50 Box 11 - JGR/Civil Rights Commission - Roberts, John G.: Files
SERIES I: Subject File

6/9/83

THE WHITE HOUSE
WASHINGTON

TO: J.G.R

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI: _____

COMMENT: ✓

ACTION: _____

6/9:
called Ullmann,
left message that
letter was busy.

Civil Rights Comm

THE WHITE HOUSE

WASHINGTON

June 7, 1983

FOR: MIKE UHLMANN AND MEL BRADLEY

FROM: JUDY JOHNSTON

SUBJECT: Attached Correspondence

WH Correspondence would like OPD approval of the attached draft regarding the Civil Rights Commission appointments.

Would you please review, edit as necessary, and return to me as soon as possible.

Thank you.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 3, 1983

To: Judy Johnston

From: Anne V. Higgins

Re: Form Letter on Civil Rights Commission

We would like OPD review and approval of the attached form letter on the President's recent nominations to the U.S. Civil Rights Commission. The intended enclosure is attached.

THE WHITE HOUSE

WASHINGTON

AVH274 DRAFT (Appointments to Civil Rights Commission)

Thank you for your message to President Reagan concerning his decision to nominate three new members to positions on the U.S. Civil Rights Commission. Your views on this matter have been fully noted.

The President is strongly committed to the fundamental goals and bipartisan character of the Civil Rights Commission. ~~and to its independence and bipartisan nature.~~ In his State of the Union Address on January 25 of this year, the President cited the importance of the Commission's work and urged Congress to reauthorize it beyond its current expiration date at the end of 1983. To fulfill this commitment, the President submitted legislation to Congress on April 6, 1983 which would extend the Commission until the year 2003, the longest extension in the Commission's history.

Under current law, members of the Commission serve for indefinite terms at the pleasure of the President on a staggered basis. The legislation proposed by President Reagan would provide for specified terms of appointment, as is now the case with the Equal Employment Opportunity Commission and similar agencies. ~~This will help ensure that the Commission's membership is reviewed regularly and will provide for the introduction of new perspectives into the Commission's work.~~

The three individuals nominated to the Commission by President Reagan on May 26 are prominent Democrats with a strong background in and commitment to civil rights. The President is confident that their presence will strengthen the Commission and allow it to continue its work on the unfinished business of guaranteeing the basic rights of all our citizens. I am enclosing for you a copy of a release issued by the White House which summarizes the qualifications of these distinguished Americans.

The same is true of the President's nominee for the position of staff director.

With best wishes,

Sincerely,

Encl. 5/25/83 release on Civil Rights Commission nominees.

File: U.S. Civil Right Commission

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 25, 1983

The President today announced his intention to nominate the following individuals to be Members of the Commission on Civil Rights:

JOHN H. BUNZEL formerly President of San Jose State University in San Jose, California, is currently serving as Senior Research Fellow at the Hoover Institution at Stanford University, Stanford, California. A long time supporter of civil rights, Dr. Bunzel was honored in 1974 by the Board of Supervisors of the City and County of San Francisco when he was awarded a Certificate of Merit for "unswerving devotion to the highest ideals of brotherhood and service to mankind and dedicated efforts looking to the elimination of racial and religious bigotry and discrimination."

Dr. Bunzel earned his undergraduate degree from Princeton University (A.B., 1948), his Masters degree from Columbia University in 1949, and his Ph.D. from the University of California at Berkeley in 1954. He resides in Belmont, California. He was born April 15, 1924 in New York City. Dr. Bunzel is a Democrat and will succeed Blandina Cardenas Ramirez.

MORRIS B. ABRAM is currently a partner with the law firm of Paul Weiss, Rifkind, Wharton and Garrison in New York City. In 1968-1970, Mr. Abram served as President of Brandeis University.

Mr. Abram has been long involved in civil rights activities. In 1946, Mr. Abram was a member of the American Prosecutorial staff at the International Military Tribunal in Nuremburg, Germany. In 1962-1964, he served as a member of the U.N. Subcommittee on the Prevention of Discrimination and Protection of Minorities by appointment of President Kennedy. Between 1963 and 1968, he served as President of the American Jewish Committee. In 1965-1968, he served as U.N. Representative to the United Nations Commission on Human Rights. In 1970-1979, he also served as Chairman of the United Negro College Fund. Since 1961, he served as a member of the Executive Committee of the Lawyers' Committee for Civil Rights Under Law.

He graduated from the University of Georgia (B.A., 1938) and the University of Chicago (J.D., 1940). He was a Rhodes Scholar at Oxford University (B.A., 1948; M.A., 1953). He resides in New York City. He was born June 19, 1918 in Fitzgerald, Georgia. Mr. Abram is a Democrat and will succeed Mary Frances Berry.

more

Following these discussions there was an additional recess for the meeting of the Nonaligned Movement in New Delhi. The UN General Assembly is likely to take up the Cyprus problem in late April or early May. After that meeting the talks can proceed to address the substantive issues separating the two communities.

President Kyprianou and Turkish leader Denktash remain supportive of the intercommunal talks as the best vehicle for progress toward eventual solution of the Cyprus problem. Ambassador Gobbi is positive about the Secretary General's good offices role in the talks and will attempt to move the discussions forward as soon as possible.

Our Embassy in Nicosia as well as our officers in the State Department remain in close contact with both parties to the intercommunal talks and continue to urge efforts for progress. Visits to the island by our diplomatic officers and by Congressmen emphasize the interest residing both in this Administration and in the Congress in seeing a fair and lasting settlement to the problem.

Sincerely,

Ronald Reagan

Note: This is the text of identical letters addressed to Thomas P. O'Neill, Jr., Speaker of the House of Representatives, and Charles H. Percy, chairman of the Senate Foreign Relations Committee.

Civil Rights Commission Reauthorization Act of 1983

Message to the Congress Transmitting Proposed Legislation. April 6, 1983

To the Congress of the United States:

I am transmitting herewith the "Civil Rights Commission Reauthorization Act of 1983".

We Americans have come to share a vision of the Nation we want to be: A Nation in which sex, race, religion, color, national origin, age, or condition of disability do not determine an individual's worth. We can be justly proud both of the progress we have made toward realizing that ideal—and of our recognition that progress remains to be made.

In my State of the Union Address on January 25 of this year, I emphasized the important role the Commission can play in assuring that we, as a Nation, keep our statutory commitments to fairness and equity for all Americans—and the necessity that the Commission not be allowed to expire, as current law provides, at the end of 1983. In recognition of these goals, the legislation I am transmitting would continue the Commission's important work through 2003.

The twenty-year extension I propose today would be the longest in the Commission's history. I believe we must assure the continuity of the Commission's mission, while preserving the original Congressional intent that the Commission have a specified purpose and duration.

I am also proposing that future members of the Commission be appointed for specified terms, as is currently the case with the Equal Employment Opportunity Commission and similar agencies. This will assure that the Commission's membership is reviewed at specified intervals and provide for the introduction of new perspectives to the Commission's work.

Finally, I am proposing that the Commission's current authorities and procedures be continued intact. Since the Commission's founding, the existing statutory provisions have enabled the Commission to fulfill its unique function while avoiding duplication of activities performed by the EEOC, Department of Justice, and other line agencies.

I ask that this legislation be adopted quickly to avoid any uncertainty regarding the Commission's status and any resulting disruption in its important work.

Ronald Reagan

The White House,
April 6, 1983.

Note: The White House press release contains a copy of the draft legislation.

file
Civil Rights Commission

JGR

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 13, 1983

FOR: FRED F. FIELDING

FROM: PETER J. RUSTHOVEN

SUBJECT: Response to Rev. Jesse Jackson
re: Civil Rights Commission

Richard Darman's office asked us to provide comments by noon today on the above-referenced proposed response, drafted by OPD for the President's signature, to a letter from the Reverend Jesse Jackson concerning the President's recent nominees for the U.S. Civil Rights Commission.

Jackson's letter recites the standard "concerns" about undermining the independence of the Commission, and closes by requesting "an urgent meeting" with the President. The draft response -- an earlier draft of which was reviewed a week or so ago by Dick Hauser and John Roberts, and improved by their editing suggestions -- is accurate and straightforward. In general, it also avoids being defensive in tone. The meeting request is ignored, as I think it should be. While I might have drafted the letter somewhat differently, in general I have no legal or other substantive objection to it.

My principal concern is whether the President himself should send the letter. Personally, I think that a Presidential response does Jackson more good than it does us, since he will have little trouble finding cause to characterize the response as "unsatisfactory" and that his predictable publicity and self-promotion efforts will get a boost if he can attack a letter signed by the President. You should know, however, that John disagrees, thinking the issue important enough to justify a demonstration of the President's personal interest, and that the response is good enough that the Reverend Jackson will be unable to get much mileage out of it. John also points out that Jackson could get mileage out of saying that the President "ignored" his letter, though I think a response signed by you or another appropriate Presidential assistant would limit the impact of that assertion.

In any event, I think you should raise the issue. Attached for your review and signature is a memorandum for Darman.

Attachment

cc: Richard A. Hauser
John G. Roberts ←

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 13, 1983

FOR: RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Response to Rev. Jesse Jackson
re: Civil Rights Commission

I have reviewed the above-referenced draft response and, in general, have no legal or other substantive objection to it.

I do, however, have some question whether the President should himself sign such a letter, rather than having the response to Jackson come from our office or OPD. Jackson would probably have little trouble characterizing the response as "unsatisfactory," and his predictable publicity and self-promotion efforts might receive a boost if he can attack a letter signed by the President personally. I recognize, however, that one can argue that the issue is important enough to merit personal Presidential involvement, and that Jackson may also get some mileage out of claiming that the President has "ignored" the letter.

In most instances, as you know, letters criticizing important Presidential decisions do not receive responses directly from the President, even when the letters come from prominent individuals. I think the concerns noted above should be weighed carefully before the President engages in personal correspondence on civil rights issues with Jesse Jackson.

U.S. Department of Justice
Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

October 26, 1983

John Roberts,

FYI

Brad

fyi Civil rights

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 25, 1983

Mr. Carl T. Rowan
3251-C Sutton Place, N.W.
Washington, D. C.

Dear Mr. Rowan:

I was in New York this past Saturday and missed Agronsky and Company. Upon my return, however, I learned that during the show you quoted me as stating, with reference to an NAACP petition to intervene in the Charleston, South Carolina, school desegregation case: "Make those bastards jump through every legal hoop before we acquiesce to their intervention."

The quoted statement was first brought to my attention in an August 17, 1983, memorandum from a lawyer in the Civil Rights Division, Gregg Meyers, to the Attorney General. Mr. Meyers' memorandum stated that in "the internal discussion about the black group's motion to intervene in the South Carolina case . . . a Division official referred to the black group as 'those bastards' and instructed us to make them 'jump through every hoop' (i.e., legal hoop) before we would acquiesce in their intervention." In a September 12 reply to Mr. Meyers' memorandum, I advised as follows with regard to this reference:

> I have been unable to confirm such a remark was made and seriously doubt the accuracy of this quotation. In any event, most litigators of any real ability approach their litigation with such an attitude. I dare say that the internal discussions among NAACP lawyers include similar pointed references.

Some five weeks later, on October 18, 1983, another Division lawyer, Timothy Cook, in a 33-page resignation statement to the Attorney General, gratuitiously embellished on the earlier Meyers' memorandum. Mr. Cook, although not himself in attendance, reported that: "In one meeting called to discuss how best to exclude black parents from a school desegregation case in South Carolina, your trial attorneys were instructed by Assistant Attorney General Reynolds to make 'those bastards

. . . jump through every hoop' before acquiescing in their involvement." It was this second-hand reformulation of the referenced statement that Channel 9 used -- and then you repeated on Agronsky and Company, adding that I had admitted the quote.

For the record, let me state as clearly as I can that I never admitted to making the statement in question. When Mr. Sherwood (Channel 9) and I spoke by phone, I told him that the quote was not mine. While I have meetings daily with Division attorneys on cases we are handling, and thus cannot recall the particulars of all conversations in all meetings, I am supremely confident that I have never made reference to the NAACP, or to any other group, as "those bastards." The term is not one I use or would use.

Nor do I regard the NAACP as "the enemy," as you suggested on the show. In the South Carolina school case, the NAACP placed itself in a position adversarial to the United States by challenging the Justice Department's ability to adequately represent the public interest. My "instruction" to the trial attorneys was to resist the intervention petition as premature, since the litigating parties were at the time in the middle of sensitive settlement negotiations, but to make clear that we would entertain a request to intervene at a later date if the NAACP should seek to renew its motion. The United States Response To Petition For Intervention (copy attached), filed with the district court over a year ago (October 8, 1982) immediately following my internal discussions with staff attorneys on this matter, accurately reflects the position I took in the referenced meeting. Let me quote directly from that filing, which I personally helped to draft:

> Applying the standards of Rule 24(b)(2) to these circumstances, it might not be improper for the court to grant permissive intervention. However, since the original parties are now engaged in settlement negotiations, neither would the court abuse its discretion by taking the intervention motion under advisement for the present to allow original parties an opportunity to determine definitively whether their ongoing negotiations will produce a settlement.
>
> If the present negotiations should not result in settlement, the Court then could appropriately entertain the present request for permissive intervention by the petitioners and, without any prejudice having occurred in the interim, permit them to participate in developing the proof of plaintiff's case during discovery and trial. On the other hand,

> should the current negotiations produce a settlement, permissive intervention could be allowed prior to the Court's ruling on the sufficiency of the proposed settlement. The United States believes that this suggested approach best serves the interests of all the parties and is most consistent with the Court's legitimate concern for judicial economy. In both contingencies outlined above, we would at the appropriate time support the request for permissive intervention so as to afford a forum in which they could participate in ensuring litigation, or, alternatively, either join or contest any settlement that might be reached. [Emphasis added.]

It is admittedly unfortunate that Channel 9, in its zeal to attribute a provocative statement to me, made no effort to investigate its "story" in advance and obtain the true facts concerning my position on the NAACP's requested intervention, as reflected in the above court filing. Equally disturbing is the degree to which the remainder of Channel 9's extended program last week on civil rights enforcement was grounded in factual errors -- all of which could easily have been corrected had I been provided an opportunity in advance to hear the accusations being made and respond to them. Channel 9 chose, however, to hear only from disgruntled attorneys who have left the Department due to philosophical differences over issues relating to forced busing, racial quotas, and Federalism.

Since you have expressed concern with the content of the program, I would welcome the opportunity to meet with you and discuss our enforcement activities under the Voting Rights Act, the Civil Rights for Institutionalized Persons Act, the criminal civil rights laws, and all other federal civil rights statutes. Contrary to the distorted, one-sided picture portrayed by Channel 9, our record is a remarkably good one that demonstrates a firm commitment to strong law enforcement in the area of civil rights. It would be nice for a change to have that record heard.

I would, in closing, make one request. Your comments about me on Agronsky and Company were in error because you, as others, had been misled by the Channel 9 story. I would hope that with this fuller explanation of the matter, you now in fairness would be willing on next week's program of Agronsky and Company to set the record straight for those viewers who heard your unreserved personal attack on me last week.

I welcome responsible debate on the civil rights issues of our day, and believe most strongly that policy differences

in this area should be voiced openly and without reservation. In engaging in that most important dialogue, however, it serves no useful purpose, in my view, to demean the discussions with groundless ad hominem remarks calculated to besmerch one's character. All will be better informed by allowing the debate to proceed on the intellectually responsible level that does it the most credit.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Enclosure

cc: Martin Agronsky
James J. Kilpatrick
Elizabeth Drew
Hugh Sidey
Gordon Peterson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

RICHARD GANAWAY, et al.,

Petitioners to intervene

v.

CHARLESTON COUNTY SCHOOL DISTRICT and STATE OF SOUTH CAROLINA,

Defendants

Civil Action No. 81-50-8

UNITED STATES' RESPONSE TO PETITION FOR INTERVENTION

On September 23, 1982, Richard Ganaway, et al., through their parents, filed a motion to intervene as plaintiffs in this litigation under Rule 24, Fed. R. Civ. P., parts (a) and (b). Filed with the motion were a complaint in intervention and memorandum in support of the motion.

I. POSTURE OF THE CASE

The United States initiated this action against the Charleston County School District and State of South Carolina in January, 1981. Filed under Title IV of the Civil Rights Act of 1964, the complaint alleged, inter alia, that the formerly dual system of public education has not been dismantled in Charleston County,

and that the substantial segregation and deprivation of equal educational opportunity that continues to exist has resulted from the defendants' intentionally discriminatory acts. The complaint seeks to enjoin the defendants' failure to meet their affirmative obligation to eliminate vestiges of the formerly dual school system, and obtain other appropriate relief.

The defendants filed motions to dismiss the complaint, to which the United States responded. Those motions have not been adjudicated, and discovery is stayed pending their resolution. Hearings on the motions to dismiss were delayed initially to hear a disqualification motion made by the United States[1/], and later to permit negotiations between the parties.[2/] Petitioners now move to intervene.

II. INTERVENTION

Petitioners seek to intervene as a matter of right or, alternatively, permissively (Motion to Intervene at 1). For reasons set forth below, petitioners' motion for intervention of right should be denied. Their motion for permissive intervention, while perhaps legally sufficient, should be delayed pending the result of negotiations between the original parties.

a. Intervention of right

In this circuit, intervention of right under Rule 24(a),

1/ The motion was denied on July 22, 1981.

2/ During this time, in July, 1982, the Charleston County school district changed counsel.

Fed. R. Civ. P.[3/] is warranted where "(1) [the moving party] has an interest in the subject matter of the action, (2) disposition of the matter may practically impair or impede the movant's ability to protect that interest, and (3) that interest is not adequately represented by the existing parties." Newport News Shipbuilding and Drydock Co. v. Peninsula Shipbuilders Association, 646 F.2d 117, 120 (4th Cir. 1981). Commonwealth of Virginia v. Westinghouse Electric Corp., 542 F.2d 214, 216 (4th Cir. 1976). Under Corby Recreation, Inc. v. General Electric Co., 581 F.2d 175, 177 (4th Cir. 1978), doubts must be resolved in favor of the intervenor, but petitioners bear the burden of satisfying all three prongs of the test. Commonwealth of Virginia, 542 F.2d at 216. Petitioners have not satisfied their burden, in that they do not and cannot demonstrate that their interests are inadequately represented by the United States[4/].

3/ Rule 24(a) provides, in pertinent part:

> [A]nyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject matter of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by the existing parties.

4/ Petitioners appear to satisfy other parts of the test. For example, they claim to represent parents of black students attending public schools in Charleston County, who seek vindication of their children's "right to attend schools that are free from discriminatory state action" (Memorandum in Support of Intervention, at 2). Courts in this and other circuits have recognized the important interests of parental groups that seek to intervene in desegregation cases to help ensure operation of racially unitary public schools. See, e.g., Atkins v. State Board of Education, 418 F.2d 874, 876 (4th Cir. 1969); Adams v. Baldwin County Board of Education, 628 F.2d 895, 896-897 (5th Cir. 1980); Dowell v. Board of Education, 430 F.2d 865, 868 (10th Cir. 1970).

The Supreme Court has recognized that the mere fact that the United States represents the public interest, rather than the interests of any particular group, may under some circumstances make the United States an inadequate representative of private parties' interests. Trbovich v. Mine Workers, 404 U.S. 528, 539 (1971).5/ This case, however, is not one in which the representation of the United States is inadequate. In Commonwealth of Virginia, 542 F.2d 214, the Fourth Circuit discusses the "adequacy of representation" requirement in a case similar to the one now before this Court. In that case, the Commonwealth sought intervention of right in a breach of contract action brought by an electric company, VEPCO. The Commonwealth's complaint-in-intervention was almost identical to that filed by VEPCO. The district court denied the motion to intervene of right and the Fourth Circuit affirmed, even while recognizing the requirements of Trbovich. In denying the motion to intervene, the Court placed great weight on the similarity of the pleadings:

> It is difficult in light of this fact to consider the representation of Virginia's interests by VEPCO inadequate. . . . When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the petitioner must demonstrate adversity of interest, collusion or nonfeasance. . . .

5/ Where the United States claims to represent the interest of a private party while simultaneously representing the public interest, "[t]he requirement of...Rule [24(a)(2)]...is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." Trbovich v. Mine Workers, supra, 404 U.S. at 538, n.10.

> Virginia has not succeeded in [making any of these showings].

542 F.2d at 216.

Thus, where the petitioners' pleadings are similar to those of the original plaintiff, petitioners may intervene of right only where they can demonstrate adversity of interest, collusion or nonfeasance on the part of the original plaintiff.

Under this standard, it is inappropriate to grant petitioners' motion to intervene of right in this litigation. First, the petitioners' pleadings are virtually identical to those of the United States, both with respect to allegations of liability and to relief sought. Both allege, for example, that public schools in Charleston County were illegally segregated prior to 1954 (Compl. ¶3; Compl. Int. ¶5); that since 1954 state and local officials have been under an affirmative duty to dismantle the dual system of public education in Charleston County (Compl. ¶4; Compl. Int. ¶6); that sections of the 1967 Act of Consolidation were enacted with the purpose, and have had the effect, of maintaining racial segregation among Charleston's public school students and personnel (Compl. ¶15; Compl. Int ¶17); that public schools in Charleston remain illegally segregated (Compl. ¶17; Compl. Int. ¶27); that defendants illegally have denied, and continue to deny, black students equal educational opportunity (Compl. ¶¶ 30-31; Compl. Int. ¶¶ 32-33); and that defendants have not fulfilled their affirmative duty to eliminate the dual system of public education and its vestiges (Compl. ¶5, Compl. Int. ¶7). Moreover, the relief sought in the complaint-in-intervention is virtually

identical to that sought by the United States in the original complaint. Both documents call for invalidation of Sections 7 and 8 of of the Act of Consolidation, for entry of an injunction barring discrimination against black students, for implementation of a plan which will fully desegregate the public schools of Charleston, for efforts to remedy the effects of discriminatory actions, and for such other relief as may be necessary (Compl. ¶ 31; Compl. Int. ¶33).

Second, notwithstanding the fact that the United States and petitioners have "the same ultimate objective," petitioners do not demonstrate "adversity of interest . . . collusion . . . [or] . . . nonfeasance" on the part of the United States, as required to intervene of right under Commonwealth of Virginia, 542 F.2d 214 (4th Cir. 1976).

Petitioners claim that their position with respect to specific remedies in school desegregation cases is different from that of the United States (Memorandum in Support of Motion to Intervene, at 4-6). Such an assertion, however, neither implies nor demonstrates collusion or nonfeasance on the part of the United States. Nor does it demonstrate adversity of interest. The interest of the United States in this lawsuit has been, and remains, to bring an end to all racially discriminatory practices in the Charleston public schools, and also to eliminate, to the extent practicable, all continuing vestiges of state-imposed segregation and unequal educational opportunity. This interest hardly seems adverse to the interest which petitioners claim to advance. At most there

exists the possibility of future differences over how shared interests may best be furthered.

For these reasons, petitioners have failed to meet their burdent of proof with respect to adequacy of representation. Because they do not satisfy all the requirements of Rule 24(a)(2) as interpreted in the Fourth Circuit, the Court should deny the motion to intervene as a matter of right.

b. Permissive Intervention

Rule 24(b)(2), Fed. R. Civ. P.6/, is to be interpreted liberally in determining permissive intervention, TPI Corp. v. Merchandising Mart, 61 F.R.D. 684, 690 (D.S.C. 1974), and this Court has favored permissive intervention where it conserves judicial resources. Id., at 690-691. However, the question of permissive intervention is ultimately a matter for the Court's discretion.

The factors affecting permissive intervention are (1) common questions of law or fact, and (2) no delay or prejudice to adjudicating the rights of the original parties.

1. Common question of law or fact. As set forth in part

6/ The pertinent part of the rule states that permissive intervention may be allowed:

> when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P., Rule 24(b)(2).

II(a), above, in our opposition to intervention or right, petitioners' complaint is nearly identical to that of the United States. Thus, it is likely that petitioners will raise numerous questions of law and fact common to those raised by the United States.

2. Delay or prejudice. Permissive intervention should be denied where it delays or prejudices adjudicating rights of the original parties. Such delay or prejudice has been found only where discovery was so advanced that the effect of intervention would have been to disrupt readiness for trial. Alexander v. Hall, 64 F.R.D. 152, 157-158 (D.S.C. 1974). Accord, Hill v. Western Electric Co., 672 F.2d 381, 387 (4th Cir. 1982). In this case, no answer has been filed, and discovery has been stayed pending resolution of outstanding motions to dismiss. Therefore, trial is not imminent.

Applying the standards of Rule 24(b)(2) to these circumstances, it might not be improper for the court to grant permissive intervention. However, since the original parties are now engaged in settlement negotiations, neither would the Court abuse its discretion by taking the intervention motion under advisement for the present to allow original parties an opportunity to determine definitively whether their ongoing negotiations will produce a settlement.

If the present negotiations should not result in settlement, the Court then could appropriately entertain the present request for permissive intervention by the petitioners and, without any prejudice having occurred in the interim, permit them to participate in developing the proof of plaintiff's case during discovery and trial. On the other hand, should the current negotiations

produce a settlement, permissive intervention could be allowed prior to the Court's ruling on the sufficiency of the proposed settlement. The United States believes that this suggested approach best serves the interests of all the parties and is most consistent with the Court's legitimate concern for judicial economy. In both contingencies outlined above, we would at the appropriate time support the request for permissive intervention so as to afford a forum in which they could participate in ensuing litigation, or, alternatively, either join or contest any settlement that might be reached.

III. CONCLUSION

Because the petitioners have not satisfied the requirements for intervention of right, their motion under Rule 24(a), Fed. R. Civ. P., should be denied. Their motion under Rule 24(b)(2), Fed. R. Civ. P., for permissive intervention should be taken under advisement until such time as the original parties determine whether or not their negotiations will produce a specific settlement proposal to submit for this Court's approval.

Respectfully submitted,

Henry D. McMaster
United States Attorney

By: Heidi Solomon

Heidi Solomon
Assistant U.S. Attorney
Charleston, S.C.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: Gregg Meyers

Thomas M. Keeling
Gregg Meyers
Attorneys
U.S. Department of Justice
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I certify that I have served a copy of the attached Response of the United States to the Petition for Intervention by mailing first-class, to each counsel listed below, a copy:

Robert Rosen, Esq.
Rosen. Oberman & Rosen
45 Broad St.
Charleston, S.C. 29402

Treva Ashworth, Esq.
Senior Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Arthur C. McFarland, Esq.
205 King Street
Charleston, S.C. 29401

Deborah Fins, Esq.
Theodore M. Shaw, Esq.
Suite 2030
10 Columbus Circle
New York, NY 10019

Done October 7, 1982, in Washington, D.C.

Gregg Meyers

Gregg Meyers, Esq.
Civil Rights Division
Department of Justice
Washington, D.C. 20530
202/633-4564