

FROM PARTIES TO PRESIDENTS: DEALING WITH DECISION-MAKER COMMENTARY

University of Texas Continuing Legal Education Page Keeton Civil Litigation Conference
Austin, TX • 2017

Travel Ban – Executive Order 13769

- 01/27/17 – Executive Order 13769
 - ▣ Suspended entry of individuals from seven countries for 120 days
 - ▣ Suspended processing refugees from all countries for 120 days and capped entry at 50,000
 - Suspended entry of Syrian refugees indefinitely
 - Provisions for minority religion
- 01/28/17 – TRO entered in NY
- 01/29/17 – TRO entered in MA
- 02/02/17 – WH lifts restrictions as to LPRs
- 02/03/17 – TRO entered in WA
- 02/09/17 – 9th Cir. Denies emergency stay



www.sousamachadoarts.com/2017/2/5/i-got-this

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Travel Ban – Comments

- 12/07/15 – “Shutdown of Muslims entering the US”
- 03/09/16 – “I think Islam hates us”
- 03/22/16 – “We’re having problems with Muslims”
- 07/24/16 – “Oh, you can’t use the word Muslim”
- 12/19/16 – “Islamic terrorists slaughter Christians”
- 12/21/16 – “You know my plans”
- 01/27/17 – “We all know what [EO’s title] means”
- 01/28/17 – “Show me the way to do it legally”
- 02/22/17 – “[S]ame basic policy outcome”
- 06/05/17 – “The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.”



hitheringer.com/donald-trump-twitter-afterlife-dc42b72901f2

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Price Waterhouse v. Hopkins (1989)

- Some evaluation comments were legitimate:
 - ▣ Abrasive
 - ▣ Issues with staff
- Some were not:
 - ▣ Hopkins “overcompensated for being a woman”
 - ▣ Hopkins should take “a course at charm school”
 - ▣ Hopkins “has matured from a tough-talking somewhat masculine hard-nosed mgr to an authoritative, formidable, but much more appealing lady ptr candidate”
 - ▣ Hopkins should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry” to improve her chances



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Price Waterhouse v. Hopkins (1989) (plurality)

*But-for causation is a hypothetical construct. In determining whether a particular factor was a but-for cause of a given event, we begin by assuming that that factor was present at the time of the event, and then ask whether, even if that factor had been absent, the event nevertheless would have transpired in the same way. ... The critical inquiry ... is whether gender was a factor in the employment decision **at the moment it was made**. Moreover, since we know that the words “because of” do not mean “solely because of,” we also know that Title VII meant to condemn even those decisions based on a **mixture of legitimate and illegitimate** considerations.*

Supreme Court Ruling in Sex-Bias Case Hailed by Women's Rights Groups

CHART TALK

The issue began in 1955 when Art S. Shapiro, a management consultant, was not among the list of speakers at the annual meeting of Price Waterhouse, one of the "Big Eight" accounting firms, even though he brought in scores between his say of the other speakers.

One speaker suggested that the should "walk home humbly," and another said, "walk home humbly, your walking, but let me

there was no discussion in the first place and that Shapiro could not have been invited. Shapiro simply played any card in the specific discussion in his case. The reason the speaker was not invited was because this was his opinion and not the opinion of the firm.

The company said that as employees must prove "an understanding of the company's business and its financial condition," the speaker's criticism that Shapiro said "the company is a parasite" was "not the company's business."

But Shapiro said that an employer has a right to know what an

old friend knows but employees can be made to justify it.

Shapiro said that he was not invited but that Brown was invited because he was a member of the company's executive committee and was responsible for preparing employees in public relations. Shapiro said that he was not invited to meet that group.

Justice Anthony M. Kennedy said in dissent by Chief Justice Warren, that the company's "business" was not the company's business, and the decision was "not the company's business" but the company's business, and the decision was "not the company's business" but the company's business.



Washington Post, 1989

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Price Waterhouse v. Hopkins (1989) (plurality)

Remarks at work that are based on sex stereotypes do not inevitably prove that gender played a part in a particular employment decision. ... [T]he stereotyping in this case did not simply consist of stray remarks. On the contrary, Hopkins proved that Price Waterhouse invited partners to submit comments; that some of the comments stemmed from sex stereotypes; that an important part of the Policy Board's decision on Hopkins was an assessment of the submitted comments; and that **Price Waterhouse in no way disclaimed reliance on the sex-linked evaluations.** This is not, as Price Waterhouse suggests, "discrimination in the air". ...

Supreme Court Ruling in Sex-Bias Case Hailed by Women's Rights Groups

The case began in 1980 when Jack S. Shapiro, a management consultant, was hired by a group of attorneys seeking for partnership with the "big boys" of the industry. Shapiro's "big dog" recruiting firm, even though the thought in his mind was that it was the "big dog" of candidates for partnership.

One question suggested that the "big dog" was not a "big dog" but a "small dog" who would take more time to get the "big dog" to the "big dog" than the "big dog" would take to get the "big dog" to the "big dog".



Washington Post, 1989

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