

# *The Student Body Supreme Court of Indiana University*

Appellate Hearing Concerning the 2008 Indiana University Student Association Elections  
**The Big Red Elections Ticket v. The Kirkwood Elections Ticket**  
**Docket Number: SBSC-2008-03**

The Big Red Elections Ticket (“Big Red”) petitioned the Indiana University Student Association Supreme Court for appellate review of the Elections Commission decision entered April 17, 2008. The Elections Commission ruled against the Kirkwood Elections Ticket (“Kirkwood”), finding them in violation of the following sections of the *Indiana University Student Association Elections Code* (“Elections Code”) – Title V, Section 502: Improper Use of E-mail, and Section 505: Interference with Campaign Materials. Kirkwood was levied a fine of 40% of their final campaign expenditures for these violations. In a separate but related decision, the Elections Commission ruled that Kirkwood was not in violation of the following sections of the Elections Code – Title V, Section 506: Campaigning in the Residence Halls and Section 507: Additional Residence Hall Restrictions.

Big Red then requested an appellate review of both of these decisions, contending that “the Elections Commission has clearly erred in its judgment, exhibited a blatant abuse of discretion, and that at least one member of the Elections Commission who took part in the entirety of the proceedings had an admitted personal bias.” As Petitioner Big Red presented possibility of existence of one or more of the following three criteria, “‘clear error, blatant abuse of discretion, or personal bias’ in the resolution of their complaint or defense” (*The Crimson Elections Ticket and The Fusion Elections Ticket v. The Big Red Elections Ticket*, SBSC-04-02 (2004), citing *Action v. Crimson, et al.*, SBSC-03-01 (2003)), the Court issued a *writ of certiorari*. On April 20, 2008, the Court heard oral arguments on the matter of *The Big Red Elections Ticket v. the Kirkwood Elections Ticket*, SBSC-2008-03.

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*Chief Justice FitzGerald with Justices Dammu, Isaacs and Maloney delivered the opinion of the Court.*

Article IV, Section 2 of the *Indiana University Student Association Constitution* grants the Court the right to adjudicate election disputes. Further, Section 1001 of the Elections Code states that the “Supreme Court shall have the final authority over all properly appealed IUSA Election and referendum disputes.” Additionally, “the Student Body Supreme Court of Indiana University recognizes its responsibility, as the highest judicial body within the Indiana University – Bloomington student government system, to preserve the integrity of the student government elections and to prove the rights and address the concerns of the student body” [*Action v. Crimson*, SBSC-03-01 (2003)].

In the case of an elections appeal, the Court has previously held that “to overturn an Elections Commission decision, [the] petitioner must show ‘clear error, blatant abuse of discretion, or personal bias’ in the resolution of their complaint or defense” (*The Crimson Elections Ticket and The Fusion Elections Ticket v. The Big Red Elections Ticket*, SBSC-04-02 (2004), citing *Action v. Crimson, et al.*, SBSC-

03-01 (2003)). Big Red alleged that the Elections Commission actions fulfilled each of these three criteria and accordingly petitioned the Court for judicial review. Based on the expressed potential for the existence of one or more of these criteria, the Court then granted Petitioner a *writ of certiorari* and a subsequent appellate hearing (judicial review) to determine the existence or inexistence of each of these criteria individually. After the appellate hearing on April 20, 2008, the Court has determined two of these three criteria were indeed met in the April 16, 2008 hearing by the Elections Commission.

First, the Court finds that the Elections Commission executed a blatant abuse of discretion in placing an unnecessarily stringent burden of proof upon the Big Red ticket in its consideration of alleged violations by Kirkwood of Elections Code Sections 506 and 507. The standard used across the Indiana University judicial system is that evidence must be “clear and convincing,” and it is imperative that this standard be universally and fairly applied. During the course of the Elections Commission hearing, nine signed testimonies were each deemed by the Elections Commission to be insufficient evidence. These statements were provided by students, Residential Programs and Services (RPS) employees, and Residence Hall Association (RHA) staff. It is the Court’s opinion that at least three of these signed statements provided sufficient evidence to constitute “clear and convincing” proof that violations occurred. The remaining statements were deemed inadmissible by the Court since they were either too general in their details or potentially biased because they were provided by individuals affiliated with Big Red.

The Court also finds that the Elections Commission exhibited clear error by improper application of the Elections Code. The Elections Commission determined that the act of forwarding impermissibly accessed correspondence of Luke Fields, Big Red candidate for President, constituted a violation of Sections 502 and 505 of the Elections Code. However, the Court finds such an application of Section 502 was incorrect because this particular section pertains solely to the protection of privacy of potential voters. Instead, the allegation should have been applied to Sections 503 and 505.

On the matter of potential personal bias, without an official recording or transcript the Court was unable to verify claims made by Big Red regarding statements made by Elections Commission member Taylor Houglund at the hearing on April 16, 2008.

Due to the Elections Commission’s blatant abuse of discretion and clear error, the Court vacates the decision of that lower judicial body and finds the following:

**I. One violation of Elections Code Section 503: “Damage to Property. Destroying, damaging, or defacing University or private property shall constitute a violation of this code.”**

The Court finds that Adam Pozza, Congressional Candidate for Kirkwood, destroyed the private property of Mr. Fields when he impermissibly deleted six months’ worth of sent e-mails from Mr.

Fields' personal computer.

**II. Two violations of Elections Code Section 505: “Interference with Campaign Materials. No candidate, ticket, or anyone acting on their behalf shall deface, destroy, alter, or otherwise change any candidate’s campaign materials.”**

First, the Court determines that Mr. Pozza destroyed campaign materials of Big Red Presidential candidate Luke Fields when he impermissibly deleted six months’ worth of sent e-mails from Mr. Fields’ personal computer. Since these e-mails could be construed as Big Red campaign memos, Mr. Pozza’s actions clearly interfered with campaign materials.

Second, the Court also finds that when Mr. Pozza changed the subject heading of one of these campaign-related e-mails from “my fucking awesome banner!” to “We gotta move!!!!,” he altered the campaign materials of another candidate. This action constitutes a second violation of Section 505. Such action is analogous to stealing physical campaign memos and altering their content.

Electronic evidence that resulted in the remand of this case to a new Elections Commission hearing on April 16, 2008 showed that both Kirkwood Presidential candidate Joe Weis and Kirkwood Chief of External candidate Eric Gibson received at least one campaign-related e-mail that was impermissibly forwarded by Mr. Pozza from the e-mail account of Mr. Fields. Therefore, executive candidates for the Kirkwood ticket knew of Mr. Pozza’s actions and failed either to inform appropriate authorities or to address the issue in a reasonable manner. Thus, the Court holds that the entire ticket must be held accountable for Mr. Pozza’s actions.

**III. One violation of Elections Code Section 506: “Campaigning in the Residence Halls. No candidate, ticket, nor any person acting on behalf of any candidate or ticket, shall campaign in any university dormitory before 9:00 a.m. or after 9:00 p.m. during the election. For the purposes of this section, the term ‘campaign’ does not include e-mailing, posting material, or wearing campaign clothing. For the purposes of this section, campaigning is meant to include ‘door-to-door’ soliciting, ‘cold-calling’ dorm rooms, or any other activity that is reasonably disruptive to students.”**

According to a signed statement provided by one Andrew Basile, a resident of Wright Quadrangle, individuals affiliated with Kirkwood campaigned after 9 p.m. in his dorm hallway on March 25, 2008. The Court deems that this statement provides clear and convincing evidence of a violation of the Elections Code. A signed statement by a party that does not exhibit bias against or in favor of either ticket should be considered at face value.

**IV. Two violations of Elections Code Section 507: “Additional Residence Hall Restrictions. Any candidate, ticket, or any person acting on behalf of any candidate or ticket found in violation of policies or guidelines established by Residential Programs and Services (RPS)**

**and/or the Residence Halls Association (RHA) regarding conduct within a dorm, shall constitute a violation of this code.”**

First, sophomore Robert Bercovitz, Kirkwood candidate for Vice President of Congress, testified to having solicited “maybe two or three votes” while “meeting friends” with his laptop in Gresham Dining Hall. The Court finds that such action does constitute setting up a campaign operation within the common space of Gresham Dining Hall without prior approval. Such action falls in clear violation of RHA guidelines stating that “in order to set up a campaign operation within the public space of a residence hall...a representative from such an IUSA ticket must receive event approval from the respective center’s Community Council.” According to sworn testimony from Ms. Robin Featherston, Big Red candidate for Treasurer, Ms. Featherston asked Mr. Bercovitz to leave and he agreed, as part of a “good faith measure.” Nevertheless, Mr. Bercovitz’s actions constituted a violation of the RHA guidelines, and as such, he must be held responsible.

The Court also finds that Kirkwood representatives committed a second violation of Elections Code Section 507 by knocking on closed doors for campaign-related purposes within the Foster Residence Hall. An e-mailed statement submitted to evidence by Foster resident Lindsey Winter states:

“I was in my room taking a nap when I was woken up by the Kirkwood Ticket asking me to vote...They left my room and kept walking down the hallway knocking on people’s doors. When someone would answer they would asked [sic] if they voted and if they said no, they would walk into their room and get on their computer and pull up their site for them to vote on. I don’t know who everyone voted for, but when they left the room they put a little flier up saying ‘I voted Kirkwood.’ There were about 15-20 of these on the doors throughout the hallway.”

The Court finds that this statement provides clear and convincing evidence that Kirkwood violated RHA guidelines specifying that “at no time may an IUSA representative enter a resident’s room without consent, nor may such a representative campaign to a closed door. This includes knocking on, speaking through, and placing any information on or underneath any door.” In light of testimony by a residence hall campaign manager for the Kirkwood ticket, who stated that an average of only four to five doors would be ajar on any given floor during residence hall campaign endeavors, the Court determines that Kirkwood campaigned to closed doors.

## **V. Summary of findings.**

The Court finds the Kirkwood ticket responsible for six violations as outlined by the Elections Code and RHA guidelines: one violation of Section 503, two violations of Section 505, one violation of Section 506, and two violations of Section 507.

It is significant to note that the evidence upon which the Court first remanded the e-mail case to the

Elections Commission indicates that Mr. Weis submitted at least one misleading statement to said Commission. This misleading assertion arose in Mr. Weis' signed statement, delivered to the Elections Commission in lieu of his attendance at the tickets' very first hearing on March 26, 2008, that Mr. Pozza had been dismissed from the ticket as soon as his actions became known to the ticket's executives. Mr. Weis wrote, "[Mr. Pozza] has deceived us in doing this without our knowledge. Upon learning of this, Mr. Pozza was immediately removed from the Kirkwood Ticket." The Court makes no assertion that Mr. Weis or other executives originally conspired with Mr. Pozza or told him to impermissibly access and forward Big Red campaign e-mails. The Court does, however, conclude that dated electronic evidence clearly indicates that in contrast to Mr. Weis' signed statement, Mr. Pozza was *not* removed from Kirkwood upon executives' awareness of his actions (March 2, 2008), but instead not until after his actions were made public weeks later due to Big Red's first appeal filed March 20, 2008.

While such submission of misleading statements does not constitute an explicit violation of the Elections Code, such behavior does demonstrate blatant disrespect for the judicial process. Furthermore, it is the Court's firm belief that to leave such a deliberate show of dishonesty unsanctioned would set a precedent that would only promote apathy and dishonesty within IUSA and/or the university community as a whole. This Court has weighed this behavior, in addition to the actual violations of the Elections Code, in determining the appropriate sanctions.

Although certain actions are not explicitly stated within the Elections Code, the Court finds that actions taken on behalf of any campaign or ticket that are illegal or that are in violation of the Code of Student Rights and Responsibilities and which are related to the elections process should be considered as implicit violations of the Elections Code. This interpretation arises from the position of the Elections Code under the jurisdiction of the Indiana University Student Code of Rights, Responsibilities and Conduct ("Code of Rights, Responsibilities and Conduct"), not to mention applicable local, state and national laws. The Court finds that when Mr. Pozza impermissibly accessed, forwarded and deleted personal e-mails of Mr. Fields, he – then as a representative of Kirkwood – committed violations that fell within the Code of Rights, Responsibilities and Conduct and likely also applicable laws. Thus, such actions also constituted a violation of the Elections Code.

## **VI. Sanctions.**

Pursuant to Elections Code Section 603: Material Violations, "Any candidate or ticket found in violation of at least three (3) violations[sic] above may qualify for a material violation of this code...If...the violations [are found] to be materially contributory to the outcome of the election, the individual candidate or ticket will be eligible for disqualification."

The Court finds that the sum of the six violations for which the Court finds Kirkwood responsible – and, in fact, the sum of the three residence hall-related violations *alone* – materially contributed to the outcome of the election. The Kirkwood ticket won by a margin of only 153 votes, which comprised

less than two percent of votes submitted. The Court recognizes the strong potential for this gap to have been closed, and indeed reversed, if not for the aggregate effect of these three residence hall violations. It is significant to note that Kirkwood's violations of Sections 503 and 505 may also have contributed materially to the outcome of the election, albeit indirectly, due to the unfair campaign disadvantage experienced by Big Red when Kirkwood chose to campaign rather than attend their first hearing (held with unfortunate and perhaps inappropriate timing on the final evening of elections March 26, 2008) while Big Red did attend that hearing.

Pursuant to Title VI, Section 603 of the Elections Code, the Court finds the sum of at least three of Kirkwood's violations to have been materially contributory to the outcome of the election. Accordingly, Kirkwood is disqualified from the 2008 Indiana University Student Association Elections.

Prior sanctions placed upon Kirkwood by the Elections Commission are hereby waived.

## **VII. Authority and jurisdiction of the Supreme Court to rule and disqualify.**

Article IV, Section 2 of the IUSA Constitution states that the Court has the authority to adjudicate elections disputes. Additionally, Section 1001 of the Elections Code holds, "The Supreme Court shall have the final authority over all properly appealed IUSA Election and referendum disputes." Further, Section 1002 of the Elections Code states that "the Supreme Court shall have the full authority over all properly appealed election disqualification decisions of the Elections Commission." The petition addressed by the Court's appellate hearing April 20, 2008 was filed in reasonable request of a "disqualification decision of the Elections Commission," and as such the Court holds final and full authority in this matter.

*It is so ordered.*

*Joining in the opinion is Justice Whited. Justice Albin offers a concurring opinion below, joined by Justice Bowers.*

*Justices Fishburn, Howard and Martin recused themselves from this case and did not take part in any decision.*

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*Justice Albin, concurring with the decision of the Court.*

It is important to note that this case is unique – a case of precedent – and comes at a time where student apathy is dangerously high. The current administration, Hoosier II, ran unopposed last year and voting turnout this spring was dismal, with less than 1/5 of the student body voting even when presented with voting stations throughout campus over a two-day period. This situation, combined with this year's election disputes, creates a situation where respect for IUSA as a whole organization

is damaged, embarking on a dangerous course that slowly chips away at the ability for the student body to be properly represented. IUSA is the voice of the student body, whether or not apathy is high, and as such has a responsibility to hold itself to the highest of standards.

The IUSA Constitution states, “The Indiana University Student Association will work to protect student rights, enrich student life, and improve Indiana University.” Students have a right to be represented by individuals of integrity, honesty, and respect for the system that empowers them. The student body was subjected to improper and unethical campaign behavior by the Kirkwood ticket, which was originally sanctioned with minor financial penalties simply because the authors of the Indiana University Student Association Elections Code did not anticipate every potential situation and did not provide a clear black or white interpretation. Constitutions, codes, and common law are generally written with broad language to encourage proper interpretation by the responsible judicial bodies – not to be held to some impossible stringent standard. The Elections Code is no different and must be interpreted in a way that serves its fundamental purpose to provide “fair and equal opportunities for all IUSA members to hold and run for office and to provide fair and equal opportunities for all IUSA members to participate in the electoral process.” The purpose of the IUSA Elections Code also implies that relevant violations of Indiana University or UITTS policy – let alone apparent violations of applicable laws – that relate to elections or campaigning cannot be ignored or downplayed. Thus, the Elections Commission failed in their responsibility to properly interpret and apply the power provided to them by the Elections Code.

It is also important to restate that the Indiana University Student Association Supreme Court is given the final authority “to preserve the integrity of the student government elections and to prove the rights and address the concerns of the student body” [*Action v. Crimson*, SBSC-03-01 (2003)]. Students have, and should have, no desire to respect an organization that encourages the “do whatever it takes” mentality with an unprincipled view of “the ramifications be damned.” Students should be presented with hard choice, but only for the right reasons. Kirkwood simply broke the rules and ran what could be called a dirty campaign.

What the Elections Commission has done by applying monetary sanctions in this case is to set an incredibly dangerous precedent: one that implies that if a ticket or individual is willing to pay monetarily, they can run a preposterously improper or untruthful campaign as long as they do not clearly, *blatantly* violate the *exact wording* of the *Elections Code*. What the Court has set out to do is to uphold the integrity of the elections process based on principles that are in line with the purpose of IUSA. During our deliberations we came to the conclusion that there was simply no way to protect the system without disqualifying the Kirkwood ticket. The Court found the Elections Commission in violation of not just one, but two, of the three criteria for an overturn of the Elections Commission’s decision. These criteria include clear error and blatant abuse of discretion. There was simply no way I could in good conscience leave the decision of such an important election to a Commission that twice violated its mandate.

The Court is obligated to hear evidence of such wrongdoing when warranted. It is unbelievable, and disappointing, that this case ever reached the level of this Court. This is just one example of how,

with time and indifference, the system has failed to accommodate unique situations such as the one presented to the Court at this time. The Court now is forced to set a precedent that, while positive for the student body and student government going forward, must overturn the popular vote. This is not something to be taken lightly and must only be considered under the direst of circumstances.

The question of whether or not the case was material is an important one. Kirkwood won the election by 153 votes, or just slightly less than two percent of the total vote. Two separate issues exist here that contribute to making this material enough to affect the election. First, the stolen e-mails from Luke Field's computer by former Kirkwood ticket member Adam Pozza began a process that may have affected Big Red's ability to campaign effectively compared to Kirkwood. Big Red executives were busy following the proper protocol of the *Elections Code* while Kirkwood executives continued to campaign during the late hours of March 26<sup>th</sup>. Kirkwood's absence from the original Elections Commission on the 26<sup>th</sup> showed disrespect for the system and positioned them with extra time to campaign across campus. Second, the RPS and RHA violations secured an undetermined number of votes. Kirkwood's behavior in the resident halls and other campus buildings, as shown in signed statements, was improper to say the least. According to signed statements and testimony, they *knowingly* violated rules regarding campaigning in residence halls.

These two issues, and their sub-components, add up to what I believe is a material impact on the outcome of the election. It is unfortunate, and frustrating, that hard evidence relating to specific number of votes is impossible to obtain, but the Court is still charged with making the decision of whether or not Kirkwood's actions were material. The standard of evidence at Indiana University is "clear and convincing." It is my belief, based on testimony, signed statements, and appeal briefs, that the evidence of actions at hand was clear and convincing, and that these violations as a whole were material to the outcome of the election.

What may be just as important is Kirkwood's, or one of its members acting on its behalf, violation of larger UITS and University policy. While those violations did not play a significant role in our decision of materiality, it is important to recognize their existence and the importance of such violations. Another important issue to address are the misleading statements submitted by Joe Weis, presidential candidate for the Kirkwood ticket. Joe Weis, in his statement to the Elections Commission, said, "[Mr. Pozza] has deceived us in doing this without our knowledge. Upon learning of this, Mr. Pozza was immediately removed from the Kirkwood Ticket." During the Supreme Court's appellate hearing of this matter on April 20<sup>th</sup>, Mr. Weis attempted to employ a strange twist of logic and misinformation by implying he had *not* originally expressed unawareness of Mr. Pozza's action, just that he was not aware *prior* to Mr. Pozza's actions. His actions leading up to the release of UITS evidence that showed e-mails were forwarded to his IU e-mail account almost immediately on March 2<sup>nd</sup> were contradictory to this statement. He failed to publicly address the issue after he received the forwarded e-mails, instead waiting until he was forced to during the remanded Elections Commission.

What is also interesting is that one of the three speaking members of the Kirkwood ticket at the April 20th appellate hearing was Jordan Loeb, former INdiana ticket member. Jordan served as

Kirkwood's "expert" on the *Elections Code* as he testified he assisted with its creation. Throughout the hearing Mr. Loeb explained the original interpretation in an oddly convenient manner that validated much, if not all, of Kirkwood's inappropriate behavior, stating it was simply the limitations of the Code and shouldn't be interpreted otherwise. When questioned, he took the position that he was not supporting Kirkwood, yet continually contradicted himself on the issues of the Court's authority, Kirkwood's responsibility, and generally his own interpretation of the Code he helped to create. When questioned about his motives, he denied any involvement with the ticket now or potentially in the future.

In the end, the content of a campaign e-mail illegally forwarded is not as important as the principle involved. The act of unauthorized access and forwarding of *any* e-mail violates university policy and generally accepted moral standards.

One violation alone would be enough to justify a slap on the wrist, but **six** violations out of a potential 13 is shocking. Any potential or personal good intentions from Kirkwood ticket members aside, a ticket is responsible for the actions of the people whom they bring into their inner circle, the ones they trust to represent their ticket to the student body and, ultimately, to potentially act as the voice of the student body. Kirkwood chose poorly enough that it engulfed their campaign in accusations of improper behavior, which led to the violations found in this decision. The Court has, among its many charges, the chief duty to be the last line of defense when protecting the integrity of the system. To do anything less than to disqualify the Kirkwood ticket, while an unbelievably difficult decision given the precedent it sets, was the only viable option I saw for the Court. It weighs heavily on me that the Court was forced to move to such steps, but I am confident that this decision was the correct one, made in the best interests of the student body, IUSA, and Indiana University as a whole.

I respectfully concur.

*Justice Bowers joins in this concurring opinion.*

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*Justice Udoff, concurring in part and dissenting in part.*

It is in my most sincere judgment that this Court thoroughly reviewed the facts of this case and accurately found the Kirkwood ticket responsible for their actions in the 2008 Indiana University Student Association's elections. I agree with the Court's finding that the Kirkwood ticket violated Section 503, Section 505, Section 506, and Section 507 of the *Indiana University Student Association Elections Code*. The Court found a total of six violations within these sections as stated in Part II of the Court's decision. Further, I concur that Joe Weis intended to mislead or deceive the Elections Commission regarding allegations of his knowledge of Adam Pozza's e-mails, thus resulting in an action that might even be characterized as an act of perjury.

While I agree with the findings of the Court, I disagree with the decision to disqualify the Kirkwood ticket. The Court adjudicated that the combination of all six violations, especially in light of Kirkwood's apparent disregard for the integrity of the judicial process, resulted in a material contribution to the outcome of the results of the election. The Kirkwood ticket won by a total of 153 votes. Thus, the Court has decided that at least this many votes were inappropriately persuaded to vote in Kirkwood's favor. I was unable to draw this conclusion.

Although the Court did not weigh the effects of the forwarded e-mails *alone* as having played a material role in the election's outcome, I would like to specifically address what I see as the relative insignificance of those e-mails. The e-mails forwarded by Mr. Pozza from Mr. Fields' account contained information regarding one of Big Red's banners. Although useful as a promotional tactic, I find it unreasonable to believe a banner of any sort is able to persuade votes alone. As pertaining to the Big Red ticket's argument that the e-mail's title was changed to invoke action, I again note that banners alone do not persuade votes and the Kirkwood's knowledge of such is insignificant to the outcome of the election. In response to the Kirkwood's actions in the residence halls, I again remain unconvinced that their wrongdoings, even combined with the e-mail violations, affected 153 votes. The Court maintained that three of the thirteen exhibits presented by Big Red individually accounted as a separate violation of the Elections Code. I contend that these acts of misconduct may have won the Kirkwood ticket additional votes in the 2008 elections process. However, this number of votes, I deem, is indeterminable and less than 153.

It is troubling that the Kirkwood ticket conducted such an inappropriate campaign and I do not condone their actions. Tickets seeking to represent Indiana University should maintain the utmost integrity. However, no elections process is without flaws. While the Court finds that the violations by the Kirkwood ticket result in a material contribution to the outcome of the election, I contend these violations were not materially contributory to said outcome. In my opinion, the outcome of the results would not have been any different if these violations did not occur. I stand alone in my suggestion that instead of overturning the election in favor of Big Red, we fine the Kirkwood ticket the maximum amount of 75% of their final, reported financial expenditures (Title VIII, Section 801). Application of the maximum fine would demonstrate that the Court takes a strong stance against Kirkwood's actions, yet would also convey that the ticket's violations did not have a material effect on the outcome of the elections.

I respectfully concur in part and dissent in part.