: Whelan, M Edward III  
Sent: Tuesday, December 18, 2001 2:07 PM  
To: Burton, Faith; Thorsen, Carl  
Cc: Colborn, Paul P  
Subject: FW: important: need review of draft PRA letter

Faith: Both Paul and I think that your sentence (b) (5). The following reflects a couple edits for your consideration: (b) (5)

." -- Ed

-----Original Message-----

From: Burton, Faith  
Sent: Tuesday, December 18, 2001 1:54 PM  
To: Colborn, Paul P; Thorsen, Carl  
Subject: RE: important: need review of draft PRA letter

What about this? FB

-----Original Message-----

From: Colborn, Paul P  
Sent: Tuesday, December 18, 2001 9:30 AM  
To: Burton, Faith  
Subject: FW: important: need review of draft PRA letter

Faith, please call me about this. Also, I never received the signed OLA letter to Horn and Ose declining to answer their questions. Please fax that to me asap at 58524.

-- Paul

-----Original Message-----

(b) (5)

(b) (5)

**Whelan, M Edward III**

---

**From:** Whelan, M Edward III  
**Sent:** Wednesday, December 19, 2001 9:23 AM  
**To:** 'Kavanaugh, Brett'  
**Subject:** FW: Draft letter to Burton, per our conversation  
**Attachments:** burton.1218.rev.wpd

FYI: Here are the OLC revisions from last night (b) (5).

-----Original Message-----

**From:** Colborn, Paul P  
**Sent:** Tuesday, December 18, 2001 5:16 PM  
**To:** Burton, Faith; Chertoff, Michael; Horowitz, Michael-CRM; Martens, Matthew; Whelan, M Edward III; Bybee, Jay; Thorsen, Carl; Durham, John; Herbert, James; Bryant, Dan  
**Subject:** RE: Draft letter to Burton, per our conversation

Attached is OLC's suggested revision to OLA's draft. Jay Bybee was out of the office this afternoon and therefore hasn't reviewed this draft. But Ed Whelan and I thought it was important to circulate the draft today so everyone can start reviewing it.

-----Original Message-----

**From:** Burton, Faith  
**Sent:** Tuesday, December 18, 2001 12:47 PM  
**To:** Chertoff, Michael; Horowitz, Michael-CRM; Martens, Matthew; Whelan, M Edward III; Bybee, Jay; Thorsen, Carl; Colborn, Paul P; Durham, John; Herbert, James; Bryant, Dan  
**Subject:** Draft letter to Burton, per our conversation

<< File: burton.1218.wpd >> If I've inadvertently omitted anyone from this circulation, would you please forward it to that individual; thanks. I will also share this with Beth Beers at the FBI. Faith

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Wednesday, December 19, 2001 2:00 PM  
**To:** Whelan, M Edward III  
**Subject:** Draft op-ed  
**Attachments:** WP Gonzales Presidential Reocrds draft 2 12.18.doc

An op-ed is running tomorrow in Wash Post. Please review this draft ASAP.  
Thanks.

(See attached file: WP Gonzales Presidential Reocrds draft 2 12.18.doc)

**Brett\_M.\_Kavanaugh@who.eop.gov**

---

**From:** Brett\_M.\_Kavanaugh@who.eop.gov  
**Sent:** Wednesday, December 19, 2001 5:54 PM  
**To:** Whelan, M Edward III  
**Subject:** FINAL CLEARANCE- SAP, H.R. 3210-Terrorism Risk Insurance Protection Act (Senate substitute)  
**Attachments:** HR3210 senate sap.wpd

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 12/19/2001 05:53 PM -----  
-----

Brett M. Kavanaugh  
12/19/2001 05:48:46 PM

Record Type: Record

To: m.edward.whelan@udoj.gov @ inet

cc:  
Subject: FINAL CLEARANCE- SAP, H.R. 3210-Terrorism Risk Insurance Protection Act (Senate substitute)

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 12/19/2001 05:48 PM -----  
-----

Danielle M. Simonetta  
12/18/2001 08:34:07 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:  
Subject: FINAL CLEARANCE- SAP, H.R. 3210-Terrorism Risk Insurance Protection Act (Senate substitute)

Here is the final version of the SAP on H.R. 3210, for your clearance. The SAP is written to reflect Sen.

Daschle's proposed substitute amendment (not the House version of the bill). The bill is scheduled to be considered on the floor at some point after 12:00 pm tomorrow. Therefore, please respond to me with your comments/clearance, by 11:00 am tomorrow, Wednesday, December 19th. If you have any questions, please call me.

Thanks,  
Danielle  
(54790)

(See attached file: HR3210 senate sap.wpd)

DRAFT - NOT FOR RELEASE

December 19, 2001  
(Senate)

(b) (5)

[REDACTED]

[REDACTED]

\*\*\*\*\*



(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Rodgers), in consultation with Commerce (Clark), Treasury (Dorsey), State (Faulkner), EP (Smith), NEC (Sumerlin), OVP (Addington), CEA (Furchtgott-Roth, Holtz-Eakin, Brown), BRD (Dale, Lobron, Timberlake), OIRA (Noe), OMBGC (Beynon), and HTF (Boden, Enger).

Justice did not respond to our request for views.

OMB/LA Clearance: \_\_\_\_\_

Administration Position to Date

The Administration has not taken a position on the Senate version of H.R. 3210.

On November 28, 2001, a SAP on H.R. 3210, the "Terrorism Risk Protection Act" was sent to the House Rules Committee. The SAP urged prompt passage of H.R.

3210 "as a step toward enactment of legislation to ensure the continued availability of insurance for terrorist-related acts." H.R. 3210 included provisions that limited terrorist-related litigation. The SAP expressed the Administration's concern with the repayment assessment mechanism and the administrative complexities of H.R. 3210 as a whole. The SAP also stated that "procedures for consolidation and management of mass tort litigation arising out of a terrorism incident are a necessary part of any meaningful terrorism insurance proposal, and thus a necessary condition for Administration support of any terrorism insurance bill."

Summary of Senate Manager's Amendment to H.R. 3210

The following summary is based on a draft of a manager's amendment that Treasury staff believe will be offered as a substitute for the House passed version of H.R. 3210.

The amendment would establish a temporary "Terrorism Insured Loss Shared Compensation Program" (Program) within the Department of the Treasury intended to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks. The amendment would provide for Federal assistance for future terrorism damage if it reaches certain levels. That amount would be based on a formula, which is market share multiplied by \$10 billion in the first year, and market share multiplied by \$15 billion in the optional second year. For losses above this "retention level," the cost of terrorism losses would be shared. The Federal government would pay for approximately 80 percent of insurance losses below \$10 billion, with the industry paying 20 percent. For losses between \$10 billion and \$100 billion, the split would be 90-10. The amendment would provide authority for one year to pay for certain property and casualty losses resulting from a terrorist attack; the authority could be extended for a second year.

Authority of the Secretary of the Treasury. The amendment would make the Secretary of the Treasury responsible for carrying out the program for financial assistance for commercial property and casualty insurers that would be established by the bill. The Secretary could extend the Program an additional year, expiring on December 31, 2003.

Triggering Determination and Federal Cost-Sharing for Commercial Insurers.



Under the amendment, Federal financial assistance would be triggered by a determination of the Secretary that the insured losses resulting from the event of an act of terrorism occurring during the covered period, or the aggregate insured losses resulting from multiple events of acts of terrorism all occurring during the covered period. The Secretary would have the sole authority for determining whether an occurrence or event was caused by an act of terrorism, whether insured losses from acts of terrorism were caused by one or multiple events or occurrences, and whether an act of terrorism occurred during the covered period.

The amount of Federal assistance would be based on a formula, which is the "market share" of a participating insurance company (total amount of gross property and casualty insurance premiums during the 2-year period preceding the year in which the act of terrorism occurred, as a percentage of the aggregate of all industry wide premiums) multiplied by \$10 billion in the first year, and market share multiplied by \$15 billion in the optional second year. For losses above the "insurance company's deductible," the cost of terrorism losses would be shared. The Federal government would pay for approximately 80 percent of insurance losses below \$10 billion, with the industry paying 20 percent. For losses between \$10 billion and \$100 billion, the split would be 90-10. The amendment would provide authority for one year to pay for certain property and casualty losses resulting from a terrorist attack; the authority could be extended for a second year. The aggregate amount of financial assistance provided could not exceed \$100 billion.

**Sovereign Immunity Protections.** Whenever Federal financial assistance is triggered (i.e., whenever an act of terrorism occurs), the amendment would provide for a Federal cause of action which would be the exclusive remedy for damages claimed pursuant to any acts of terrorism that caused the insured losses. These cases would be governed by the law of the State in which the act of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Under the amendment, the plaintiff may seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

**Extension of Program.** The Secretary could, upon making a determination that an extension of the provisions of the bill is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, extend the period in which these provisions apply to a date no later than December 31, 2003.

**State Preemption.** Under the amendment, a commercial insurer would be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under the regulations issued by the Secretary. If any provision of any State law prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to the amendment, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

**Studies and Reports.** Under the amendment, no later than 9 months after the date of enactment the Secretary would be required to submit a report to Congress that would consider the impact of the Program on: (1) the availability of insurance coverage for acts of terrorism; (2) the affordability of such coverage, including the effect of such coverage of premiums; and (3) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry. The Secretary would also consider the probable impact on the United States economy if the Program terminates at midnight on December 31, 2002.

Within 9 months of enactment of the amendment, the Secretary would be required to conduct a study and report to the Congress on the potential effects of acts of terrorism on the life insurance industry in



the United States and other lines of insurance coverage. The Secretary would be required to consult with the National Association of Insurance Commissioners (NAIC), representatives of the insurance industry, and other experts in the field.

Beginning 6 months after enactment of the amendment, and every 6 months thereafter, each participating insurance company would be required to submit a report to the NAIC that states the premium rates charged by that insurance company during the preceding 6-month period for insured losses covered by the Program, and includes an explanation of and justification for those rates. The NAIC would be required to forward copies of each report submitted, to the Secretary of the Treasury, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Comptroller General of the United States.

The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the Federal Trade Commission would be required to submit a joint report to Congress and the Comptroller General of the United States summarizing and evaluating the reports forwarded by NAIC. No later than 90 days after receipt, the Comptroller General of the United States would be required to evaluate and submit a report to Congress an evaluating the reports.

#### Pay-As-You-Go Scoring

According to BRD (Lee), the amendment would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. RMO staff advises that the bill could potentially have a PAYGO cost, but an OMB estimate has not been made. Cost estimates are problematic due to uncertainties involving future acts of terrorism. CBO scoring of the manager's amendment is not yet available.

LEGISLATIVE REFERENCE DIVISION  
DECEMBER 18, 2001

Message Sent To: \_\_\_\_\_

Nicholas E. Calio/WHO/EOP@EOP  
Joel D. Kaplan/WHO/EOP@EOP  
Kristen Silverberg/WHO/EOP@EOP  
Jack Howard/WHO/EOP@EOP  
Ziad S. Ojakli/WHO/EOP@EOP  
Matthew Kirk/WHO/EOP@EOP  
Michael J. Conway/WHO/EOP@EOP  
Jill Davie/WHO/EOP@EOP  
Alison Jones/WHO/EOP@EOP  
Ashley Holbrook/WHO/EOP@EOP  
Daniel M. McCarthy/WHO/EOP@EOP  
D. Marcus Sumerlin/OPD/EOP@EOP  
Leslie A. Mooney/OPD/EOP@EOP  
Allison L. Riepenhoff/WHO/EOP@EOP  
Diana L. Schacht/OPD/EOP@EOP  
Rebecca L. Halkias/WHO/EOP@EOP  
Wendell G. Smith/WHO/EOP@EOP

Wendy J. Grubbs/WHO/EOP@EOP  
Edward Ingle/WHO/EOP@EOP  
Albert Hawkins/WHO/EOP@EOP  
Nancy P. Dorn/WHO/EOP  
Candida P. Wolff/OVP/EOP@EOP  
Lauren K. Allgood/OVP/EOP@EOP  
Cesar Conda/OVP/EOP@EOP  
Neil S. Patel/OVP/EOP@EOP  
Jonathan W. Burks/OVP/EOP@EOP  
Douglas J. Holtz-Eakin/CEA/EOP@EOP  
Diana E. Furchtgott-Roth/CEA/EOP@EOP  
Daniel J. Bartlett/WHO/EOP@EOP  
Susan B. Ralston/WHO/EOP@EOP  
Harriet Miers/WHO/EOP@EOP  
Stuart W. Bowen/WHO/EOP@EOP  
Barbara A. Barclay/WHO/EOP@EOP  
Debra D. Bird/WHO/EOP@EOP  
Carolyn E. Cleveland/WHO/EOP@EOP  
Karen D. Cruson/WHO/EOP@EOP  
Lauren C. Lohrman/OMB/EOP@EOP  
Christine C. McCarlie/OMB/EOP@EOP  
Eric C. Pelletier/OMB/EOP@EOP  
Randall S. Kroszner/CEA/EOP@EOP  
Brett M. Kavanaugh/WHO/EOP@EOP  
David S. Addington/OVP/EOP@EOP  
Linda C. Luisi/NSC/EOP@EOP  
George M. Andricos/NSC/EOP@EOP  
John A. Cloud/NSC/EOP@EOP  
John F. Sammis/NSC/EOP@EOP  
Amy C. Smith/OMB/EOP@EOP

**Colborn, Paul P**

---

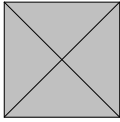
**From:** Colborn, Paul P  
**Sent:** Thursday, December 20, 2001 9:16 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'; Thorsen, Carl; Bryant, Dan  
**Cc:** Whelan, M Edward III  
**Subject:** RE: Burton letter  
**Attachments:** burton.1219.olc.wpd

Brett: Attached is the final version. I'm also faxing you a signed copy. I'll leave it to Dan or Carl to respond on the (b) (5) question.  
-- Paul

-----Original Message-----

From: Brett\_M.\_Kavanaugh@who.eop.gov  
[mailto:Brett\_M.\_Kavanaugh@who.eop.gov]  
Sent: Wednesday, December 19, 2001 8:46 PM  
To: Thorsen, Carl; Bryant, Dan; Colborn, Paul P  
Subject: Burton letter

few questions:  
can someone e-mail me final version of letter to Burton? (b) (5)  
(b) (5) ?



**U.S. Department of Justice**

Office of Legislative Affairs

---

Office of the Assistant Attorney General

*Washington, D.C. 20530*

December 19, 2001

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I am writing to follow up regarding the Committee's subpoenas seeking prosecutorial decisionmaking memoranda in connection with the Committee's investigations of campaign finance matters, alleged false statements by an individual (Ernest Howard) in a separate investigation, and the FBI's handling of informants in Boston. The Department stands ready to work with the Committee to seek to accommodate the legitimate needs that the Committee may have for information regarding these matters.

The Department has a strong confidentiality interest in the extremely sensitive prosecutorial decisionmaking documents called for by the subpoenas. The Attorney General and other Department decisionmakers must have the benefit of candid and confidential advice and recommendations in making investigative and prosecutorial decisions. Consistent with the longstanding position of the executive branch with respect to these kinds of highly sensitive memoranda, the President has therefore asserted executive privilege with respect to the subpoenaed documents. At the same time, he has requested that the Department remain willing to work with the Committee to provide such information as the Department can, consistent with his instructions and without violating the constitutional doctrine of separation of powers.

Pursuant to longstanding executive branch policy, in responding to congressional requests for confidential information, the Department seeks in all cases to engage in an accommodation process in an effort to satisfy legitimate congressional needs while protecting executive branch confidentiality interests. The Department has already accommodated the Committee's information needs with respect to the prosecutorial memoranda relating to campaign finance and the Howard matter. We have provided briefings on the reasons for the decisions to decline prosecutions for Ernest Howard and Mark Middleton, which your August 30, 2001, letter indicated were very helpful. With regard to the Conrad collection of memoranda, on August 23, 2000,

then Attorney General Reno publicly stated the reasons for her decision not to appoint a Special Counsel and, on October 5, 2000, you questioned her about that decision in an interview on the record. Prior to these explanations, the Department had provided the underlying factual records relating to each matter, to the extent permissible under the grand jury secrecy requirements of Rule 6(e) of the Federal Rules of Criminal Procedure. In the October 2000 meeting, some information also could not be provided because of its relevance to then pending investigations.

As to the Boston matter, we believe that the Department and the Committee can work together to provide the Committee additional information without compromising the principles maintained by the executive branch. We will be prepared to make a proposal as to how further to accommodate the Committee's needs as soon as you inform us in writing of the specific needs the Committee has for additional information. See United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977); Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc).

The Department has been providing an extensive body of other materials to the Committee since April 27, 2001, when we provided approximately 1178 pages in response to your request of March 30, 2001 for documents about the murder of Mr. Edward Deegan, for which Mr. Joseph Salvati and six others were convicted. Since the crime was not prosecuted federally, the FBI does not have a discrete file on the subject. Hence, the responsive documents were found in other files and some information was redacted because it pertained to other matters outside the scope of the Committee's request. In August 2001, Committee counsel reviewed unredacted copies of these documents and some pages were re-processed to restore information that was responsive to your June 5 request for documents on other Boston matters. More than 3800 pages have been produced in response to that request and the FBI is still processing responsive documents regarding the FBI's handling of informants in Boston. We expect to provide documents regarding the FBI's Top Hoodlum Program this week and to produce additional documents after the Holiday recess.

The document production process for the Boston matters has thus been proceeding since March of this year. We note, moreover, that the Committee's March and June requests did not indicate any interest in the prosecutorial decision-making memoranda and the Committee did not even request them until it subpoenaed them on September 6. The Committee then immediately scheduled for September 13 a hearing regarding its demand for these documents. When that hearing was postponed due to the events of September 11, the Department was advised that the matter would be deferred until a later time. We first learned that the Committee was renewing the matter during the week following Thanksgiving when the hearing was re-scheduled for December 6. It was postponed to December 13 at the Department's request so that Assistant Attorney General Michael Chertoff could testify, but his obligations relating to the September 11 investigation made that appearance impossible and the Chairman refused the Attorney General's request that the hearing be postponed to the week of December 17.



The Department fully respects the Committee's interest in reviewing allegations of misconduct by government employees, and we have provided, and will continue to provide, investigative records, judicial filings, and other records responsive to your requests, consistent with the accommodation process. Of course, we cannot provide grand jury information covered by Rule 6(e), electronic surveillance information subject to Title III, or information that would identify confidential informants.

Finally, as the Committee is aware, the Department is fully committed to addressing corruption in the handling of informants by the FBI in Boston and has dedicated extensive resources to that purpose. In 1999, the Justice Task Force was established to investigate law enforcement corruption relating to Messrs. James Bulger and Stephen Flemmi. The Task Force has expanded the scope of the inquiry to include allegations that FBI agents and prosecutors allowed a witness to frame Mr. Salvati and others for the Deegan murder while permitting that witness to protect another individual, who was central to the murder conspiracy. It was the Task Force that located exculpatory documents, which led to the release of Peter Limone and the dismissal of charges against Mr. Salvati and Mr. Limone. The Task Force also has obtained the indictment of former FBI Special Agent John Connolly, which is expected to go to trial early in 2002. Additionally, the United States Attorney's Office in Boston obtained indictments against Messrs. Bulger and Flemmi in 1995 and in 2000, charging them with 19 and 10 murders, respectively. The ongoing work of the Task Force and the United States Attorney's Office is dedicated to investigating and prosecuting corruption by FBI agents and prosecutors relating to the handling of informants, as well as any underlying crimes that may have been committed by those individuals. As these efforts proceed, it will be important to ensure that they are based only on the evidence and the law, free from any political influence or coercion.

We have not objected to the Committee's undertaking its own investigation and we understand that Committee staff have conducted interviews and may have undertaken other investigative steps in Boston and elsewhere. We ask that the Committee provide us with information that it believes may be relevant to potential violations of federal criminal law. We understand the Committee's interest in not deferring its own inquiry while our criminal investigations continue, and we trust that the two can continue independently, as has often happened historically.

The Department looks forward to a continued dialogue with the Committee so we can accommodate your legitimate oversight needs for information in a manner that is consistent with



our law enforcement responsibilities. We would like to resume such a constructive conversation as soon as possible.

Sincerely,

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

Members of Committee on Government Reform

**Colborn, Paul P**

---

**From:** Colborn, Paul P  
**Sent:** Thursday, December 20, 2001 9:29 AM  
**To:** 'Brett\_M.\_Kavanaugh@who.eop.gov'  
**Cc:** Whelan, M Edward III  
**Subject:** Letter to Chairman Horn re presidential records executive order

Brett: Has the letter gone out? If so, could you fax me the signed copy at 305-8524? Thanks.

-- Paul

cc: Ed