

NLWJC- Kagan

Counsel - Box 004 - Folder 008

UC Regents



THE WHITE HOUSE  
WASHINGTON  
November 30, 1995

MEMORANDUM FOR JACK QUINN

FROM: ELENA KAGAN

SUBJECT: UNIVERSITY OF CALIFORNIA/AFFIRMATIVE ACTION

You may recall a short-lived flap in the middle of last summer concerning the Administration's response to the University of California Board of Regents' resolution to halt affirmative action. Ab played a semi-public role in handling this issue, and I assume you will take over this role if the issue rears its head again. This memo is to bring you up to speed on the matter and to bring to your attention a very recent development that you should know about.

I am attaching a number of letters from last summer indicating the nature of the controversy. Briefly summarized, Leon made some comments on a Sunday talk show suggesting that the Board of Regents' action might endanger some federal funding to the University because of contract or program requirements involving affirmative action; Gov. Pete Wilson and Lt. Gov. Gray Davis wrote to the President protesting any action cutting off federal funds; Ab responded, on behalf of the Administration, that the Administration would engage in routine review of the University's compliance with federal requirements, but would make every effort to avoid cutting off federal funds; and J.W. Peltason, the University of California President, assured Ab that the University would continue to comply with all federal affirmative action requirements under a provision of the Board of Regents' resolution exempting actions necessary to maintain eligibility for federal programs.

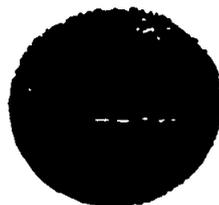
Earlier this month, I received a briefing from DOJ attorneys assigned to coordinate and oversee agency responses to the Board of Regents' action. I reported on this briefing in the attached memo to Barry Toiv. In that memo, I noted that none of the agencies had encountered any evidence that the University was failing to comply with federal requirements and therefore none had taken any action against the University.

I just received a call from Shirley Wilcher, the Deputy Assistant Secretary of the Department of Labor for Federal Contract Compliance Programs. Wilcher told me that she, Solicitor Tom Williamson, and Assistant Secretary for Employment Standards Bernie Anderson have scheduled a meeting for next week with University officials to discuss the University's compliance with federal affirmative action requirements. I am not certain exactly how this meeting came about, but it follows a meeting with the University's General Counsel last month, in which the

General Counsel assured DOL of its desire to comply with federal affirmative action requirements. Wilcher expects the University officials to make a presentation on the University's continuing compliance with federal requirements.

Given the University's clear desire to comply with federal requirements, I do not expect this meeting to lead to any attempt on DOL's part to take action against the University. I must say that I would prefer that the agencies not have such meetings; but I don't think we can or should do anything about this meeting at this point. I will keep you posted; let me know what you think about this matter.

7/24



GOVERNOR PETE WILSON

July 25, 1995

The President  
The White House  
Washington, D.C. 20005

Dear Mr. President:

On Sunday, July 23, White House Chief of Staff Leon Panetta stated that the decision by the University of California's Board of Regents to abolish racial preferences in university hiring, contracts and admissions had prompted your Administration to consider cutting off a variety of federal funding programs to the State of California and our people. In this morning's Los Angeles Times, however, unnamed representatives of your Administration suggest that this is not the case.

Because Mr. Panetta holds a position of such significant authority within your White House, and because he has not himself retracted his earlier comments nor shown any indication of doing so, I would appreciate a direct clarification from you as to the validity of his threat.

Mr. President, this is the second time in less than a year that your White House has made such outrageous attempts at political blackmail in order to coerce the people of California into forfeiting a public policy position with which you happen to disagree. The people of California deserve a direct answer: Does your Administration plan to cut off federal funding to our state as your Chief of Staff has threatened? Or was Mr. Panetta not speaking with your authority on this matter?

The people of California await your response.

Sincerely,

PETE WILSON



**GRAY DAVIS**  
*Lieutenant Governor*  
*State of California*

**VIA FACSIMILE**  
**202/456-2883**

July 26, 1995

*Gray Davis*  
*6-6797*

The Honorable Bill Clinton  
President of the United States  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. President:

I want to commend you on your courageous and statesmanlike address last week on the subject of affirmative action.

It was particularly appropriate coming as it did just prior to consideration by the University of California Board of Regents of the proposal to abolish affirmative action in University admissions, hiring and contracting. Several of us Regents fought hard to prevent this untimely, wholesale reversal of long-standing policy -- driven as it was, in large measure, by presidential politics. Unfortunately, we were not ultimately successful.

As a Regent, however, I take very seriously my fiduciary responsibility to the University of California system. Despite the Regents' action, I certainly do not want to see the loss of any federal funding allocated to the University. In fact, as you know, the resolutions approved by the Regents contain a clause that essentially renders their provisions null and void if their enactment would lead to the loss of State or federal funds.

It would be particularly helpful if you could designate someone from the Department of Justice and the federal agencies and departments that provide funding to the University to work with the Regents and University of California Administration to help avoid any implementation action that might endanger federal funding.

The Honorable Bill Clinton  
President of the United States  
July 26, 1995  
Page two

The 163,000 students and 7,000 faculty members of the University of California, the preeminent public university in the nation, truly represent this State's best and brightest. We must work together to ensure that they are not punished due to the misguided action of 14 members of the Board of Regents.

I look forward to hearing from you, and want to thank you again for your leadership and concern on this matter.

Best regards,

A handwritten signature in black ink that reads "Gray Davis". The signature is written in a cursive style with a large, stylized "G" and "D".

GRAY DAVIS

Encls.

cc: Leon Panetta  
Chief of Staff

Bruce Lindsey  
Deputy Counsel

✓ John Emerson  
Deputy Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 27, 1995

The Honorable Pete Wilson  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Governor Wilson:

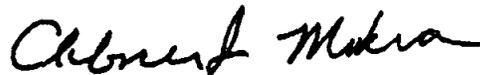
The President has asked me to respond on his behalf to your letter concerning the effects of the University of California Board of Regents' resolution to halt affirmative action.

As you know, the President disagrees with the Regents' decision. As his Chief of Staff Leon Panetta recently stated, the resolution is a mistake -- a retreat from this nation's longstanding commitment to equal opportunity and equal justice.

As a matter of course, in order to comply with all applicable law, federal agencies review actions of such significance to determine whether and how they affect the administration and enforcement of federal programs. It is this regular and routine process to which Leon Panetta recently referred. Agencies must determine whether the University of California's new policy violates the terms and conditions of any preexisting contracts with or grants to the University of California. In the event that this review reveals any problems, we will make every effort to work with the State of California to avoid cutting off any federal monies. I have been instructed by the Chief of Staff to work with the University of California in this regard.

Please be assured that the President is not interested in taking punitive action against the University of California for its ill-considered change in policy. Nor is he interested, as some appear to be, in using the University of California as a pawn in a political battle. The President well understands the greatness of the University of California system and has a deep commitment to preserving it. It is a shame that the Board of Regents last week failed to show the same understanding and commitment.

Sincerely yours,



Abner J. Mikva  
Counsel to the President

Identical letter sent to the Honorable Gray Davis

THE WHITE HOUSE

WASHINGTON

July 27, 1995

The Honorable Gray Davis  
Lieutenant Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Lieutenant Governor Davis:

The President has asked me to respond on his behalf to your letter concerning the effects of the University of California Board of Regents' resolution to halt affirmative action.

As you know, the President disagrees with the Regents' decision. As his Chief of Staff Leon Panetta recently stated, the resolution is a mistake -- a retreat from this nation's longstanding commitment to equal opportunity and equal justice.

As a matter of course, in order to comply with all applicable law, federal agencies review actions of such significance to determine whether and how they affect the administration and enforcement of federal programs. It is this regular and routine process to which Leon Panetta recently referred. Agencies must determine whether the University of California's new policy violates the terms and conditions of any preexisting contracts with or grants to the University of California. In the event that this review reveals any problems, we will make every effort to work with the State of California to avoid cutting off any federal monies. I have been instructed by the Chief of Staff to work with the University of California in this regard.

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Sincerely yours,



Abner J. Mikva  
Counsel to the President

Identical letter sent to the Honorable Pete Wilson

Elena



**GRAY DAVIS**  
Lieutenant Governor  
State of California

July 28, 1995

The Honorable Abner J. Mikva  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Judge Mikva:

Thank you very much for your timely and detailed response to my letter to the President.

It was reassuring to learn that the President shares my concern that the University of California and its 163,000 students not be penalized financially as a result of the UC Regents' ill-considered action last week abolishing affirmative action. I am also particularly pleased that you have been designated as primary liaison between the Clinton Administration and the Board of Regents in this matter. I look forward to working with you as we deal with this drastic change of policy.

By the way, after receiving your letter yesterday I spoke with UC President Jack Peltason, who was delighted to hear that a former classmate and longtime friend would be representing the White House in this process. I believe he will be giving you a call soon.

Best regards,

*Gray Davis*

GRAY DAVIS

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

J. W. PELTASON  
President

OFFICE OF THE PRESIDENT  
300 Lakeside Drive  
Oakland, California 94612-3550  
Phone: (510) 987-9074  
Fax: (510) 987-9086

July 28, 1995

Abner J. Mikva, Esq.  
Counselor to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. Mikva:

I was very pleased to learn that you will serve as liaison to the University of California in connection with any questions about the University's status as a federal contractor in light of the recent adoption by the Board of Regents of two resolutions which prohibit the use of race, sex, color, ethnicity, or national origin as criteria for admission (effective in January 1997) and in employment and contracting (effective in January 1996).

I want to assure you that the University intends to take no action which will jeopardize its eligibility to receive federal or State funds. Both of the resolutions adopted by The Regents provide specifically that the University will continue to comply with the federal and State mandates requisite for sustained eligibility for federal and State funds. A copy of my recent statement clarifying the University's response to the two resolutions is attached for your information.

I will be pleased to discuss these matters with you at any time. If for some reason I should be unavailable, please feel free to call General Counsel James E. Holst. He can be reached at (510) 987-9738.

I remember with great pleasure our working together in Illinois, and I hope that our paths will cross again soon.

Cordially,

A handwritten signature in black ink, appearing to read "J. W. Peltason", with a long horizontal flourish extending to the right.

J. W. Peltason

cc: Provost Walter E. Massey  
Senior Vice President V. Wayne Kennedy  
General Counsel James E. Holst

THE WHITE HOUSE

WASHINGTON

August 4, 1995

President J.W. Peltason  
University of California  
Office of the President  
300 Lakeside Drive  
Oakland, California 94612-3550

*Jack*  
Dear ~~President Peltason:~~

I appreciate your letter of July 28 regarding the Board of Regents' resolutions on affirmative action and the effect of those resolutions on federal funding.

As I wrote to the Governor and Lieutenant Governor, the President is not interested in taking punitive action against the University of California for its ill-advised decision. In order to comply with applicable law, however, federal agencies may have to review whether that decision violates the terms and conditions of current contracts with and grants to the University of California. I have committed to work with the University to try to resolve any problems that might arise from this review.

In this regard, your letter and the assurances it provides are very welcome. You note that the resolutions provide specifically that the University will continue to comply with federal mandates requisite for continued eligibility for federal funds. You also write that the University will take no action that puts it into conflict with funding eligibility requirements. With this approach on the University's part, it is extremely unlikely that any problems will arise. Your respect for existing legal requirements should combine with the President's respect for a great university system to ensure the continued payment of federal monies.

I too remember with pleasure our working together in Illinois, and I look forward to continued cooperation in the future.

Sincerely yours,



Abner J. Mikva  
Counsel to the President

THE WHITE HOUSE  
WASHINGTON  
November 2, 1995

MEMORANDUM FOR BARRY TOIV

FROM: ELENA KAGAN *EK*

RE: UNIVERSITY OF CALIFORNIA

I just received a briefing from the Department of Justice on the status of its review of the University of California's compliance with the affirmative action components of federal contracts and grant programs. The bottom line is that DOJ currently has no reason to think that the University has violated the terms of any grant or contract regarding affirmative action.

DOJ initially met with representatives of the agencies with substantial contractual relationships with the University of California -- HHS, Education, Labor, Defense, and Energy. (The Energy contracts represent a full 95% of the total dollar value of the federal government's contracts with the University.) DOJ asked these agencies to provide it with a rundown of all contracts with the University, a summary of affirmative action requirements contained in those contracts, and a description of the contracts' enforcement mechanisms. DOJ discovered, in reviewing this material, that most of the contracts contain only mild and precatory affirmative action provisions. DOJ also discovered that most of the contracts contain detailed procedures, which may stretch over months or even years, for determining noncompliance with contractual provisions.

DOJ next asked the agencies to relay any evidence that the University was refusing to comply with the contracts' affirmative action provisions. None of the agencies has encountered such evidence; all believe that the University is currently complying with all provisions regarding affirmative action. The President of the University, J.W. Peltason, specifically has assured Secretary O'Leary that the University will continue "to honor all of its obligations under its contracts with the Department of Energy for the management of our three national laboratories, including those provisions that relate to equal opportunity, nondiscrimination, and affirmative action." More generally, President Peltason has written to Abner Mikva that "the University intends to take no action which will jeopardize its eligibility to receive federal or State funds."

The affected agencies will report to the Department of Justice any future evidence of non-compliance. Similarly, they will report any attempt by the University to renegotiate contractual provisions on affirmative action. If I receive any news on this score, I will let you know. For now, it appears that the University is fully complying with all the terms of its federal contracts, including those on affirmative action.

Label Pinzler - DOJ / Civ Rts.

She's prob going out there to say:

I assume you will comply

If I get any idea, I'll bring out actions. / Business as usual  
(see below)

Office of Fed K Compliance Profs  
enforced EO  
11246 - prohibits discrim by Kers

receiving fed funds

regs - goals + timetables

precatory

Office coords K. compliance for a  
# of agencies (most)

K compliance police

If make no effort → Then, yes  
there's trouble.

But assuming making some  
efforts, prob OK.

It ~~is~~ <sup>is</sup> 2) They will do compliance reviews  
if doing better - discussions etc  
(kind of squishy)

Not my understanding that They will do  
anything more.  
Will check - get back to me.

Memo to Jack  
Barry

?

Shirley W. ~~Witt~~<sup>Witt</sup>

219-9475

(DOL)

Regional office called when they broke



U of C has invited DOL  
to discuss compliance

General Counsel came out at a mo. ago  
quick chat  
drafting a policy stmt - want to comply

They're going to give us a presentation  
We are not going to impair our abil  
to do a compliance  
we will make no deference.  
Just ask whatever questions seem appropriate

Tom Williamson  
(to lister)

Bernie Anderson  
Asst Secy for  
Emp & Safety  
Shirley Witt  
Dep Asst Secy -  
Fed K compli-  
ance

Mecon

SIY-6715

Pinzler  
Isabell Penzler -  
Deval's deputy  
UC aff action  
CALL if she  
doesn't call me  
in a couple of  
days.

Referred to us (Civil Rts Div)

mtg w/ apts w/ lots of Ks - Ed, HHS, Energy (labs - 95% of Ks  
in \$s)  
Labor

Debeaux

Asked to give rundown of all Ks

They said - too many

HHS did give document - 2 phonebooks

Next - asked for idea of what kind of AA reqs -  
and enf mech.

All have given short papers.

DoD - also ~~sent~~ gave form K.

Aside from DOE -

~~no~~ no mandatory reqs -  
mostly precautionary

(Also - long process for determining non-compliance)

Next 2 - let us know if UC Ks are refusing to  
follow your programs.

Heard ~~Q~~ on this.

No one feels there is non-compliance w/ (mild)  
aff action events (bec. of resolution's language)  
/ reqs 26

Dept of Energy -

Ks up for renegotiation This year. (Just 3)

Livermore (Los Alamos

If someone wanted to make an issue of This, This would be an  
op.

Are They asking to renegotiate AA reg's??

TP- will check on This.



## U.S. Department of Labor

Employment Standards Administration  
Office of Federal Contract  
Compliance Programs  
Washington, D.C. 20210



SEP 15 1995

MEMORANDUM FOR DEVAL L. PATRICK  
Assistant Attorney General  
Civil Rights Division

THROUGH: THOMAS S. WILLIAMSON  
Solicitor of Labor

BERNARD E. ANDERSON  
Assistant Secretary for  
Employment Standards

FROM: SHIRLEY J. WILCHER  
Deputy Assistant Secretary

SUBJECT: OFCCP Enforcement Program: Sanctions and Penalties

I have received copies of correspondence between Abner Mikva and Gray Davis, Lieutenant Governor of California, about the effects of the University of California Board of Regents' resolution to halt affirmative action. As you know, the Office of Federal Contract Compliance Programs (OFCCP) conducts compliance reviews of covered Federal contractors under all three programs it enforces -- Executive Order 11246, Section 503 of the Rehabilitation Act, and VEVRAA. In addition, OFCCP also investigates complaints filed by individuals who believe that they have been victims of discrimination.

Where it is determined that OFCCP laws have been violated by a contractor, sanctions or penalties may be imposed. Violations could range from a minor technical deficiency in a written affirmative action program (AAP), to a more serious shortcoming, such as failure to have an AAP or discrimination against one or more individuals.

If a contractor is willing to correct its deficiencies, OFCCP resolves the more serious violations with a written conciliation agreement, while the minor technical violations are resolved with a letter of commitment. If no violations are found, a letter of compliance is issued by the agency. OFCCP has conducted five compliance reviews of University of California facilities since 1991, four of which were closed with conciliation agreements, one with a letter of compliance. At the present time, there is an open compliance review underway at the University of California, Santa Cruz.

CC: Kevvi  
Anson  
Isabella  
Bill V. 9/26/95

Working for America's Workforce

- 2 -

Normally, where a contractor fails to agree and/or to implement acceptable remedies for noncompliance, sanctions are deemed appropriate and ultimately, enforcement proceedings are pursued by the agency. Executive Order 11246, in Section 209(a), enumerates six forms of "sanctions and penalties" for noncompliance with the provisions of the Order. They are: (1) publishing the names of contractors that have failed to comply; (2) recommending that the Department of Justice bring proceedings to enforce the contractual provisions of Section 202 of the Order, including the enjoining of organizations and individuals who prevent compliance; (3) recommending that the Equal Employment Opportunity Commission or the Department of Justice institute proceedings under Title VII of the Civil Rights Act of 1964; (4) recommending that the Justice Department bring criminal proceedings for the furnishing of false information; (5) canceling, terminating, suspending, or causing to be canceled, terminated or suspended, any contract, or any portion thereof; and (6) debarment from further contracts or extensions or other modifications of existing contracts, until the contractor has established and will carry out personnel and employment policies in compliance with the provision of the Order.

The only sanctions expressly addressed in the regulations implementing Executive Order 11246 are publishing the names of contractors that have failed to comply, recommending that the Department of Justice bring an enforcement proceeding, contract cancellation, and debarment. 41 CFR 60-1.26 and 1.27.

OFCCP has actually canceled a company's existing contracts only on one occasion. Debarment also is often used as a last resort. The Secretary frequently includes in a Final Administrative Order a provision stating that debarment will occur only if the contractor fails to comply with the Order within a set period of time (such as 60 days). However, the Secretary recently has issued Orders in several cases providing that the debarment will take effect immediately. Those cases, in which the Secretary did not provide the contractors with a further opportunity to come into compliance, all involved contractors that had violated the terms of conciliation agreements with OFCCP.

Depending upon the level of complexity associated with a case, it can take as long as from six months to ten years to take an enforcement case through the administrative process to the point of a Final Order from the Secretary. Since 1980, there have been only 14 debarments, the last six occurring since 1993. The attached chart provides a summary/outline of the typical steps in the OFCCP debarment process, from determination of noncompliance to the Final Order. The steps are not all mandatory. Moreover, as noted above, the Secretary may order immediate debarment rather than simply that debarment will occur if the contractor fails to obey the Final Order.

-3-

Also attached, are tables showing contract transactions with the University of California for Fiscal year 1994 and contract dollars paid to the University of California by federal agencies in fiscal year 1994.

I hope that this discussion of sanctions and penalties, as they relate to OFCCP, is informative. If you have further questions, I will be happy to discuss them with you.

Attachments

**U.S. Department of Labor**

Employment Standards Administration  
Office of Federal Contract  
Compliance Programs  
Washington, D.C. 20210

**INFORMATION**

SEP 15 1995

**MEMORANDUM FOR THE SECRETARY**

**THROUGH:** BERNARD E. ANDERSON   
Assistant Secretary

**FROM:** SHIRLEY J. WILCHER   
Deputy Assistant Secretary

**SUBJECT:** Memorandum to the Department of Justice (DOJ) on  
OFCCP Enforcement Sanctions

**PRIORITY:** Important

**SUMMARY**

In response to a request from the Justice Department, the attached memorandum was recently sent to Deval Patrick, Assistant Attorney General, Civil Rights Division. The memorandum describes sanctions available to OFCCP, recent compliance review activity and contract award information regarding the University of California System.

**BACKGROUND**

Questions have arisen as to the effect on OFCCP programs if the University of California Board of Regents should decide to abolish affirmative action in University admissions, hiring and contracting. It is our position that actions by a state body do not override the authority of Federal laws. In its analysis of the issues, DOJ requested a summary of the sanctions available under and used in the administration of the Executive Order (E.O.) program, and recent compliance review activity at university establishments. Our memorandum briefly outlines sanctions under the E.O., the recent compliance review activity, information about the number of contracts the university system had in fiscal year 1994, and the Federal agency with which the university had contracts in fiscal year 1994 and the first quarter of fiscal year 1995.

**OTHER DOL AGENCIES INVOLVED**

The Office of the Solicitor has been involved in preparation of the memorandum to DOJ.

**OTHER FEDERAL AGENCIES INVOLVED**

None

**CONGRESSIONAL INTEREST**

Senators Dole and Graham have both indicated their opposition to affirmative action in general and the E.O. 11246 program as currently administered, in particular.

**CONTACT**

Shirley J. Wilcher, Deputy Assistant Secretary, 219-9475.

Summary/Outline  
OFCCP Debarment Process From Determination of  
NonCompliance By Field Staff To Final Order of Compliance

- |   |   |
|---|---|
| 1. Contractor NonCompliance Determined By OFCCP                     | 7. RSOL/NSOL Files Administrative Complaint With ALJ Office |
| 2. Contractor Refuses To Comply After Conciliation Efforts By OFCCP | 8. Discovery: Interrogatories, Depositions, Etc.            |
| 3. Regional OFCCP Consults With RSOL                                | 9. Briefs Filed   |
| 4. Case Referred to RSOL/NSOL For Enforcement                       | 10. Hearing Before ALJ                                      |
| 5. RSOL/NSOL Attempt To Resolve                                     | 11. ALJ Recommended Decision                                |
| 6. Contractor Refuses To Resolve/Comply                             | 12. Secretary/Asst. Sec. Issues Final Order of Compliance   |

13. Failure To Obey Final Order:

DEBARMENT

LEGEND: RSOL = Regional Solicitor  
NSOL = National Solicitor  
ALJ = Administrative Law Judges

The table below shows the institution of the University of California, number of federal contracts and the dollar amounts of transactions in FY 1994. The amounts shown are not total contract amounts, but represent obligations made during the fiscal year. Many of the contracts included below are for more than one year.

Contract Transactions with the University of California  
Fiscal Year 1994

INSTITUTION	NO. OF CONTRACTS	TRANSACTION AMOUNTS
Regents of the University	12	\$ 4,591,000
Univ. of California, Berkeley	31	4,258,065,000
Univ. of California, Davis	9	2,773,000
Univ. of California, Irvine	14	12,856,000
Univ. of Calif., Los Angeles	34	14,496,000
Univ. of Calif., San Diego	29	11,245,000
Univ. of Calif., San Fransisco	10	17,389,000
Univ. of Calif., Santa Barbara	9	1,201,000
Univ. of Calif., Santa Cruz	2	132,000
Institution Not Identified*	6	4,205,057,000
TOTALS	156	\$8,527,805,000

(Source: Federal Procurement Data System Tapes)

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\* Includes \$4,201,194,000 for Los Alamos, New Mexico

The information below shows for each contracting office the dollars paid to the University of California during FY 1994 for work on federal contracts. For the first quarter of FY 1995, the amount was \$1,316,551,000 from the Army, Air Force, Navy, FBI, Geological Survey, NASA, NOAA, National Biological Survey and the Department of education and Energy. Once again, the Department of Energy had the largest transactions totalling \$1,310,397,000.

AGENCY	DOLLARS
Air Force	\$ 6,281,000
Alcohol, Drug Abuse and Mental Health Administration	2,204,000
Army	6,554,000
Bureau of Land Management	40,000
Bureau of Reclamation	52,000
Centers for Disease Control	612,000
Department of Education	821,000
Department of Energy	8,447,420,000
Department of Veterans Affairs	10,476,000
Federal Bureau of Investigation	3,210,000
Geological Survey	27,000
Health Care Financing Adm.	930,000
Minerals Management Service	276,000
National Aeronautics and Space Administration	22,274,000
National Institutes of Health	18,604,000
National Oceanic and Atmospheric Administration	367,000
Navy	6,433,000
Nuclear Regulatory Commission	10,000
Office of the Assistant Secretary for Health	419,000
Public Health Service	31,000
Smithsonian Institution	50,000
U.S. Army Corps of Engineers	689,000
TOTAL	\$8,527,805,000



GRAY DAVIS  
Lieutenant Governor  
State of California

*Elm*

~~CONFIDENTIAL~~

DETERMINED TO BE AN  
ADMINISTRATIVE MARKING  
INITIALS: JGP DATE: 5/24/10  
2009-1006-F

July 28, 1995

The Honorable Abner J. Mikva  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Judge Mikva:

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By the way, after receiving your letter yesterday I spoke with UC President Jack Peltason, who was delighted to hear that a former classmate and longtime friend would be representing the White House in this process. I believe he will be giving you a call soon.

Best regards,

*Gray Davis*

GRAY DAVIS

## THE WHITE HOUSE

WASHINGTON

July 27, 1995

The Honorable Gray Davis  
Lieutenant Governor, State of California  
State Capitol  
Sacramento, CA 95814

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As a matter of course, in order to comply with all applicable law, federal agencies review actions of such significance to determine whether and how they affect the administration and enforcement of federal programs. It is this regular and routine process to which Leon Panetta recently referred. Agencies must determine whether the University of California's new policy violates the terms and conditions of any preexisting contracts with or grants to the University of California. In the event that this review reveals any problems, we will make every effort to work with the State of California to avoid cutting off any federal monies. I have been instructed by the Chief of Staff to work with the University of California in this regard.

Please be assured that the President is not interested in taking punitive action against the University of California for its ill-considered change in policy. Nor is he interested, as some appear to be, in using the University of California as a pawn in a political battle. The President well understands the greatness of the University of California system and has a deep commitment to preserving it. It is a shame that the Board of Regents last week failed to show the same understanding and commitment.

Sincerely yours,



Abner J. Mikva  
Counsel to the President

Identical letter sent to the Honorable Pete Wilson

THE WHITE HOUSE  
WASHINGTON

July 27, 1995

The Honorable Pete Wilson  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Governor Wilson: —

The President has asked me to respond on his behalf to your letter concerning the effects of the University of California Board of Regents' resolution to halt affirmative action.

As you know, the President disagrees with the Regents' decision. As his Chief of Staff Leon Panetta recently stated, the resolution is a mistake -- a retreat from this nation's longstanding commitment to equal opportunity and equal justice.

As a matter of course, in order to comply with all applicable law, federal agencies review actions of such significance to determine whether and how they affect the administration and enforcement of federal programs. It is this regular and routine process to which Leon Panetta recently referred. Agencies must determine whether the University of California's new policy violates the terms and conditions of any preexisting contracts with or grants to the University of California. In the event that this review reveals any problems, we will make every effort to work with the State of California to avoid cutting off any federal monies. I have been instructed by the Chief of Staff to work with the University of California in this regard.

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Sincerely yours,



Abner J. Mikva  
Counsel to the President

Identical letter sent to the Honorable Gray Davis

JUL 26 '95 16:41 FR LT-GOVERNOR OFFICE

916 3234998 TO 9120245617:5

P.23



GRAY DAVIS  
 Lieutenant Governor  
 State of California

VIA FACSIMILE  
 202/456-2883

July 26, 1995

The Honorable Bill Clinton  
 President of the United States  
 The White House  
 1600 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20500

Dear Mr. President:

I want to commend you on your courageous and statesmanlike address last week on the subject of affirmative action.

It was particularly appropriate coming as it did just prior to consideration by the University of California Board of Regents of the proposal to abolish affirmative action in University admissions, hiring and contracting. Several of us Regents fought hard to prevent this untimely, wholesale reversal of long-standing policy – driven as it was, in large measure, by presidential politics. Unfortunately, we were not ultimately successful.

As a Regent, however, I take very seriously my fiduciary responsibility to the University of California system. Despite the Regents' action, I certainly do not want to see the loss of any federal funding allocated to the University. In fact, as you know, the resolutions approved by the Regents contain a clause that essentially renders their provisions null and void if their enactment would lead to the loss of State or federal funds.

It would be particularly helpful if you could designate someone from the Department of Justice and the federal agencies and departments that provide funding to the University to work with the Regents and University of California Administration to help avoid any implementation action that might endanger federal funding.

STATE CAPITOL  
 ROOM 1114  
 SACRAMENTO, CA 95814  
 (916) 445-8384  
 FAX (916) 323-9998

5777 WEST CENTURY BOULEVARD  
 SUITE 1830  
 LOS ANGELES, CA 90045-5831  
 (310) 412-6118  
 FAX (310) 412-6333

465 CALIFORNIA STREET  
 SUITE 250  
 SAN FRANCISCO, CA 94104  
 (415) 557-2882  
 FAX (415) 557-3630

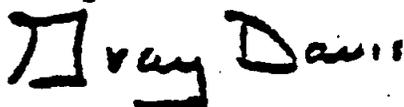
JUL 26 '95 16:41 FR LT-GOVERNOR OFFICE 916 3234996 TO 512024561715 P.04

The Honorable Bill Clinton  
President of the United States  
July 26, 1995  
Page two

The 163,000 students and 7,000 faculty members of the University of California, the preeminent public university in the nation, truly represent this State's best and brightest. We must work together to ensure that they are not punished due to the misguided action of 14 members of the Board of Regents.

I look forward to hearing from you, and want to thank you again for your leadership and concern on this matter.

Best regards,



GRAY DAVIS

Encls.

cc: Leon Panetta  
Chief of Staff

Bruce Lindsey  
Deputy Counsel

John Emerson  
Deputy Assistant to the President

# FAX TRANSMISSION

OFFICE OF CIVIL RIGHTS ENFORCEMENT



U.S. DEPARTMENT OF AGRICULTURE  
Washington, D.C. 20250

NAME: Isabelle Pinzer

OFFICE: DOT

TELEPHONE: \_\_\_\_\_

FAX NUMBER: 202-307-2572

SENDER: Andrew Johnson

OFFICE: PPD

TELEPHONE: 202 720-3094

FAX NUMBER: 202-720-6095

MESSAGE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 8/3/95

TIME: \_\_\_\_\_

TOTAL NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 9

PLEASE NOTE: IF THERE ARE ANY PROBLEMS DURING TRANSMITTAL OR RECEIPT, CONTACT THE SENDER. THANK YOU!

AN EQUAL OPPORTUNITY EMPLOYER



United States  
Department of  
Agriculture

Office of  
the Secretary

Office of  
Civil Rights  
Enforcement

Washington, D.C.  
20250

03 AUG 1995

Ms. Isabelle Katz Pinzler  
Deputy Assistant Attorney General  
Civil Rights Division  
Department of Justice  
9th Street & Pennsylvania, N.W.  
Room 5744  
Washington, D.C. 20530

Dear Ms. Pinzler:

In response to your request for an "inventory" of grants, contracts, and other agreements currently in place between the University of California and the United States Department of Agriculture (USDA), the enclosed data is provided. Also enclosed is a program index to assist you in identifying the specific program (e.g., grant).

The enclosed information covers direct payments made by USDA to the University of California. It does not include "pass through funds" or sub-agreements made to the State of California which would require an additional four to six weeks to compile. Should your office require this additional information, please let me know.

For information on the enclosed, please contact Andrew Johnson, Chief, Policy and Planning Division, who may be reached at (202) 720-3094.

Sincerely,

David Montoya  
Director

Enclosures

# REPORT 1

08/03/95 14:27 202 720 8048 003/009

AGENCY	CFDA	RECIPIENT	FEDERAL FUNDS
U.S. DEPARTMENT OF AGRICULTURE FEDERAL FUNDS TO HIGHER EDUCATION INSTITUTIONS IN CALIFORNIA FY 1994			
AGRIC RESEARCH SVC.	10.001	UNIV. OF CA. AT DAVIS COLLEGE OF AGRICULTURAL UNIVERSITY OF CALIFORNIA, DAVIS COLLEGE OF AG	5,000.00 24,450.00
AGRIC. COOP. SERVICE	10.350	REG OF UNIVERSITY OF CALIFORNIA	38,665.00
ANMAL & PLNT HEALTH INSP. SVC.	10.025	<del>IMPERIAL CTY AGRIC COMM OFFICE</del> REG OF THE UNIV OF CALIF, BERKELEY REG OF UNIV OF CALIFORNIA REG OF UNIVERSITY OF CALIFORNIA REGENTS OF THE UNIV OF CALIFORNIA UNIVERSITY OF CALIFORNIA UNIVERSITY OF CALIFORNIA, DAVIS	<del>4,000.00</del> 92,459.00 331,223.00 24,749.00 31,500.00 82,000.00 19,425.00
COOP. STATE RESEARCH SERVICE	10.200	UNIVERSITY OF CALIFORNIA	2,653,354.00
	10.202	CALIFORNIA POLY STATE UNIV FNDTN <del>HUMBOLDT STATE UNIVERSITY</del> UNIVERSITY OF CALIFORNIA	31,073.00 <del>93,217.00</del> 497,156.00
	10.203	UNIVERSITY OF CALIFORNIA	4,744,996.00
	10.206	<del>HELGA L. GEORGE</del> <del>MICHAEL B. COOLEY</del> <del>PAUL J. ODE</del> SALK INST FOR BIOLOGICAL STUDIES <del>TIMOTHY R. COLLIER</del> UNIV OF CALIFORNIA IRVINE UNIV OF CALIFORNIA-LOS ANGELES UNIV OF CALIFORNIA-SAN DIEGO UNIVERSITY OF CALIFORNIA	<del>80,000.00</del> <del>80,000.00</del> <del>80,000.00</del> 100,000.00 <del>80,000.00</del> 410,000.00 55,000.00 188,800.00 7,079,165.00
	10.207	SCHOOL OF VET MED UNIV OF CALIF UNIVERSITY OF CALIFORNIA	291,796.00 187,148.00
	10.210	UNIVERSITY OF CALIFORNIA	432,000.00
	10.217	UNIVERSITY OF CALIFORNIA	34,563.00
	10.219	UNIVERSITY OF CALIFORNIA	222,487.00
EXTENSION SERVICE	10.500	UNIVERSITY OF CALIFORNIA	12,357,459.00
FOREST SERVICE	10.652	<del>HUMBOLDT STATE UNIVERSITY FOUNDATION</del> UNIVERSITY OF CALIFORNIA AT BERKELEY	<del>17,500.00</del> 6,800.00

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U.S. DEPARTMENT OF AGRICULTURE  
 FEDERAL FUNDS TO HIGHER EDUCATION INSTITUTIONS IN CALIFORNIA  
 FY 1994

AGENCY	CFDA	RECIPIENT	FEDERAL FUNDS
NATL. AGRIC. LIBRARY	10.700	REGENTS OF THE UNIVERSITY OF CALIFORNIA	38,850.00
OFF. OF INTL. COOP. & DEV.	10.961	UNIVERSITY OF CALIFORNIA - DAVIS	183,584.00
		UNIVERSITY OF CALIFORNIA - LOS ANGELES	123,563.00
		UNIVERSITY OF CALIFORNIA - OAKLAND	30,937.00
		UNIVERSITY OF CALIFORNIA - RIVERSIDE	21,512.00
		UNIVERSITY OF CALIFORNIA-DAVIS	25,000.00
	10.962	UNIVERSITY OF CALIFORNIA AT DAVIS	47,549.00
	10.963	UNIVERSITY OF CALIFORNIA - DAVIS	8,800.00
		UNIVERSITY OF CALIFORNIA - RIVERSIDE	5,000.00
		UNIVERSITY OF CALIFORNIA AT DAVIS	1,500.00

# REPORT 2

PAGE 1

U. S. DEPARTMENT OF AGRICULTURE  
FEDERAL FUNDS TO HIGHER EDUCATION INSTITUTIONS IN CALIFORNIA  
FY 1995

AGENCY	CFDA	RECIPIENT	FEDERAL FUNDS
AGRIC RESEARCH SVC.	10.001	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA UNIV OF CALIFORNIA	10,325.00 1,290.00
ANMAL & PLNT HEALTH INSP. SVC.		REG OF THE UNIV OF CALIFORNIA	-10,000.00
	10.025	REG OF UNIV OF CALIFORNIA-DAVIS	2,348.00
		REG OF UNIVERSITY OF CALIF BERKELEY	89,433.00
		REG OF UNIVERSITY OF CALIFORNIA	343,624.00
		RGENTS OF UNIVERSITY OF CALIFORNIA	36,000.00
COOP. STATE RESEARCH SERVICE	10.200	<del>CALIFORNIA STATE UNIVERSITY</del> <del>SAN FRANCISCO STATE UNIVERSITY</del> UNIVERSITY OF CALIFORNIA	<del>60,000.00</del> <del>60,000.00</del> 6,263,156.00
	10.202	<del>CALIFORNIA POLY STATE UNIV FNDIN</del> <del>HUMBOLDT STATE UNIVERSITY</del> UNIVERSITY OF CALIFORNIA	<del>28,217.00</del> <del>89,850.00</del> 371,463.00
	10.203	UNIVERSITY OF CALIFORNIA	3,524,679.00
	10.206	<del>BECKMAN RESEARCH INSTITUTE</del> <del>CALIFORNIA STATE UNIVERSITY</del> <del>ELENA DEL CAMPILLO</del> <del>SCRIPPS CLINIC &amp; RSCH FOUNDATION</del> UNIV OF CALIFORNIA-LOS ANGELES UNIV OF CALIFORNIA-SAN DIEGO UNIVERSITY OF CALIFORNIA	<del>200,000.00</del> <del>50,000.00</del> <del>90,000.00</del> <del>100,000.00</del> 176,868.00 90,000.00 3,011,967.00
	10.207	SCHOOL OF VET MED UNIV OF CALIF UNIVERSITY OF CALIFORNIA	193,767.00 132,731.00
	10.210	UNIVERSITY OF CALIFORNIA	24,716.00
	10.215	UNIVERSITY OF CALIFORNIA	177,500.00
	10.217	UNIVERSITY OF CALIFORNIA	5,229.00
EXTENSION SERVICE	10.500	UNIVERSITY OF CALIFORNIA	8,560,600.00
FOREST SERVICE	10.652	UNIVERSITY OF CALIFORNIA-DAVIS	75,457.00
NATL. AGRIC. LIBRARY	10.700	REGENTS OF THE UNIVERSITY OF CALIFORNIA	39,000.00
OFF. OF INTL. COOP. & DEV.	10.961	UNIVERSITY OF CALIFORNIA - DAVIS UNIVERSITY OF CALIFORNIA - LOS ANGELES	10,000.00 37,297.00

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U.S. DEPARTMENT OF AGRICULTURE  
FEDERAL FUNDS TO HIGHER EDUCATION INSTITUTIONS IN CALIFORNIA  
FY 1995

AGENCY	CFDA	RECIPIENT	FEDERAL FUNDS
OFF. OF INTL. COOP. & DEV.	10.961	UNIVERSITY OF CALIFORNIA - OAKLAND	5,880.00
		UNIVERSITY OF CALIFORNIA-DAVIS	32,639.00
	10.962	CALIFORNIA STATE UNIVERSITY - CHICO UNIVERSITY OF CALIFORNIA - DAVIS	20,102.00 44,582.00
	10.963	UNIVERSITY OF CALIFORNIA-RIVERSIDE	3,000.00

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008/009

# AGENCY PROGRAM INDEX

Program Description	Financial	Non-Financial	Combined
<p><i>The alphabet(s) in parenthesis following the program title shows the type(s) of assistance available through that program. The alphabet codes with accompanying types of assistance are as follows: A—Formula Grants; B—Project Grants; C—Direct Payments for a Specified Use; D—Direct Payments with Unrestricted Use; E—Direct Loans; F—Guaranteed/Insured loans; G—Insurance; H—Sale, Exchange, or Donation of Property or Goods; I—Use of Property, Facilities, and Equipment; J—Provision of Specialized Services; K—Advisory Services and Counseling; L—Dissemination of Technical Information; M—Training; N—Investigation of Complaints; O—Federal Employment.</i></p> <p><i>Included in the agency Program Index is a chart to help users distinguish programs that provide financial assistance from those providing services and technical assistance. There is also a column included which lists those programs that provide both financial and non-financial assistance.</i></p>			
<b>DEPARTMENT OF AGRICULTURE</b>			
<b>AGRICULTURAL RESEARCH SERVICE</b>			
10.001 Agricultural Research—Basic and Applied Research (B) .....	X		
<b>ANIMAL AND PLANT HEALTH INSPECTION SERVICE</b>			
10.025 Plant and Animal Disease, Pest Control, and Animal Care (B,J,K,L,M) .....			X
10.028 Animal Damage Control (B,J,K,L,M) .....			X
<b>AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE</b>			
10.051 Commodity Loans and Purchases (D,E) .....	X		
10.052 Cotton Production Stabilization (D) .....	X		
10.053 Dairy Indemnity Program (D) .....	X		
10.054 Emergency Conservation Program (C) .....	X		
10.055 Feed Grain Production Stabilization (D) .....	X		
10.058 Wheat Production Stabilization (D) .....	X		
10.059 National Wool Act Payments (D) .....	X		
10.062 Water Bank Program (C) .....	X		
10.063 Agricultural Conservation Program (C) .....	X		
10.064 Forestry Incentives Program (C) .....	X		
10.065 Rice Production Stabilization (D) .....	X		
10.066 Emergency Livestock Assistance (D,H) .....			X
10.067 Grain Reserve Program (D) .....	X		
10.068 Rural Clean Water Program (C) .....	X		
10.069 Conservation Reserve Program (C) .....	X		
10.070 Colorado River Basin Salinity Control Program (C) .....	X		
10.071 Federal-State Cooperation in Warehouse Examination Agreement (C) .....	X		
10.072 Wetlands Reserve Program (C) .....	X		
<b>OFFICE OF ADVOCACY AND ENTERPRISE</b>			
10.140 Special Emphasis Outreach Programs Grants (B,K) .....			X
<b>AGRICULTURAL MARKETING SERVICE</b>			
10.153 Market News (L) .....		X	
10.155 Marketing Agreements and Orders (J,K) .....		X	
10.156 Federal-State Marketing Improvement Program (B) .....	X		
10.162 Inspection Grading and Standardization (J) .....		X	
10.163 Market Protection and Promotion (J,K,M) .....		X	
10.164 Wholesale Market Development (B,K) .....			X
10.165 Perishable Agricultural Commodities Act (N) .....		X	
10.167 Transportation Services (B,K) .....			X
<b>COOPERATIVE STATE RESEARCH SERVICE</b>			
10.200 Grants for Agricultural Research, Special Research Grants (B) .....	X		
10.202 Cooperative Forestry Research (A) .....	X		
10.203 Payments to Agricultural Experiment Stations Under Hatch Act (A) .....	X		
10.205 Payments to 1890 Land-Grant Colleges and Tuskegee University (A) .....	X		
10.206 Grants for Agricultural Research—Competitive Research Grants (B) .....	X		
10.207 Animal Health and Disease Research (A) .....	X		
10.210 Food and Agricultural Sciences National Needs Graduate Fellowship Grants (B) .....	X		
10.212 Small Business Innovation Research (B) .....	X		
10.214 Morrill-Nelson Funds for Food and Agricultural Higher Education (A) .....	X		
10.215 Sustainable Agriculture Research and Education (B) .....	X		
10.216 1890 Institution Capacity Building Grants (B) .....	X		
10.217 Higher Education Challenge Grants (B) .....	X		

Program Description	Financial	Non-Financial	Combined
10.218 Buildings and Facilities Program (B).....	X		
10.219 Biotechnology Risk Assessment Research (B).....	X		
10.220 Food and Agricultural Sciences-All Americans Undergraduate Scholars Program (B).....	X		
<b>ALTERNATIVE AGRICULTURAL RESEARCH AND COMMERCIALIZATION CENTER</b>			
10.240 Alternative Agricultural Research and Commercialization Program (B).....	X		
<b>ECONOMIC RESEARCH SERVICE</b>			
10.250 Agricultural and Rural Economic Research (L).....		X	
<b>AGRICULTURAL COOPERATIVE SERVICE</b>			
10.350 Technical Assistance to Cooperatives (K,L).....		X	
<b>HUMAN NUTRITION INFORMATION SERVICE</b>			
10.375 Human Nutrition Information Service (L).....		X	
<b>FARMERS HOME ADMINISTRATION</b>			
10.404 Emergency Loans (E).....	X		
10.405 Farm Labor Housing Loans and Grants (B,F).....	X		
10.406 Farm Operating Loans (E,F).....	X		
10.407 Farm Ownership Loans (E,F).....	X		
10.410 Very Low to Moderate Income Housing Loans (E,F).....	X		
10.411 Rural Housing Site Loans (E).....	X		
10.415 Rural Rental Housing Loans (E).....	X		
10.416 Soil and Water Loans (E,F).....	X		
10.417 Very Low-Income Housing Repair Loans and Grants (B,E).....	X		
10.420 Rural Self-Help Housing Technical Assistance (B).....	X		
10.421 Indian Tribes and Tribal Corporation Loans (E,F).....	X		
10.427 Rural Rental Assistance Payments (C).....	X		
10.433 Rural Housing Preservation Grants (B).....	X		
10.435 Agricultural Loan Mediation Program (B).....	X		
10.437 Interest Assistance Program (F).....	X		
10.441 Technical and Supervisory Assistance Grants (B).....	X		
10.442 Housing Application Packaging Grants (B).....	X		
10.443 Outreach and Assistance Grants for Socially Disadvantaged Farmers and Ranchers (B).....	X		
<b>FEDERAL CROP INSURANCE CORPORATION</b>			
10.450 Crop Insurance (G).....	X		
<b>FOOD SAFETY AND INSPECTION SERVICE</b>			
10.475 Cooperative Agreements with States for Intrastate Meat and Poultry Inspection (B).....	X		
10.477 Meat and Poultry Inspection (J).....		X	
<b>EXTENSION SERVICE</b>			
10.500 Cooperative Extension Service (A,B).....	X		
<b>FOOD AND NUTRITION SERVICE</b>			
10.550 Food Distribution (H).....		X	
10.551 Food Stamps (C).....	X		
10.553 School Breakfast Program (A).....	X		
10.555 National School Lunch Program (A).....	X		
10.556 Special Milk Program for Children (A).....	X		
10.557 Special Supplemental Food Program for Women, Infants, and Children (A).....	X		
10.558 Child and Adult Care Food Program (A,H).....			X
10.559 Summer Food Service Program for Children (A).....	X		
10.560 State Administrative Expenses for Child Nutrition (A).....	X		
10.561 State Administrative Matching Grants for Food Stamp Program (A).....	X		
10.564 Nutrition Education and Training Program (A).....	X		
10.565 Commodity Supplemental Food Program (A,H).....			X
10.566 Nutrition Assistance For Puerto Rico (C).....	X		
10.567 Food Distribution Program on Indian Reservations (B,H).....			X
10.568 Emergency Food Assistance Program (Administrative Costs) (A).....	X		
10.569 Emergency Food Assistance Program (Food Commodities) (A).....	X		
10.570 Nutrition Program for the Elderly (Commodities) (A).....	X		
10.571 Food Commodities for Soup Kitchens (A).....	X		
10.572 WIC Farmers' Market Nutrition Program (FMNP) (A).....	X		

Program Description	Financial	Non-Financial	Combined
<b>FOREIGN AGRICULTURAL SERVICE</b>			
10.600 Foreign Agricultural Market Development and Promotion (C).....	X		
10.601 Market Promotion Program (C).....	X		
<b>FOREST SERVICE</b>			
10.652 Forestry Research (B).....	X		
10.664 Cooperative Forestry Assistance (A,B,I).....			X
10.665 Schools and Roads—Grants to States (A).....	X		
10.666 Schools and Roads—Grants to Counties (A).....	X		
10.668 Additional Lands—Grants to Minnesota (A).....	X		
10.670 National Forest—Dependent Rural Communities (B,E,I,M).....			X
<b>NATIONAL AGRICULTURAL LIBRARY</b>			
10.700 National Agricultural Library (L).....		X	
<b>RURAL DEVELOPMENT ADMINISTRATION</b>			
10.760 Water and Waste Disposal Systems for Rural Communities (B,E,F).....	X		
10.761 Technical Assistance and Training Grants (B).....	X		
10.762 Solid Waste Management Grants (B).....	X		
10.763 Emergency Community Water Assistance Grants (B).....	X		
10.764 Resource Conservation and Development Loans (E).....	X		
10.765 Watershed Protection and Flood Prevention Loans (E).....	X		
10.766 Community Facilities Loans (E,F).....	X		
10.767 Intermediary Relending Program (E).....	X		
10.768 Business and Industrial Loans (F).....	X		
10.769 Rural Development Grants (B).....	X		
10.770 Water and Waste Disposal Loans and Grants (Section 306C) (B,E).....	X		
<b>PACKERS AND STOCKYARD ADMINISTRATION</b>			
10.800 Livestock, Meat and Poultry Market Supervision (B).....	X		
<b>RURAL ELECTRIFICATION ADMINISTRATION</b>			
10.850 Rural Electrification Loans and Loan Guarantees (E).....	X		
10.851 Rural Telephone Loans and Loan Guarantees (E).....	X		
10.852 Rural Telephone Bank Loans (E).....	X		
10.854 Rural Economic Development Loans and Grants (B,E).....	X		
10.855 Distance Learning and Medical Link Grants (B).....	X		
<b>SOIL CONSERVATION SERVICE</b>			
10.900 Great Plains Conservation (C,K).....			X
10.901 Resource Conservation and Development (B,K).....			X
10.902 Soil and Water Conservation (K).....		X	
10.903 Soil Survey (L).....		X	
10.904 Watershed Protection and Flood Prevention (B,K).....			X
10.905 Plant Materials for Conservation (J).....		X	
10.906 River Basin Surveys and Investigations (J,K).....		X	
10.907 Snow Survey and Water Supply Forecasting (L).....		X	
10.910 Rural Abandoned Mine Program (C,K).....			X
<b>NATIONAL AGRICULTURAL STATISTICS SERVICE</b>			
10.950 Agricultural Statistics Reports (L).....		X	
<b>OFFICE OF INTERNATIONAL COOPERATION AND DEVELOPMENT</b>			
10.960 Technical Agricultural Assistance (B).....	X		
10.961 International Agricultural Research Program (B).....	X		
10.962 International Training—Foreign Participant (B).....	X		
10.963 Scientific and Technical Cooperation (B,C).....	X		
<b>DEPARTMENT OF COMMERCE</b>			
<b>BUREAU OF THE CENSUS</b>			
11.001 Census Bureau Data Products (L).....		X	
11.002 Census Data User Services (K,L,M).....		X	
11.003 Census Geography (J,L).....		X	
11.004 Census Intergovernmental Services (K,L,M).....		X	
11.005 Census Special Tabulations and Services (J,L).....		X	
11.006 Personal Census Search (J).....		X	

# UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

J.W. PELTASON  
President

OFFICE OF THE PRESIDENT  
300 Lakeside Drive  
Oakland, California 94612-3380  
Phone: (510) 987-9174  
Fax: (510) 987-9046

July 26, 1995

The Honorable Hazel O'Leary  
Secretary of Energy  
U.S. Department of Energy  
Forrestal Building  
Washington, D.C. 20585

Dear Secretary O'Leary:

At their July meeting, The Regents of the University of California approved two resolutions regarding the use of race and gender, among other criteria, in admissions and employment and contracting. The Regents' action has been the subject of much media coverage and speculation. I am writing to assure you, whatever you may have read to the contrary, that the University of California will continue in the future, as it has in the past, to honor all of its obligations under its contracts with the Department of Energy for the management of our three national laboratories, including those provisions that relate to equal opportunity, nondiscrimination, and affirmative action. The resolutions adopted by The Regents specifically provide that the University will continue to comply with any federal requirements necessary to maintain the University's eligibility for federal funds.

I enclose a copy of my statement on The Regents' action for your information. I will be pleased to discuss this with you if you have any questions or concerns.

Cordially,

J. W. Peltason

Enclosure

cc: Regent Clair Burgener, Chairman of the Board of Regents  
Regent S. Sue Johnson, Chair, Committee on Oversight  
Provost Walter E. Massey  
Senior Vice President V. Wayne Kennedy



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

August 3, 1995

Memorandum

To: Isabelle K. Pinzler  
Deputy Assistant Attorney General for Civil Rights

From: Judith A. Winston *Judy Winston*

Subject: University of California Resolution on Affirmative Action

This responds to your request for information on the relationship of Department of Education laws to the resolution adopted by the Board of Regents for the University of California (UC) barring affirmative action based on race or gender in employment and admissions in the UC system.

None of the civil rights statutes administered by the Department of Education relating to discrimination on the basis of race or national origin (Title VI of the Civil Rights Act of 1964) or gender (Title IX of the Education Amendments of 1972) requires affirmative action, unless in a particular case it is established that affirmative action is required to remedy current discrimination or the current effects of past discrimination by the recipient. Thus, we do not believe that the UC resolutions in any way interfere with enforcement of these civil rights laws. We would note that compliance with Title IX intercollegiate athletics requirements may involve gender-conscious decisions by UC schools because Title IX provides for separate and comparable athletic opportunities for men and women. It is unclear whether the UC resolution would implicate these provisions.

As we reported to the White House as part of the President's affirmative action review, a handful of small Department grant programs condition eligibility on the basis of race. These include, for example, a program to recruit and retain minority elementary and secondary school teachers; a similar program to attract minority students to careers as postsecondary faculty; and a program to recruit minority students for foreign service careers. Many other Department programs authorize use of race or gender as a factor to promote diversity. It is possible that a UC school, based on the resolution, would seek to use funds under these programs in a manner inconsistent with the grant statute or with the plans or assurances provided in its funding application. If that occurred, the Department would have a number of enforcement options, including withholding grant funds under the statute, terminating the grant, and seeking recovery of the grant funds. Each of these actions could be based on reporting by the grantee, program reviews, or audit findings. Each would be subject to due

process procedures, including a hearing before an administrative hearing officer within the Department, and would reflect the Department's policy to seek settlement of non-compliance issues before instituting formal action.

In the aggregate, over \$83 million in Department funds are made available this year to the UC system, exclusive of student loans. Almost \$59 million of this amount are in the form of student aid, including grants and other forms of campus-based aid. Almost \$25 million are in the form of grants or contracts to the UC schools. A high percentage of student loans are subsidized -- in the form of special allowances to reduce interest or no charges for interest while the student remains in school. We have considered these subsidized loans to be a form of financial aid for purposes of our civil rights statutes. However, we do not have data available on UC loan volume under the Federal Family Education Loan Program, in which loans are made by banks, insured by guaranty agencies, and reinsured by the Federal Government, nor do we yet have such current information on the new Direct Loan Program, in which funds are loaned directly by the Department, except for the UC-Irvine campus, where annual direct Federal loan volume is about \$36 million.

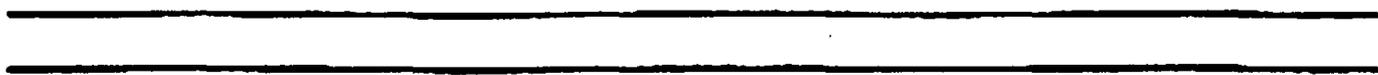
We would be happy to provide additional information if this would be useful.

**U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS**



**OFFICE OF THE DIRECTOR**

**FAX TRANSMISSION COVER SHEET**



**TO**

**FROM**

Name: Isabelle Pinzler

Name: Lisa Silverberg

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Office for Civil Rights  
Office of the Director  
Room 5400, Cohen Building  
330 Independence Avenue, SW  
Washington, DC 20201

Phone: (202) 619-0403

FAX: (202) 619-3437

Phone: \_\_\_\_\_

# of Pages Including Cover: 8

FAX #: \_\_\_\_\_

**MESSAGE:**

*This is it! Hope it's helpful.*

*Lisa*

Note to Isabelle Pinzler

The following are descriptions of a sample of the "affirmative action" programs under which the University of California receives funding. I hope this will give you an idea of how the programs generally work.

**Program Descriptions**

**The Predoctoral Fellowship Program** is authorized by 42 USC 288. The intent of this program is to make graduate fellowships available to underrepresented minority graduates from all institutions. \$220,142

**The Minority International Research Training Grant (MIRT)** is authorized by 42 USC 2421, 282 (h) and 287b. This program provided opportunities for minority undergraduate and predoctoral students underrepresented in the scientific professions to study abroad at centers of academic excellence. \$801,230

**The MHSSRAP is now the NCRR Minority Initiative: K-12, Teachers and High School Students.** This program is aimed at increasing the pool of underrepresented minority high school students who are interested and academically prepared to pursue careers in biomedical/behavioral research and the health professions. The program includes both K-12 inservice and preservice teachers and minority high school students. \$168,008

**The Bridges to the Baccalaureate Degree.** The objective is to encourage the development of new and innovative programs and the expansion of existing programs to improve the academic competitiveness of underrepresented minority students and facilitate the transition from two year junior or community colleges to four year institutions. \$668,008

**MARC Predoctoral Fellowship.** This fellowship supports research training leading to the Ph.D. degree in the biomedical sciences for elected students who are graduates of the MARC Honors Undergraduate Research Training Program. \$158,223

**Minority Biomedical Research Support Program.** The program was established to strengthen institutional research capabilities and provide for faculty and student participation in research at two and four year colleges, universities, and health professional schools with substantial minority enrollments. \$999,846

**Centers of Excellence in Minority Health.** Authorized by 42 USC 293c, 42 CFR 57.2102-2120. Program authority expires 9/30/95. The Centers of Excellence (COE) program provides for grants to schools for programs of excellence in health professions

education for minority individuals.

COEs include Centers of Excellence at certain Historically Black Colleges and Universities, Hispanic Centers of Excellence, Native American Centers of Excellence, and other Centers of Excellence.

"Other Centers of Excellence" are defined as institutions "having an enrollment of underrepresented minorities above the national average for such enrollments of health professions schools".  
\$1,503,012

**Family Medicine Training.** This program, authorized by 42 USC 293 k, 42 CFR 57.1601-1610 and 57.1701-1710, provides for various types of grants to medical schools and other training institutions to help increase the numbers and improve the quality of family medicine physicians, one "review criterion" applied, by administrative determination, in the review of grant applications by peer reviews is that a proposal includes a strategy and plan for recruiting and retaining underrepresented minority and disadvantaged faculty, students, trainees, and/or residents. Applicants are expected to reflect the diversity of the populations within their states. \$10,257,826

**Advanced Nurse Education.** Under this program, one "review criterion" applied, by regulation, in the review of grant application is the degree to which the project proposes to attract, maintain, and graduate minority and disadvantaged students.

In addition, by administrative determination, a "funding priority" is given to applicants which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from the minority or low-income populations identified as at risk or poor health outcomes. \$406,221

**AIDS Education and Training Centers.** This program provides for support of multidisciplinary AIDS education and training programs for health care providers within designated geographic areas. By statute, preference in the award of funds must be given to projects which will train health professional who will provide treatment for minority individuals with HIV disease or train minority health professionals to provide treatment for individuals with HIV disease.

In addition, by administrative determination, all projects are required to have a plan for outreach to minorities, including involvement of minority providers, providers who server minority populations, minority professional organizations, and minority health care delivery systems. \$1,882,383

**Area Health Education Centers.** This program helps meet health personnel needs of underserved communities by supporting the development of regional networks of academic medical centers and related local and regional planning, educational, and clinical resources.

One of the statutory requirements for participating medical schools is that the schools carry out recruitment programs for the health science professions, or programs for health-career awareness, among minority and other elementary or secondary students from areas the program has determined to be medically underserved.

By administrative determination, medical schools applying for awards may qualify for additional points in the peer review process based on their efforts to admit and retain minorities and the percentage of graduates who are disadvantaged or underrepresented minorities. \$318,170

  
Lisa Silverberg

P.05  
 2022607425: # 3/ 6

FAX NO. 2026193437

VVVV/NIN EXAMCAT

OASH

AUG-16-95 WED 04:04 PM HHS OCR

08/15/95 TUE 14:07 FAX 2022607425

**\*NIH AWARDS ACTIVE 8/10/95 MADE TO THE UNIVERSITY OF CALIFORNIA UNDER THE PRELIMINARY "MINORITY PROGRAMS DOJ INVENTORY LIST" (Excluding most supplements)**

UC Campus	Name of Program	Grant Number	Dollars Awarded
UC-Lawrence Berkeley Lab	Minority High School Student Research Apprentices Program (MHSSRAP)	2 S01 RR03381-02	\$ 12,000
UC-Berkeley	Minority Predoctoral Fellowship	5 F31 CA63924-02	16,670
	Minority Predoctoral Fellowship	1 F31 RR05062-01	16,670
	MHSSRAP	2 S01 RR03259-12	13,008
UC-Davis	MARC Predoctoral Fellowship	5 F31 GM15929-03	16,361
	MARC Predoctoral Fellowship	5 F31 GM15315-04	16,427
	Minority Predoctoral Fellowship	1 F31 DK09271-01	24,335
	Minority Predoctoral Fellowship	5 F31 AG05377-04	15,206
	Minority Predoctoral Fellowship	1 F31 ES05669-01	16,636
	MHSSRAP	2 S01 RR03144-13	13,000
	MHSSRAP	2 S03 RR03006-03	34,000
UC-Irvine	MARC Predoctoral Fellowship	5 F31 GM14278-02	16,838
	MARC Predoctoral Fellowship	5 F31 GM14918-04	17,331
	Minority Predoctoral Fellowship	3 F31 CA67718-01	17,158

UC Campus	Name of Program	Grant Number	Dollars Awarded
	MHSSRAP	2 503 RR03031-13	45,000
	Minority International Research Training (MIRT) Program	5 T37 TW00023-02	168,403
UC-Los Angeles	MARC Predoctoral Fellowship	5 F31 GM16494-02	16,404
	MHSSRAP	2 503 RR01515-06	13,000
	MHSSRAP	2 503 RR03012-14	6,000
	Baccalaureate Bridge to the Future	1 R25 GM150067-01 3 R25 GM150067-01.S1	326,990 8,233
	Minority International Research Training (MIRT) Program	1 T37 TW00059-01	262,688
	Minority International Research Training (MIRT) Program	1 T37 TW00061-01	111,639
UC-Riverside	Minority Predoctoral Fellowship	1 F31 GM16401-01 3 F31 GM16401-01.S1	44,693 2,215
	MHSSRAP	2 503 RR03140-12	13,000
UC-San Diego	MARC Predoctoral Fellowship	1 F31 GM17185-01	13,910
	MARC Predoctoral Fellowship	1 F31 GM17064-01	17,099
	MARC Predoctoral Fellowship	1 F31 GM17049-01	24,798
	Minority Predoctoral Fellowship	1 F31 GM17217-01	17,099

UC Campus	Name of Program	Grant Number	Dollars Awarded
	Minority Predoctoral Fellowship	1 F31 A005697-01	16,823
	Minority Predoctoral Fellowship	1 P31 GM17230-01	16,182
	MHSSRAP	2 S03 RR00348-13	19,000
	MHSSRAP	2 S03 RR00009-15	21,000
	Minority Biomedical Research Support Program	5 S06 GM47165-04 3 S06 GM47165-04S1	245,840 4,713
UC-San Francisco	MARC Predoctoral Fellowship	5 P31 GM15347-03	19,255
	Minority Predoctoral Fellowship	3 P31 GM15385-03	16,455
	MHSSRAP	2 S03 RR0278-14	13,000
UC-Santa Barbara	None		
UC-Santa Cruz	Baccalaureate Bridge to the Future Biomedical Sciences Program	1 R25 GM51765-01 3 R25 GM51765-01S1	328,968 2,000
	MARC Honors Undergraduate Research Training	2 T34 GM47910-16	157,126
	Minority Biomedical Research Support Program	2 S06 GM08132-20 3 S06 GM08132-20S1	416,397 332,896
	Minority International Research Training (MIRT)	5 T37 TW00024-03	258,500
	Society for the Advancement of Chicano and Native American Scientists (SACNAS) Conferences 1995-97	2 T36 GM08285-07	233,359

• SOURCE: BIPAC OPEN/PENDING/CONTRACT FILES

UC Campus	Name of Program	Grant Number	Dollars Awarded
UC-Hastings College	None		



### TELECOPIER MEMORANDUM

DATE: 27 July 1995 TIME: 2:30

TO

NAME: Isabelle Katz Pinzler  
OFFICE: Dept of Justice -- Civil Rights Division  
PHONE NO.: (202) 514-6715 FAX NO.: (202) 307-2572

FROM

NAME: Gurden Drake  
DEPUTY GENERAL COUNSEL (ACQUISITION AND LOGISTICS)  
PHONE NO.: (703) 697-6921 FAX NO.: (703) 693-6367

We are transmitting 25 pages including this cover sheet.  
If you do not receive all pages, please call us at the above listed  
phone number.

#### REMARKS

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OFFICE OF THE DEPUTY GENERAL COUNSEL  
(ACQUISITION & LOGISTICS)  
DEPARTMENT OF DEFENSE

July 27, 1995

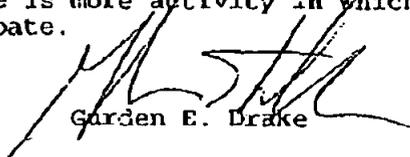
MEMORANDUM FOR ISABELLE KATZ PINZLER

SUBJECT: DoD Grants to University of CA

Attached in response to your request in connection with your "look" at funding with the University of California are two documents:

1. A list totaling contract and grant obligations with the University.
2. Generic terms and conditions for grants that are used (voluntarily at this point) by most R&D federal agencies. These terms and conditions probably are included in most DoD grants to the University of CA. The only way to ascertain whether they are used 100% would be to pull each grant from DoD grant-making offices located throughout the United States.

Please let me know if you need more on this. I would also appreciate your letting me know if there is more activity in which we need to participate.

  
Garden E. Drake

Attachments

FY 1994 Grants & Contracts

	INSTNAME	Grants	Contracts		
A	UNIVERSITY OF CALIFORNIA, BERKELEY	9,310,039	1,446,879		10,756,918
A	UNIVERSITY OF CALIFORNIA, DAVIS	4,142,721	1,084,854		5,227,575
A	UNIVERSITY OF CALIFORNIA, IRVINE	5,611,242	1,195,180		6,806,402
A	UNIVERSITY OF CALIFORNIA, LOS ANGELES	19,630,096	4,257,086		23,887,182
A	UNIVERSITY OF CALIFORNIA, RIVERSIDE	627,313			627,313
A	UNIVERSITY OF CALIFORNIA, SAN DIEGO	9,575,085	2,900,014		12,475,099
A	UNIVERSITY OF CALIFORNIA, SAN FRANCISCO	2,151,336	663,456		2,814,792
A	UNIVERSITY OF CALIFORNIA, SANTA BARBARA	18,699,849	3,818,450		22,518,299
A	UNIVERSITY OF CALIFORNIA, SANTA CRUZ	3,067,226	103,167		3,170,393
		<b>72,814,907</b>	<b>15,469,066</b>		<b>88,283,973</b>

  
 of this amount  
 \$69 million is "research"  
 (i.e., Technology Base, or  
 6.1+6.2 funds)

Title : FDP-GEN Federal Demonstration Project (FDP) General Terms and Conditions

Type : Grant Conditions

NSF Org: OD / LPA

Date : January 7, 1994

File : fdpgen

Federal Demonstration Project  
General Terms and Conditions

Article	Subject
1.	Recipient Responsibilities and Federal Requirements . 1
2.	Allowable Costs and Prior Approvals . . . . . 1
3.	Programs of Related Projects. . . . . 2
4.	Payment . . . . . 2
5.	Significant Project Changes . . . . . 3
6.	Non-Competitive or Continuation Award Requirements. . 3
7.	Financial Reports . . . . . 3
8.	Final Report Requirements . . . . . 3
9.	Dissemination of Project Results. . . . . 3
10.	Acknowledgment of Support and Disclaimer. . . . . 3
11.	Data Collection . . . . . 4
12.	Site Visits . . . . . 4
13.	Preaward Costs. . . . . 4
14.	Extensions Without Additional Funds . . . . . 4

15. Equipment and Real Property . . . . . 4

16. Alteration and Renovation . . . . . 5

17. Use of U.S.-Flag Air Carriers . . . . . 5

18. Financial Management System . . . . . 5

19. Procurement System. . . . . 5

20. Income. . . . . 5

21. Unobligated Balances and Limit of Federal Liability . 5

22. Patents and Inventions. . . . . 6

23. Audits and Records. . . . . 6

24. Suspension or Termination . . . . . 6

25. National Security . . . . . 7

26. Nondiscrimination . . . . . 7

27. Animal Welfare. . . . . 7

28. Research Involving Recombinant DNA Molecules. . . . . 7

29. Clean Air and Water . . . . . 7

30. Human Subjects. . . . . 9

31. Activities Abroad . . . . . 8

32. Debarred or Suspended Parties . . . . . 8

33. Closeout. . . . . 8

34. Rights in Data. . . . . 8

1. Recipient Responsibilities and Federal Requirements

a. The recipient institution (recipient) has full responsibility for the conduct of the project or activity supported by this award, in accordance with the requirements of this award, and for the results. The requirements of this award are contained in:

- (1) The Federal statute that authorized this award;
- (2) These general terms and conditions;

TOTAL P.005

(3) The supplemental agency-specific requirements of the awarding agency that are incorporated in the Demonstration Agreement (hereafter referred to as agency-specific requirements); and

(4) Any special conditions attached to this award.

b. If the requirements of this award conflict, the following order of precedence shall apply:

- (1) The Federal statute that authorized this award;
- (2) Any special conditions attached to this award;
- (3) The agency-specific requirements; and
- (4) These general terms and conditions.

c. The requirements of this award identified in subparagraph a of this Article are the entire body of requirements of this award. Codified Federal regulations, OMB Circulars, such as A-21 and A-110, and other uncodified Federal policy or procedural requirements apply to this award only as specified in these general terms and conditions, the agency specific requirements, or a special condition of this award.

d. Any request by the recipient for waiver or deviation from any provision of either these general terms and conditions or the agency specific requirements shall be submitted to the awarding agency's designated representative identified on the signature page of the Demonstration Agreement. Any request by the recipient for a waiver or deviation from any special condition attached to this award shall be submitted to the cognizant awarding agency official for this particular award (usually the Grants Officer or Contracting Officer who signed the award on behalf of the awarding agency).

e. Subawards

(1) For purposes of these general terms and conditions, the following terms shall have the following meanings:

(a) Recipient means the university which receives an award directly from a participating awarding agency.

(b) Subrecipient means any entity that is receiving funds under the prime award on any permissible basis other than the purchase of goods or services.

(c) Subaward means any award of funds under the prime award for purposes contemplated by subparagraph e(2) or for the purchase of goods or services.

(d) Subawardee means any entity that receives a subaward.

(3)

(2) In any subaward (except a contract for the purchase of goods or services) under this award, the recipient shall apply the following:

(a) If the subrecipient is a party to the Demonstration Agreement, then the requirements that apply to the subrecipient shall be the same as those that apply to the prime recipient of this award.

(b) If the subrecipient is not a party to the Demonstration Agreement, then the requirements that apply to the subrecipient shall be those that would apply if the prime recipient were not covered by the Demonstration Agreement.

(3) Attachment O of OMB Circular A-110 shall apply to any contract for the purchase of goods or services under this award if the purchaser is the recipient or a subrecipient that is a public or private nonprofit university or hospital or any other private nonprofit organization. Section .36 Procurement of the Common Rule on UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS (along with any agency-specific additions), published in the Federal Register on March 11, 1988 (53 FR 8087-8103), shall apply to any such contract if the purchaser is a subrecipient that is a state, local or Indian tribal government, as those terms are defined in the Common Rule. (See also Article 19 of these general terms and conditions.)

f. To the extent not otherwise treated in these general terms and conditions or the agency-specific requirements, the awarding agency shall be bound by any of its published rules applicable to this award (whether or not in the form of codified regulations) which:

- (1) Limit the awarding agency's right to take unilateral actions,
- (2) Establish a right for the recipient, and/or
- (3) Establish due process requirements (including, but not limited to, any rules providing an administrative process for hearing appeals by the recipient from decisions of the awarding agency).

2. Allowable Costs and Prior Approvals

a. The allowability of costs under this award shall be determined in accordance with the requirements of this award and the applicable Federal cost principles in effect on the effective date of this award.

b. OMB Circular A-21 contains applicable federal cost principles for this award.

c. The only prior Federal approvals required to be obtained by the recipient under this award shall be those specified in any of the requirements listed in Article 1, above, including those specified in

TOTAL P.002

④

these general terms and conditions. All other Federal prior approval requirements, including those in OMB Circulars A-21 and A-110, are waived. The recipient may maintain such internal prior approval systems as it considers necessary.

d. Indirect costs shall be reimbursed as indicated in the agency-specific requirements.

e. The applicable Federal cost principles for subawards and contracts/subcontracts under the award shall be those otherwise applicable to the type of organization receiving the subaward, contract or subcontract. In addition to OMB Circular A-21, the other applicable cost principles are:

(1) OMB Circular A-122 applicable to other nonprofit organizations (as specified in the Circular) except those organizations specifically exempted by the Circular.

(2) Subpart 31.2 of the FAR (48 CFR Subpart 31.2) applicable to commercial firms and those nonprofit organizations specifically exempted from the provisions of OMB Circular A-122.

(3) OMB Circular A-87 (codified in the Code of Federal Regulations as 34 CFR Part 255) for state and local governments.

(4) 45 CFR 74, Appendix E, for hospitals.

f. If this award includes a cost-sharing requirement, the award shall also be subject to the provisions of Attachment B of OMB Circular A-110.

g. Any subaward (including any cost-type contract or subcontract) under this award shall address whether and how the subawardee obtains any requisite prior approvals. If the subawardee is a party to the Demonstration Agreement, then the prior approval requirements that apply to the subawardee shall be the same as those that apply to the recipient. If the subawardee is not a party to the Demonstration Agreement, the prior approval requirements that apply to the subawardee shall be those that would apply if this award were not covered by the Demonstration Agreement. In either case, the recipient, not the Federal awarding agency, shall grant or deny the subawardee's requests for prior approval.

h. Allocability and Documentation Standards

(1) Cost Principles: The recipient institution is responsible for ensuring that costs charged to this award are allowable, allocable, and reasonable under the applicable cost principles.

(2) Internal Controls: The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

(5)

(3) Multiple Benefit: (Not applicable to NIH) If a cost benefits two or more projects or activities, the costs may be charged or transferred to either or any of the awards involved as long as the productivity and the approved scope of those awards are maintained; the costs are otherwise allowable; and the proper internal controls are in effect (see h(1) and h(2) above).

(4) Documentation: Federal requirements for documentation are specified in OMB Circulars A-21 and A-110 and agency policies on cost transfers. If the institution authorizes the Principal Investigator or other individual to have primary responsibility for the management of grant funds, then the institution's documentation requirements (e.g., signature or initials of the Principal Investigator or designee or use of a password) need not provide for additional documentation (explanations or certifications) beyond that required in this paragraph h.

### J. Programs of Related Projects

#### a. General

(1) Often, when the same person serves as the Principal Investigator/Project Director (PI/PD) under two or more Federal awards, the ostensibly discrete projects supported by those awards actually comprise a single program of related projects. In some cases, even awards with different PI/PDs may support projects that comprise such a program.

(2) This Article provides a special rule on allocating costs to a program of related projects. It also provides criteria and procedures for determining whether two or more projects supported by separate awards comprise such a program.

#### b. Allocation of Costs

(1) If the project supported by this award is determined to be part of a program of related projects, in accordance with paragraphs c and d, below, then the recipient may treat the entire program of related projects as a single cost objective for purposes of paragraph C.4, "Allocable costs," of OMB Circular A-21. A cost that is allocable to the program may be charged by the recipient to any one or more of the constituent projects/awards that make up the program, in any proportion.

(2) For purposes of this paragraph b, the terms "particular sponsored agreement" and "the sponsored agreement" in subparagraph C.4.b. of OMB Circular A-21 shall be understood as referring to the program of related projects, and the term "other sponsored agreements" in that paragraph shall be understood as referring to any project/award that is not part of the program of related projects.

#### c. Criteria

The following criteria shall be used to determine whether two or more separate awards comprise a program of related projects:

(1) Either (a) the theoretical approaches are interrelated; (b) studies of the same phenomena are conducted by the same or different techniques; or (c) studies of different phenomena are conducted by the same technique; and

(2) All or most of the costs of each project would also be legally permissible for support under the Federal appropriations from which the other projects are funded. (This criterion is intended to preserve the integrity of the Federal appropriations process. It is noted that Federal appropriation law does not preclude two or more awards from participating in a pool of costs some of which are not eligible under one or more of the awards. This is permissible so long as none of the awards is charged, in total, more than the allowable costs which are eligible under its appropriation. If that principle is observed, the question of which costs are assigned to which award is moot); and

(3) All of the projects/awards involved are covered by the Demonstration Agreement.

#### d. Procedures

(1) The recipient may request a determination that two or more projects comprise a program of related projects. To be considered as part of a program of related projects, at the time the request is submitted, a project must have at least 30 days of active status remaining in the project period. The request must:

(a) Be in writing (a Project Relatedness Request Form is available for this purpose), and be sent to the lead agency's designated representative (as specified in the Demonstration Agreement); and a copy sent to the designated representative (or Grants Policy Office, NIH; of each of the other agencies (if any) involved;

(b) Be signed by the PI/PD (or by each PI/PD, if more than one) and countersigned by another authorized official of the recipient;

(c) Identify the appropriate relatedness criterion (under paragraph c of this Article) and include a brief statement of why the recipient believes the projects meet that criterion.

(2) For purposes of this paragraph, "lead agency" is the participating agency which provides the preponderance of dollar support to the projects to be related. If all of the projects to be related are National Science Foundation (NSF) projects, the procedure in subparagraph d(1)(a) above need not be followed. If the request is to relate an NSF project(s) and a project(s) of one or more of the other participating agencies, the lead agency will be other than NSF regardless of the NSF dollar support.

(3) The lead agency shall consult with the other affected Federal awarding agency or agencies, and shall grant the request, in

writing (by means of the Project Relatedness Request Form) within 30 days of receipt, if it concludes that the criteria in paragraph c, above, are met. The lead agency will rely on the opinion of the other affected Federal agency or agencies concerning their statutory authority(ies).

(4) No project may be included in a program of related projects unless the awarding agency for that project agrees.

#### 4. Payment

a. Unless otherwise specified in the special conditions of this award, the recipient shall receive advance payments under this award. Such payments shall be made pursuant to Treasury Circular No. 1075, revised. The specific payment method to be used will be specified by the awarding agency.

b. Interest earned on advances pending disbursement shall be reported to the awarding agency on the Federal Cash Transactions Report (SF 272). Unless otherwise instructed by the Federal agency, the amount shall be remitted by check made payable to the awarding agency.

#### 5. Significant Project Changes

The recipient organization and the principal investigator are responsible for the effective conduct of the project as approved in the grant award. Prior written approval is required from the awarding agency if there is to be a significant project change. Examples of significant project changes include:

a. Change in scope or objectives -- If the phenomenon(a) under study or the objectives of the project, stated in the approved application or approved modifications thereto, have been changed.

b. Absence or change of Principle Investigator/Project Director (PI/PD) -- If the approved PI/PD:

(1) severs his or her connection with the recipient, or

(2) otherwise relinquishes active direction of the project (either permanently or for a continuous period of more than 3 months), then the recipient must either:

(a) appoint a replacement PI/PD with the approval of the awarding agency, or

(b) relinquish the award (in which case the award shall be terminated by mutual agreement in accordance with Article 24;

c. Transfer, by contract or other means, of a significant part of the research or substantive programmatic effort, after an award has been made. The recipient must submit a justification, a description of the scientific/technical impact on the project, and a

*preferred  
deposition  
for  
witness  
or  
any  
book*

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budget estimate to the cognizant awarding agency official. Contractual arrangements that are disclosed in the proposal or modifications thereto do not require additional-post award approval, unless specifically withheld in the award. Such changes should be proposed in writing to the cognizant awarding agency official by an authorized official of the recipient organization. The agency decision will be transmitted in writing by the cognizant awarding agency official.

#### 6. Non-Competitive or Continuation Award Requirements

a. **Applicability.** Unless otherwise specified in agency-specific requirements or in the special conditions of an award, the following process shall be used to receive support for the remainder of a project period award.

b. **Policy.** After issuance of an initial (usually 12-months) award, and if there is recommended future support, award recipients must submit a technical progress report in order to receive additional annual recommended increments of funding remaining in the project period.

c. **Content of Technical Progress Report.** The technical progress report should be written in language readily understandable to a scientist who may not be a specialist in the field of the project's research. The style used in Scientific American articles would be appropriate. Abbreviations and language that may not be generally known to the broader scientific community should be avoided or clearly defined. It is suggested that the entire report, exclusive of the list of publications, not exceed 2 pages. The report should include the following components:

**Specific aims** - If the aims have not been modified from the original application, state this. If they have been modified, give the revised aims and the reason for the modification.

**Results** - Emphasize findings and their significance to the field, their relationship to the general goals of the award, their relevance to the agency's mission, and their potential practical applications. Also address unexpected problems you have encountered, or might encounter, in carrying out this project.

**Plans for the coming year**

**Publications** - List only those arising from this project. Copies of publications and reprints which have not previously been submitted to the agency should be enclosed with the report. Due one time per year at time determined by the agency.

d. **Budget.** Revised budget information will be required under this demonstration funding mechanism if there are any significant changes in the size or scope of the project or in the originally negotiated total estimated cost for the project period.

#### 7. Financial Reports

a. Financial Status Report

(1) If the budget period (or other funding period) exceeds 18 months, an original and two copies of the Financial Status Report (FSR) (SF 269 or SF 269-A) shall be submitted to the cognizant awarding agency official by the recipient within 90 days of the anniversary date of the beginning of the budget period (or other funding period).

(2) For multiple-year projects funded in annual increments, an original and two copies of the FSR must be submitted to the cognizant awarding agency official by the recipient within 90 days of the end of each budget period.

b. Federal Cash Transactions Report

For awards receiving advance funding, an original and two copies of a Federal Cash Transactions Report (SF 272) shall be submitted within 15 days following the end of each funding quarter.

8. Final Report Requirements

Within 90 days following the expiration or termination of the project, the recipient must furnish the cognizant awarding agency official with:

- a. An original and two copies of a final performance report which covers the entire period of support;
- b. Final expenditure and disbursement information on the Financial Status Report and/or Federal Cash Transactions Report, as required by the awarding agency; and
- c. Any other reports required under this award, including invention reports.

9. Dissemination of Project Results

- a. The recipient is expected to publish or otherwise make publicly available the results of the work conducted under this award.
- b. At such time as any article resulting from work under this award is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to the cognizant awarding agency official, clearly labeled with the award number and other appropriate identifying information.

10. Acknowledgement of Support and Disclaimer

a. An acknowledgement of awarding agency support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, in the following terms:

"This material is based upon work supported by the [name of awarding agency(ies)] under Award No. [Recipient should enter the awarding agency(ies) award number(s)] ."

b. All materials, except scientific articles or papers published in scientific journals, must also contain the following:

"Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the [name of awarding agency(ies)]."

c. Any solicitation using Federal grant funds to procure goods and services (including construction) costing \$500,000 or more must announce the amount and percentage of total costs to be financed with Federal funds.

#### 11. Data Collection

Data collection activities, if any, performed under this project are the responsibility of the recipient, and awarding agency support of the project does not constitute approval of any survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data are being collected for or in association with the awarding agency without the specific written approval of the cognizant awarding agency official of such data collection plan or instrument. However, this requirement is not intended to preclude mention of awarding agency support of the project in response to an inquiry or acknowledgement of such support in any publication of these data.

#### 12. Site Visits

The awarding agency, through authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and to provide such technical assistance as may be required. If any site visit is made by the awarding agency on the premises of the recipient, a subrecipient, or contractor, the recipient shall provide, and shall require its subrecipients and contractors to provide, all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly interfere with or delay the work.

#### 13. Preaward Costs

a. Recipients may approve preaward costs of up to ninety (90) days prior to the effective date of an award. Requests for preaward costs for periods exceeding 90 days shall be submitted in writing to the cognizant awarding agency official. Preaward expenditures prior to funding of an increment within a multiple-year project are not subject to this limitation or approval requirement but are subject to subparagraph c, below.

b. Preaward costs must be necessary for the effective and

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economical conduct of the project, and the costs must be otherwise allowable in accordance with Article 2, above.

c. Any preaward expenditures are made at the recipient's risk. Approval of preaward costs by the recipient does not impose any obligation on the awarding agency in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the recipient expected.

#### 14. Extensions Without Additional Funds

Recipients may extend the expiration date of the project if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant awarding agency official in writing within ten (10) days of the extension.

#### 15. Equipment and Real Property

a. Expenditures for general purpose equipment which would be treated as direct costs for the project or program are unallowable unless the equipment is primarily used in the actual conduct of the research.

b. The recipient shall maintain a property management system which, at a minimum, meets the requirements of OMB Circular A-110, Attachment N, and which, in its essential elements, remains as approved by the Office of Naval Research (ONR). ONR shall be notified of any major change(s) to the approved system.

c. Title to equipment purchased or fabricated with awarding agency or cost sharing funds, as direct costs of the project or program, shall vest in the recipient upon acquisition. The recipient shall specify in any subaward (including cost-type contracts only) whether title to equipment purchased or fabricated under the subaward vests in the recipient, the subrecipient or the contractor, as applicable. The recipient shall also require the subrecipient to specify, in any cost-type contract awarded by the subrecipient, whether title to equipment purchased or fabricated by the contractor vests in the contractor or in the subrecipient.

d. In accordance with the exemption provided by P.L. 95-224, as amended by P.L. 97-258 (31 U.S.C. 6306), the recipient (and the subrecipient or contractor, if applicable) shall be exempt from accountability to the Federal Government for equipment acquired under this award. For any item of equipment with an original acquisition cost of \$1,000 or more, the Federal Government may require that title be transferred to the Federal Government or a third party if the project or program for which the equipment was purchased is transferred to another recipient. In any such case, the awarding agency(ies) will notify the recipient of the intent to transfer title within

125 days following the expiration or termination of the project(s).

e. No real property may be acquired or constructed under this award.

f. Nothing in this Article requires the recipient or subrecipient to maintain any records that would not otherwise be required for equipment acquired under this award.

16. Alteration and Renovation

a. Work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for its currently designated purpose or adapted to an alternative use to meet a programmatic requirement, is allowable subject to the following:

(1) The building to be altered or renovated must have a useful life consistent with research purposes and be architecturally and structurally suitable for conversion to the type of space required;

(2) The alteration and renovation must be essential to the project supported;

(3) The space involved must actually be occupied by the project or program;

(4) The space must be suitable for human occupancy before alteration and renovation work is started, except where the purpose of the alteration or renovation is to make the space suitable for some purpose other than human occupancy (e.g., storage); and

(5) If the space is rented, evidence must be provided that the terms of the lease are compatible with the alteration and renovation proposed.

b. The recipient and the awarding agency shall comply with the applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C.4321 et seq.); the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128); the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.); Section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 792), and the standards contained in "Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped" (American National Standards Institute, Inc., A-117.1 1961; reaffirmed 1971).

*This is in the affirmative act on it.*

17. Use Of U.S.-Flag Air Carriers

a. The Comptroller General of the United States, by

Decision B138942 of June 17, 1975, as amended March 31, 1981, provided guidelines for implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974.

b. Any air transportation to, from, between, or within a country other than the U.S., of persons or property, the expense of which will be assisted by this award, must be performed on a U.S.-flag air carrier if service provided by such carrier is "available."

c. The following rules apply unless the result would be use of a foreign air carrier ("foreign carrier") for the first or last leg of travel from or to the U.S.:

(1) A U.S.-flag air carrier ("U.S. carrier") shall be used to destination or, in the absence of through service, to farthest interchange point.

(2) If a U.S. carrier does not serve an origin or interchange point, a foreign carrier shall be used to the nearest interchange point to connect with a U.S. carrier.

(3) If a U.S. carrier involuntarily reroutes the traveler via a foreign carrier, the foreign carrier may be used.

d. Exceptions. In the following situations, use of a foreign carrier is permissible:

(1) Travel to and from the U.S. Use of a foreign carrier is permissible if:

(a) The airport abroad is the origin or destination airport, and use of a U.S. carrier would extend the total travel time 24 hours or more than would travel by foreign carrier; or

(b) The airport abroad is an interchange point, and use of a U.S. carrier would require the traveller to wait six (6) hours or more to make connection or would extend the total travel time six (6) hours or more than would travel by foreign carrier.

(2) Travel Between Points Outside the U.S. Use of a foreign carrier is permissible if:

(a) Travel by foreign carrier would eliminate two (2) or more aircraft changes en route; or

(b) Travel by U.S. carrier would extend the total travel time six (6) hours or more than would travel by foreign carrier.

(3) Short Distance Travel. For all short distance travel, regardless of origin and destination, use of a foreign carrier is permissible if the elapsed travel time on a scheduled flight from origin to destination airport by foreign carrier is three

{3} hours or less and service by U.S. carrier would double the travel time.

#### 18. Financial Management System

The recipient shall maintain a financial management system which, at a minimum, meets the requirements of Attachment F to OMB Circular A-110.

#### 19. Procurement System

Equipment screening is required only when a proposed equipment purchase per unit is \$10,000 or greater, or a higher threshold if approved by the institution's Cognizant Federal Audit Agency. The recipient shall maintain a procurement system which, at a minimum, meets the requirements of Attachment O to OMB Circular A-110, and which, in its essential elements, remains as approved by the Office of Naval or Research (ONR). ONR shall be notified of any major change(s) to the approved system.

#### 20. Income

a. Royalty Income. The recipient may retain royalties received during or after the term of this project as a result of copyrights produced under this award with no accountability to the awarding agency.

b. Interest Income. The recipient shall remit or credit to the awarding agency any interest or other investment income earned on advances of funds made under this award.

c. Other Income. Income received as a result of inventions, as specified in Article 22, shall be disposed of as specified in that Article. All other income earned or received as a result of the federally sponsored project or program shall be used for research purposes at the discretion of the recipient.

d. Reporting. If the income is used on a federally assisted project, the use of such income must be reported on the Financial Status Report(s) for that project for the applicable period.

e. Recordkeeping. Records of the earning and/or receipt and use of such income shall be maintained as specified in Article 23, below.

#### 21. Unobligated Balances and Limit of Federal Liability

a. Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the

project. Since the carryover of unobligated balances is automatic, no separate or specific awarding agency prior approval shall be required to authorize use of the funds. Costs of a period into which funds are carried over shall be assigned on a "first funds awarded - first funds used" basis; i.e., the carryover from the prior period shall be used in full before the current period's funding is used. As a corollary, any carryover balance will be presumed to be derived from the most recently awarded funds.

b. The recipient shall notify the awarding agency by means of the Financial Status Report of the amount of unobligated balance as of the end of each funding period.

c. The maximum obligation of the awarding agency to the recipient is the amount indicated in the award as obligated by that agency. Nothing in this Article or in the other requirements of this award requires the awarding agency to make any additional award of funds or limits its discretion with respect to the amount of funding to be provided for the same or any other purpose.

## 22. Patents and Inventions

a. This award, as performed by the recipient, shall be subject to the Patents Rights (Small Business Firms and Nonprofit Organizations) clause at 37 CFR 401.14 (51 FR 25517, et seq., July 14, 1986, or any subsequent amendment in effect as of the beginning date of this award) and the following:

(1) In each instance where the term contract or contractor is used in the clause, those terms shall be read as award and recipient, respectively.

(2) In each instance where the term Federal Agency, agency, or funding Federal agency is used in the clause, the term shall be read to mean the awarding agency for this award.

(3) Under paragraph (g) of the clause, the title shall read Contracts and Subawards under the Award, and, in that paragraph, subcontract and subcontractor shall be read as contract or subaward and contractor or subrecipient, respectively.

(4) Under subparagraph (g)(2) of the clause, if a contract or subaward is to be made to any organization other than a nonprofit organization or small business firm, as defined in paragraph (a) of the clause, the recipient shall contact the cognizant awarding agency official to ascertain the appropriate patent clause.

(5) See the agency-specific requirements of the awarding agency for the point of contact for communications on matters relating to the clause.

23. Audits and Records

a. Financial records, supporting documents, statistical records, and other records pertinent to each year of this project shall be retained by the recipient for a period of 3 years from submission of the annual Financial Status Report specified in Article 7 or, for indirect cost computation supporting records, three years from the date of submission of the indirect cost rate computation or proposal to the cognizant Federal agency. Records that are the subject matter of audits, appeals, litigation, or the settlement of claims arising out of the performance of the project shall be retained until such audits, appeals, litigation, or claims have been disposed of, or until the end of the regular three-year retention period, whichever is later.

b. Unless court actions or audit proceedings have been initiated, the recipient may substitute copies made by microfilming, photocopying, or similar methods for the original records.

c. The head of the awarding agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient organization, and the performing organization, if different, to make audits, examinations, excerpts and transcripts. Further, any negotiated contract in excess of \$10,000 made by the recipient shall include a provision to the effect that the recipient, the awarding agency, the Comptroller General, or any of their duly authorized representatives, shall have access to pertinent records for similar purposes. The rights of access to records in this paragraph shall not be limited to the required retention period, but shall last as long as the records are retained.

d. In order to avoid duplicate recordkeeping, the awarding agency may make special arrangements with recipients to retain any records that are needed for joint use. The awarding agency may request transfer to its custody of records not needed by the recipient when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding agency, the 3-year retention requirement is not applicable to the recipient. In the event that records are transferred to the awarding agency, the awarding agency will negotiate a mutually agreeable arrangement with the recipient regarding reimbursement of costs associated with the transfer.

e. The recipient shall arrange for the conduct of audits as required by OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations." The recipient shall provide copies of the reports of these audits to the Federal Audit Agency assigned cognizance under OMB Circular A-88. Any Federal audit of this project deemed necessary by the cognizant awarding agency official shall build upon the results of the

*referred  
for  
university  
audits*

audit(s).

#### 24. Suspension or Termination

a. The awarding agency may suspend or terminate this award, in whole or in part, (1) when the awarding agency believes that the recipient has materially failed to comply with the terms and conditions of the award, (2) for any reason by mutual agreement between the awarding agency and the recipient upon the request of either party, or (3) when the parties cannot mutually agree to the extent of a termination.

b. Normally, action by the awarding agency to suspend or terminate an award for cause will be taken only after the recipient has been informed by the awarding agency of any deficiency on its part and given an opportunity to correct it. However, the awarding agency may immediately suspend or terminate the award without prior notice when it believes such action is necessary to protect the interests of the Government.

c. No costs incurred during a suspension period or after the effective date of a termination will be allowable, except those costs which, in the opinion of the awarding agency, the recipient could not reasonably avoid or eliminate, or which were otherwise authorized by the suspension or termination notice, as provided in this Article, and the appropriate Federal cost principles. In no event will the total of payments under a terminated award exceed the amount obligated by the awarding agency or the awarding agency pro rata share when cost-sharing was required, whichever is less.

#### 25. National Security

a. The awarding agency does not expect that results of supported research projects will be classifiable, except in very rare instances.

b. Executive Order 12356 (47 Federal Register 14874 (1982)) states that basic scientific research information not clearly related to the national security may not be classified (section 1.6(b)). Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to the national security or cryptology may require classification (section 1.3(a)).

c. There may, therefore, be cases when a recipient originates information during the course of a supported project that the recipient believes requires classification under Executive Order 12356 (section 1.2(e)).

d. In such a case, the recipient has the responsibility promptly to:

- (1) Submit the information directly to the awarding

agency or other U.S. Government agency with appropriate subject matter interest and classification authority as specified in the agency-specific requirements under the Demonstration Agreement, or if uncertain which agency should receive the information, to the Director of the Information Security Oversight Office, General Services Administration;

(2) Protect the information as though it were classified until the recipient is informed that the information does not require classification, but no longer than thirty (30) days after receipt by the agency under subparagraph d(1); and

(3) Notify the cognizant awarding agency official.

e. The Executive Order requires the Federal agency with appropriate subject matter interest and classification authority to decide within thirty (30) days whether to classify the material. If the agency determines the information requires classification, the recipient shall cooperate with that agency or other appropriate agencies in securing all related project notes and papers.

f. If the information is determined to require classification, the performing organization may wish to or need to discontinue the project, in which case the award shall be terminated by mutual agreement.

g. If the award is to be terminated, all material deemed to be classified shall be forwarded to the awarding agency, in a manner specified by the awarding agency, for proper disposition.

h. If the recipient and the awarding agency wish to continue the project, the recipient shall obtain appropriate security clearances as specified by the awarding agency. Costs associated with handling and protecting any such classified information shall be negotiated at the time the determination to proceed is made.

i. If the agency identified in subparagraph d(1) does not respond within 30 days, the recipient is under no further obligation to treat the information as classified.

## 26. Nondiscrimination

a. To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), Title IX of the Education Amendments of 1972 (P.L. 92-318, 20 USC 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Age Discrimination Act of 1975 (P.L. 94-135), the implementing regulations issued pursuant thereto by the awarding agency as specified in the agency-specific requirements incorporated in the Demonstration Agreement, and the assurance of compliance which the recipient has filed with the awarding agency.

b. The recipient shall obtain from each organization that

applies to be, or serves as a subrecipient, contractor or subcontractor under this award (for other than the provision of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by awarding agency regulations.

#### 27. Animal Welfare

a. Any recipient performing research on vertebrate animals shall comply with the Laboratory Animal Welfare Act of 1966, as amended (7 USC 2131 et seq.), and the regulations pertaining to it. The recipient is expected to ensure that the guidelines described in DHHS Publication No. (NIH) 85-23, "Guide for the Care and Use of Laboratory Animals," are followed and to comply with the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training" (included as an Appendix to the NIH Guide).

b. The recipient is also responsible for complying with the Public Health Service Policy on the Care and Use of Laboratory Animals (PHS Policy) and such other requirements as are established by the awarding agency.

NOTE--The recipient may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

#### 28. Research Involving Recombinant DNA Molecules

Any recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules agrees by acceptance of this award to comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," November 1984 (49 FR 46266-46291), such later revision of those guidelines as may be published in the Federal Register.

#### 29. Clean Air and Water

(Applicable only if the award exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 USC 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 USC 1319(c)), and is listed by EPA, or if the award is not otherwise exempt.) The recipient agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 USC 1857, et seq., as amended by P.L. 91-604) and section 308 of the Federal

Water Control Act (33 USC 1251 et seq., as amended by P.L. 92-500), respectively, relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in Section 114 and Section 308 of the Clean Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder prior to this award.

(2) That no portion of the work under this award will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date that this award was effective unless and until the EPA eliminates the name of such facility or facilities from such listings.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility in which the award is being performed.

(4) To insert the substance of the provisions of this clause into any nonexempt subaward or contract under the award.

#### 30. Human Subjects

The recipient is responsible for the protection of the rights and welfare of any human subjects involved in research, development and related activities supported by this award. The recipient agrees to comply with the Department of Health and Human Services regulations on protection of human subjects published in 45 CFR Part 46, and such other requirements as are established by the awarding agency. For purposes of these general terms and conditions, the footnotes appearing in 45 CFR 46 do not apply.

#### 31. Activities Abroad

The recipient should assure that project activities carried on outside the United States are coordinated as necessary with appropriate Government authorities and that appropriate licenses, permits or approvals are obtained prior to undertaking proposed activities. The awarding agency does not assume responsibility for recipient compliance with the laws and regulations of the country in which the activity(ies) is (are) to be conducted.

#### 32. Debarred or Suspended Parties

This award is subject to any regulations of the awarding agency that provide for debarring or suspending organizations or individuals from eligibility to participate under financial assistance programs (provided those regulations would apply to this award if it were not covered by the Demonstration Agreement).

#### 33. Closeout

This award may be closed out without an award-specific (transactional) audit or without an organization-wide or single audit covering the entire period of Federal support. The closeout of this award shall not affect the retention period for, or Federal right of access to, project records (See Article 23). After closeout, the awarding agency may nevertheless disallow and recover from the recipient an appropriate amount, on the basis of a subsequently received audit report or any other available information.

34. Rights In Data

a. Definitions

(1) "Data" as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes Computer Software, and data of a scientific or technical nature. The term does not include information incidental to grant administration, such as financial, administrative, cost or pricing or management information.

(2) "Computer Software," as used herein, means computer programs, computer data bases, and documentation thereof.

(3) "Federal Government Purposes," as used herein, does not include the right to use, or authorize others to use, Data first produced in the performance of this award for commercial purposes. For this document, the definition of "commercial purposes" is the right to reproduce, produce or manufacture and sell the Data for profit.

b. Rights in Data

(1) Rights in the Recipient of this Award. Except as otherwise provided in the terms and conditions of this award, the recipient shall have the right to and may permit others to copyright, publish, disclose, disseminate and use, in whole or in part, any Data first produced in the performance of work under this award.

(2) Rights In the Federal Government. Except as otherwise provided in the terms and conditions of this award, the Federal Government, and others acting for it or on its behalf, shall have the right, and are hereby granted a royalty-free, non-exclusive, irrevocable license throughout the world, to use, reproduce, prepare derivative works, perform publicly, display publicly and distribute to the public any Data including Data copyrighted pursuant to subparagraph b.(1) above, first produced in the performance of work under this award for Federal Government purposes.

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- Chief of Staff -

Thought - sometime this month.

My own thought

Check back w/ them

- Get back to me 1st thing next wk.

~~Please pass this message on to Elana when she checks in later today.~~

~~Thank you.~~

- Barry Triv ⇒

- Letters - wanted to give accurate  
acct.

Raise concern - don't still want to  
be studying this in 6 mos.

## **STATEMENT ON THE REGENTS' JULY 20TH RESOLUTIONS ON ADMISSIONS AND EMPLOYMENT AND CONTRACTING**

**President J. W. Peltason  
July 24, 1995**

I would like to clarify a few points about the two resolutions adopted by The Regents at their meeting last Thursday, July 20. These resolutions prohibit the use of race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University or in its employment and contracting practices, effective in January of 1997 for admissions and in January of 1996 for employment and contracting.

Obviously, we will comply with the resolutions approved by the Board. It is important to make clear at the outset, however, that they have to do with means, not with goals. As the resolutions adopted by The Regents explicitly recognize, our goal as a university remains what it has long been, which is to reflect within our community California's diverse population. We are committed to diversity as both a powerful tool in educating our students for the world in which they must make their personal and professional lives, and as an essential way of meeting our responsibility to prepare future leaders for California's diverse society. To this end, we will accelerate our outreach efforts.

It is also important to note that the resolutions contemplate that no changes will be made in contracting and employment until January 1996, and in admissions until January 1997. This provides us with ample time for appropriate consultation and orderly planning.

In the meantime, I am taking the following actions:

- We are looking into what effect the resolution on contracting and employment will have on the University's programs. Few significant changes are likely, however, because UC's employment and contracting programs are governed by State and federal laws, regulations, executive orders, and the U. S. Constitution, and our practices historically have been and will continue to be in compliance with these various laws and requirements. Further, the resolution

adopted by The Regents explicitly stipulates that the University will continue to comply with any federal or State requirements necessary to maintain our eligibility for federal and State funds.

- I intend to begin immediately the process of working with the Chancellors and the faculty to determine how we can make the changes called for by the Board's action with respect to undergraduate, graduate, and professional admissions, the area in which we expect the most change to result from adoption of The Regents' resolutions. Since the resolution on admissions requires no change until January of 1997, we therefore have 18 months in which to work out how we will implement the resolution.
- In consultation with the Chairman of the Board, I will also take prompt action, as called for in the resolution on admissions, to appoint a task force representing the University, the business community, students, other education segments, and other organizations engaged in helping underrepresented minority and other students prepare for a college or university education. The purpose of this task force is to determine new directions in academic outreach and to seek expanded funding for outreach efforts. This is a welcome step, and the task force will be organized soon so it can begin its work.

The only changes to be made now, either in employment and contracting or in admissions, are those I announced in the statement sent to The Regents on July 10. In brief, these changes are:

- UCLA and Berkeley will institute a more comprehensive review of undergraduate applicants' background and qualifications.
- UC Davis and UC Irvine have discontinued the practice of granting admission to all eligible underrepresented students who apply.
- We have modified the Target of Opportunity Program so that, first, it will no longer be used to reserve faculty positions solely for the hiring of underrepresented minority and women faculty, as has been the case on some campuses. Second, a search can be waived to hire *any* faculty members whose presence would significantly enhance the quality of the faculty.

- We have taken action to ensure that all of our Management Fellowships and similar development programs are not restricted to women or minority applicants but are open to all staff.
- And I have asked the University's General Counsel, James E. Holst, to assess all of our business activities in light of the recent Supreme Court decision and the Board's resolution, and to come back with specific recommendations if in his judgment any of them need to be modified.

The Chancellors, the Vice Presidents and other University Officers, and I will be working together in the months ahead to make the necessary changes in our programs and to seek new ways to strengthen the University's diversity. I will keep the University community, The Regents, and the public informed about our progress.

Attachments: Regents' Resolutions SP-1 and SP-2

Approved  
Approved as amended  
Accepted  
Notice served  
Deferred  
Withdrawn  
Disapproved

**SP-1**

**OFFICE OF THE SECRETARY**

**July 12, 1995**

**TO THE BOARD OF REGENTS:**

**ITEM FOR ACTION**

**For Meeting of July 20, 1995**

**ADOPTION OF RESOLUTION: POLICY ENSURING EQUAL TREATMENT-  
ADMISSIONS**

Regent Connerly recommends that the following resolution be adopted:

WHEREAS, Governor Pete Wilson, on June 1, 1995, issued Executive Order W-124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit"; and

WHEREAS, paragraph seven of that order requests the University of California to "take all necessary action to comply with the intent and the requirements of this executive order"; and

WHEREAS, in January 1995, the University initiated a review of its policies and practices, the results of which support many of the findings and conclusions of Governor Wilson; and

WHEREAS, the University of California Board of Regents believes that it is in the best interest of the University to take relevant actions to develop and support programs which will have the effect of increasing the eligibility rate of groups which are "underrepresented" in the University's pool of applicants as compared to their percentages in California's graduating high school classes and to which reference is made in Section 4;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

Section 1. The Chairman of the Board, with the consultation of the President, shall appoint a task force representative of the business community, students, the University, other segments of education, and organizations currently engaged in academic "outreach."

The responsibility of this group shall be to develop proposals for new directions and increased funding for the Board of Regents to increase the eligibility rate of those currently identified in Section 4. The final report of this task force shall be presented to the Board of Regents within six months after its creation.

Section 2. Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University or to any program of study.

Section 3. Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for "admissions in exception" to UC-eligibility requirements.

Section 4. The President shall confer with the Academic Senate of the University of California to develop supplemental criteria for consideration by the Board of Regents which shall be consistent with Section 2. In developing such criteria, which shall provide reasonable assurances that the applicant will successfully complete his or her course of study, consideration shall be given to individuals who, despite having suffered disadvantage economically or in terms of their social environment (such as an abusive or otherwise dysfunctional home or a neighborhood of unwholesome or antisocial influences), have nonetheless demonstrated sufficient character and determination in overcoming obstacles to warrant confidence that the applicant can pursue a course of study to successful completion, provided that any student admitted under this section must be academically eligible for admission.

Section 5. Effective January 1, 1997, not less than fifty (50) percent and not more than seventy-five (75) percent of any entering class on any campus shall be admitted solely on the basis of academic achievement.

Section 6. Nothing in Section 2 shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

Section 7. Nothing in Section 2 shall prohibit the University from taking appropriate action to remedy specific, documented cases of discrimination by the University, provided that such actions are expressly and specifically approved by the Board of Regents or taken pursuant to a final order of a court or administrative agency of competent jurisdiction. Nothing in this section shall interfere with the customary practices of the University with regard to the settlement of claims against the University relating to discrimination.

Section 8. The President of the University shall periodically report to the Board of Regents detailing progress to implement the provisions of this resolution.

Section 9. Believing California's diversity to be an asset, we adopt this statement: Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California, this policy will achieve a UC population that reflects this state's diversity through the preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences.

Approved

Approved as amended

Accepted

Notice served

Deferred

Withdrawn

Disapproved

**SP-2**

**OFFICE OF THE SECRETARY**

**July 12, 1995**

**TO THE BOARD OF REGENTS:**

**ITEM FOR ACTION**

**For Meeting of July 20, 1995**

**ADOPTION OF RESOLUTION: POLICY ENSURING EQUAL TREATMENT--  
EMPLOYMENT AND CONTRACTING**

Regent Connerly recommends that the following resolution be adopted:

WHEREAS, Governor Pete Wilson, on June 1, 1995, issued Executive Order W-124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit"; and

WHEREAS, paragraph seven of that order requests the University of California to "take all necessary action to comply with the intent and the requirements of this executive order"; and

WHEREAS, in January 1995 the University initiated a review of its policies and practices, the results of which support many of the findings and conclusions of Governor Wilson;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

Section 1. Effective January 1, 1996, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria in its employment and contracting practices.

Section 2. The President of the University of California is directed to oversee a systemwide evaluation of the University's hiring and contracting practices to identify what actions need be taken to ensure that all persons have equal access to job competitions, contracts, and other business and employment opportunities of the University. A report and recommendations to accomplish this objective shall be presented to the Board of Regents before December 31, 1996.

Section 3. Nothing in Section 1 shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

Section 4. Nothing in Section 1 shall prohibit the University from taking appropriate action to remedy specific, documented cases of discrimination by the University, provided that such actions are expressly and specifically approved by the Board of Regents or taken pursuant to a final order of a court or administrative agency of competent jurisdiction. Nothing in this section shall interfere with the customary practices of the University with regard to the settlement of claims against the University relating to discrimination.

## **REGENTS' DIVERSITY COMMITMENT**

**ADOPTED BY THE BOARD OF REGENTS  
JULY 20, 1995**

**The following statement was adopted to apply to the Policy Ensuring Equal Treatment--  
Admissions and the Policy Ensuring Equal Treatment--Employment and Contracting:**

**Believing California's diversity to be an asset, we adopt this statement: Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California, this policy will achieve a UC population that reflects this state's diversity through the preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences.**

THE WHITE HOUSE

WASHINGTON

August 2, 1995

MEMORANDUM FOR ABNER J. MIKVA

FROM: ELENA KAGAN

SUBJECT: UNIVERSITY OF CALIFORNIA FUNDING

I had a conversation with Nancy McFadden this morning, in which we discussed (1) the agencies' review of grants or contracts involving the University of California and (2) our own role in that review.

1. A meeting took place last week among various agency counsels; they are now determining what grants or contracts conceivably could be implicated by the Regents' action; no new meeting has been set.

2. I asked Nancy if she would keep me in touch with what was going on and make sure I get all relevant documents. I did all this in a very unassuming, even apologetic, kind of way. She noted that some people at Justice might have concerns about our having a role in the process, but seemed herself understanding and cooperative. I really do think we have to keep track of this at this point, given our letter and Davis' response and given the chance that difficult issues will arise. A casual word to John Schmidt, as we discussed, probably would be helpful on this score.

## G.O.P. Lawmakers Offer a Ban On Federal Affirmative Action

By STEVEN A. HOLMES

WASHINGTON, July 27 — A group of Congressional Republicans led by Senator Bob Dole, the leading candidate for the party's Presidential nomination, introduced legislation today that would effectively bar the Federal Government from granting any benefits on the basis of race, ethnicity or sex.

Sponsors of the bill, offered only a week after President Clinton's ringing endorsement of affirmative action, said it would not come up for a vote until next year, a schedule that would inject the divisive issue of race- and sex-based preferences into the 1996 campaign for the White House.

The bill, the Equal Opportunity Act of 1995, would prohibit the Federal Government from granting any preference on the basis of race, color, sex or national origin in connection with any Federal contract, job or any other Federal activity. It would also bar the Government from requiring or encouraging any Federal contractor to grant any such preferences in hiring or promotion.

The measure is backed in the House by 70 Republicans, including Charles T. Canady of Florida, its leading sponsor in that chamber. But it has yet to gain the endorsement of some important Republican lawmakers, among them Speaker Newt Gingrich, who first wants the party to come up with a preference-free package of legislation benefiting the poor, a way of offsetting the effects of an affirmative-action ban. Nor has the bill yet won the endorsement of the only two black Republicans in Congress: Representatives Gary A. Franks of Connecticut and J. C. Watts of Oklahoma.

But given the general antipathy within the party toward race- and sex-based preferences, and the weight of the leading Republican Presidential candidate behind the legislation, the bill could become the axis on which the debate over affirmative action turns in Congress and the 1996 campaign.

"For too many citizens, our country is no longer the land of opportunity but a pie chart where jobs and other benefits are often awarded not because of hard work or merit but

because of someone's biology," Mr. Dole, the Senate majority leader, said at a news conference in the ornate Mansfield Room at the Capitol. "We have lost sight of the simple truth that you don't cure discrimination with more discrimination."

Another Republican Presidential aspirant, Gov. Pete Wilson of California, has made opposition to affirmative action a central element of his campaign. With his enthusiastic backing, the Board of Regents of the University of California voted last week to end all racial preferences in hiring, contracts and admissions at the state's public institutions of higher learning.

The regents' action has led the Rev. Jesse Jackson, who has also hinted at a Presidential run, to mount a petition drive to recall Mr. Wilson from office. In a telephone interview today, Mr. Jackson said a "broad coalition" of clerical, civil rights, women's and student groups had met to organize a campaign to gather 600,000 signatures to place the question of Mr. Wilson's recall on the ballot next year.

"We're going to let politicians who want to cash in on race- and sex-baiting know that we're going to fight back," Mr. Jackson said.

In addition, officials of the Labor Department are studying whether the regents' vote violates a 1965 Presidential order, issued by Lyndon B. Johnson, that requires Federal contractors to develop plans to increase the number of women and minority-group members hired and promoted.

"We expect the University of California will continue to comply with the non-discrimination and affirmative-action requirements of the executive order," Labor Secretary Robert B. Reich said in an interview. "That executive order has never required the hiring of unqualified people or the use of quotas."

But officials of the department stress that any effort to strip California universities of their contracts would be a long, drawn-out process, involving an investigation, a hearing before an administrative law judge and perhaps litigation in the Federal courts.

## Doubt Recalled on Using Gas at Waco Siege

By DAVID JOHNSTON

WASHINGTON, July 27 — A top F.B.I. official testified today at Congressional hearings on the raid on a sect's compound outside Waco, Tex., that he did not realize that the on-scene commander had concluded that a tear-gas operation proposed for gradually ending the siege was almost certain to escalate quickly into a massive gas assault.

Larry A. Potts, who at the time was the head of criminal division of the Federal Bureau of Investigation and the official in Washington with overall responsibility for the siege of the Branch Davidian compound, also testified for the first time today that he had doubts from the start about the plan to use gas.

In the end, the assault culminated in a fire, which officials said was set by the Branch Davidians in a spasm of self-destruction. About 80 Davidians died.

"When I first heard about the plan I was very much opposed to it," he said. Later he added that there were too many "unknowns."

"It was the unknown in terms of what their reaction might be and how we could measure that," he said. "It was the unknown as to whether or not maybe there were other things that we might be able to do that we had not yet tried. It was all of those questions that I thought we had to answer as well as what would be the effect of CS gas on those inside the compound."

Mr. Potts said he became a convert to a modified version of the plan after a trip to the Davidian compound. Even so, he said, he never realized that Jeffrey Jamar, the F.B.I. commander at the siege, had determined that it was "99 percent"

certain that the Branch Davidians would shoot at F.B.I. agents when they used tanks to spray tear gas into the compound.

"I certainly didn't understand that he believed that there was a 99 percent chance," said Mr. Potts. "When I spoke to him in late March on the phone we talked about what the response would be of the Davidians if we put gas in, and he said, 'I believe they'll shoot.' I said, 'How can we go forward if we believe that there's that strong a chance they will shoot?'"

Mr. Jamar said in an interview later that he had misspoken during the hearing. He said and had meant to tell the lawmakers that his fears about the likelihood of shooting were only in the event that the F.B.I. sent lighter vehicles to the compound than than the tanks used in the first phase of the gassing operation.

Nevertheless, the possibility of a misunderstanding between the two officials over the issue is potentially significant because it seemed to lend credence to the assertion by some lawmakers that a communications breakdown led to flawed decisions in Washington.

Moreover, the issue of how the Branch Davidians were likely to react — whether they would fight or flee — was a critical element in deciding if the gassing plan could succeed or lead to tragedy.

"April 19 was not any kind of D-Day where we said, 'We've got to end this thing right now,'" Mr. Potts said at one point. "April 19 was to put some gas in one portion of the compound and then back away."

The plan, approved by Attorney General Janet Reno, envisioned that F.B.I. agents would begin a slow,

phased operation. F.B.I. officials said today that they believed the chemical agent would drive the Davidians out the building.

But that calculation proved wildly optimistic. The religious sect stayed inside, some firing automatic weapons on the two gas carrying tanks two minutes after they began the gassing. That triggered a contingency plan worked out in advance, that said agents would respond to any shots fired by immediately firing tear gas throughout the entire compound to suppress the shooting. Later, the F.B.I. punched gaping holes in the walls, which officials said was a desperate effort to allow anyone inside the building to flee. Mr. Jamar said today that he now believes that none of the nine people who left the building that day were forced out by the gas.

At a news conference today, Ms. Reno defended her decision to approve the assault but said she would not have authorized it if she had thought David Koresh, the Davidian leader and his followers would take their own lives.

Mr. Jamar, who is now retired, said surveillance tapes recorded the Branch Davidians discussing preparation to light fires. "If we'd have heard 'spread the fuel,' we'd have stopped right there," he said.

In the past, law enforcement officials have hinted at control problems among the F.B.I. ranks once the gas operation got under way. But today was the first time that any F.B.I. official talked publicly about possible misunderstandings that could explain why some Justice Department officials said the tactical forces reacted far more aggressively than they expected.

THE WHITE HOUSE

WASHINGTON

July 27, 1995

The Honorable Pete Wilson  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Governor Wilson:

The President has asked me to respond on his behalf to your letter concerning the effects of the University of California Board of Regents' resolution to halt affirmative action.

As you know, the President disagrees with the Regents' resolution. As his Chief of Staff Leon Panetta recently stated, that resolution is a mistake -- a retreat from this nation's longstanding commitment to equal opportunity and equal justice.

As a matter of course, in order to comply with all applicable law, federal agencies review actions of such significance to determine whether and how they affect the administration and enforcement of federal programs. It is this regular and routine process to which Leon Panetta recently referred. Agencies must determine whether the University of California's new policy violates the terms and conditions of any preexisting contracts with or grants to the University of California. In the event that this review reveals any problems, ~~I am sure~~ the agency involved will make every effort to work with the State of California to avoid cutting off any federal monies. *I have been authorized by the President's Chief of Staff to work with*

Please be assured that the President is not interested in taking punitive action against the University of California for its ill-considered change in policy. Nor is he interested, as some appear to be, in using the University of California as a pawn in a political battle. The President well understands the greatness of the University of California system and has a deep commitment to preserving it. It is a shame that the Board of Regents last week failed to show the same understanding and commitment.

Sincerely yours,

Abner J. Mikva  
Counsel to the President

*Handwritten signature of Abner J. Mikva*

*Handwritten notes:*  
The threat of California as a pawn in a political battle  
Federal funds are not lost  
in this regard.  
Identical letter to Furt VD

Send to McFadden

? - Schmidt

? - need itself contemplative -  
refer to province

Allyson  
228-6616

THE WHITE HOUSE

WASHINGTON

July 27, 1995

*his Chief of staff*

The Honorable Gray Davis  
Lieutenant Governor, State of California  
State Capitol, Room 1114  
Sacramento, CA 95814

*decision.*

Dear Lieutenant Governor Davis:

The President has asked me to respond on his behalf to your letter of July 26 concerning the effects of the University of California Board of Regents' resolution to halt affirmative action.

*As you know,*  
*disagrees with*  
The President appreciates your support of his recent address on affirmative action and your determined efforts to prevent the passage of the Regents' resolution. As Leon Panetta, Chief of Staff to the President, recently stated, that resolution is a mistake -- a retreat from this nation's longstanding commitment to equal opportunity and equal justice.

*As*  
*they*  
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*got Adams*  
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Sincerely yours,

Abner J. Mikva  
Counsel to the President

*in order to ensure they follow the law,*

THE WHITE HOUSE

WASHINGTON

July 27, 1995

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Lieutenant Governor, State of California  
State Capitol, Room 1114  
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Abner J. Mikva  
Counsel to the President

THE WHITE HOUSE

WASHINGTON

July 27, 1995

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Lieutenant Governor, State of California  
State Capitol, Room 1114  
Sacramento, CA 95814

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Sincerely yours,

Abner J. Mikva  
Counsel to the President

State disagree w/ policy  
(agree w/ Davis)

Funding - not a threat

Designate someone?

previously  
grants, etc

strange if no one  
reviews legal comings  
of such a

MSOP itself receives  
it not implicate her law

not interested in punitive  
action

last thing Pres would  
is for st US sys  
to lose fed funds

mistake of CP said  
be assured that...

transcript

Asking someone at DOJ to be in  
touch - assure want for any  
funds.

James/John Schmidt

↳ assign <sup>someone</sup> ~~person~~ to deal

John Schmidt

Pressure here of rev. caps would normally  
go down

talking pros - from state -

2 props at issue  
OFCCP - for procurement like  
some D of Ed.

Judy Winkler -

Bob Matthews,  
D of Energy  
by guest Ken w/ U Carl

DOT called out  
of caps

not happening now -  
so what to review?  
to jeopardize  
fed funds.

not protecting caps  
or to do what would  
normally do  
-  
to coordinating a look  
at whether action  
like this indicates  
federal policies.  
Schmidt/McFadden

Nancy McFadden -

Send copy of  
Hv to  
Nancy.

Any further questions  
to John Schmidt.  
or Jeral.

The text of the -

Had a mtg from gen'l  
councils from agencies -  
They're getting back -  
early next wk -  
description of what  
going to Univ; what  
authorizing source is  
(reg, statute); any  
relevant conditions?  
- SURVEY -

But - amt to a lot of  
D. CP stepped way  
ahead of curve.  
Downplaying any  
expecs.

As LP, 10/5 to  
the Pres, recently  
scrated,

Dear :

The President has asked me to respond on his behalf to your letter of July 26 concerning the effects of the University of California Board of Regents' resolution to halt affirmative action.

The President appreciates your support of his recent address on affirmative action and your determined efforts to prevent the passage of the Regents' resolution. That resolution is a great error -- a retreat from this nation's longstanding commitment to equal opportunity and equal justice.

As a matter of course, federal agencies will review an action of such significance to determine whether (and, if so, how) it affects the administration and enforcement of federal programs. It is this regular review to which Leon Panetta, ~~Chief of Staff to the President~~ recently referred. Agencies must determine whether the University of California's new policy violates the terms and conditions of any preexisting contracts with or grants to the University of California. The Department of Justice ~~has begun this review~~. In the event that the review uncovers any problems, I am sure the Department will make every effort to work with the State of California to avoid cutting off any federal monies. *agencies*

Please be assured that the President is not interested in taking punitive action against the University of California for its ill-considered change in policy. Nor is he interested, as some appear to be, in using the University of California as a pawn in a political battle. The President well understands the greatness of the University of California system and has a deep commitment to preserving it. It is a shame that the Board of Regents last week failed to show the same understanding and commitment.

*and other agencies  
will, in the normal course,  
undertake this review.*

Nancy McFadden

514-9700

---

K. Gibson

67020

---

TO: John Emerson

DRAFT #2

Dear Lt. Governor Davis:

Thank you for your letter of July 26 expressing concern that the University of California not be foreclosed from receiving federal funds because of the July 20 vote of the UC Board of Regents to eliminate affirmative action.

I completely agree with you, and am taking action to ensure that no federal funds are lost. I have asked \_\_\_\_\_ of the Department of Education, \_\_\_\_\_ of the Department of Energy, and \_\_\_\_\_ of the National Institutes of Health to work with your office, the other Regents, and UC President Jack Peltason to ensure that implementation of the Regents' new poliocy does not endanger federal funding.

The University of California is not only the State's crown jewel, it is a very important national asset. Be assured that my Administration stands ready to help protect the University's status and future.

Please ignore draft just sent.

~~Billy + Elena Kagan~~

~~THIS IS Davis' suggested response.~~

~~[Signature]~~

*file: UC Regents*

George --

Attached is guidance to our press office re: DOJ role regarding UC Regents' action. A confined description -- we don't want to build up expectations; we also are avoiding putting any time frame for decision.

We may get some press inquiries on whether this was White House-ordered (one of our typical questions). Our response is that it was natural for DOJ to take a look at such a sweeping action that appears to be in direct contravention of federal policy as articulated by the President.

Let me know if you have any concerns/thoughts.

Nancy

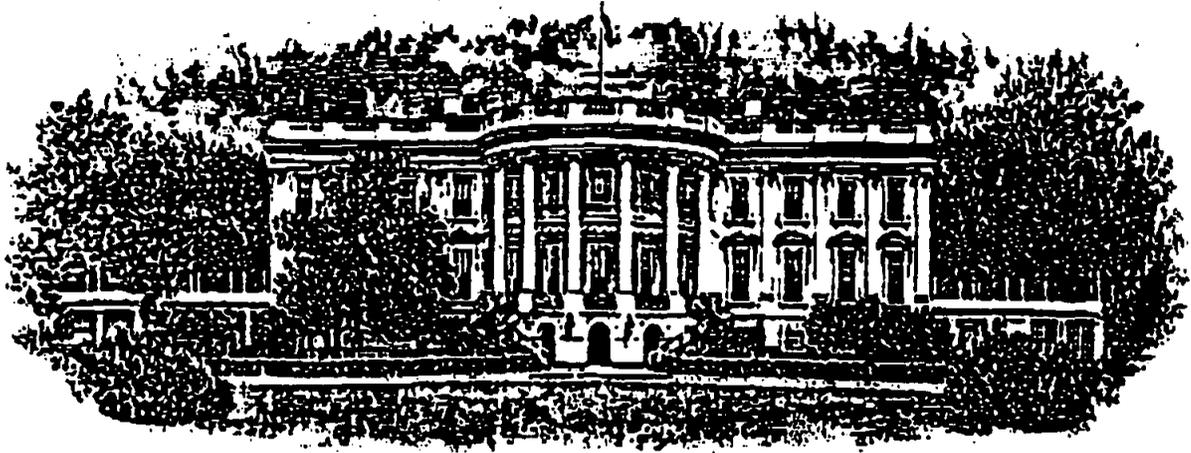
cc: James C.

The Department of Justice is analyzing last week's decision by the University of California's Board of Regents' to alter its affirmative action policies in employment, contracting and admissions. The Department is working with relevant federal agencies to determine whether the Regents' actions violate conditions of federal grants or contracts to the University of California.

In response to press inquiries since the Board's decision, the Department of Justice has informed reporters that we are exploring the role we can play to ensure equal opportunity. From today on we will be sticking to the above description of our activities, being careful not to presuppose the outcome of any legal analysis of the Regents' decisions.

We recommend that the White House refer all press inquiries on the subject to the Department's Office of Public Affairs (Myron Marlin 616-2765).

# The White House



## COUNSEL'S OFFICE

### FACSIMILE TRANSMISSION COVER SHEET

**DATE:** \_\_\_\_\_

**TO:** Barry Toiv

**FACSIMILE NUMBER:** 6-2271

**TELEPHONE NUMBER:** \_\_\_\_\_

**FROM:** James Castello

**TELEPHONE NUMBER:** 6-6611

**PAGES (WITH COVER):** 3

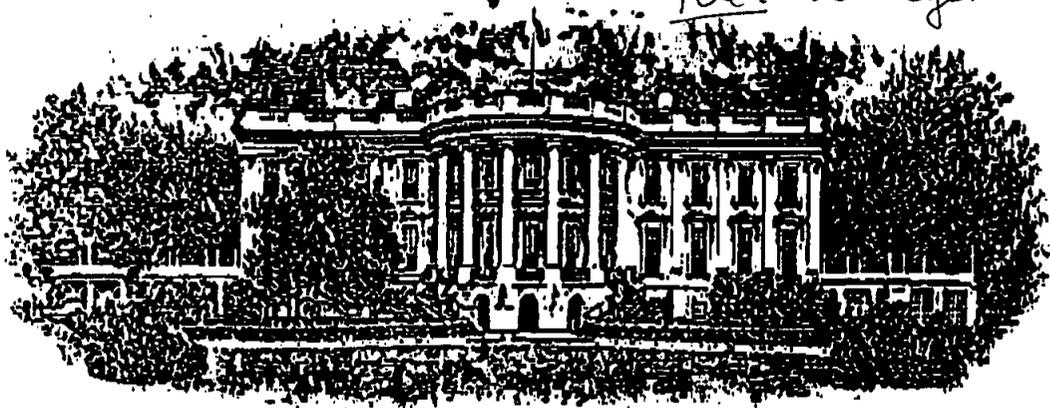
**COMMENTS:** As discussed -- Nancy  
McFadden at DOJ sent us  
the attached.

### PLEASE DELIVER AS SOON AS POSSIBLE

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# The White House

*file: VC Regents*



## COUNSEL'S OFFICE

### FACSIMILE TRANSMISSION COVER SHEET

DATE: July 25, 95

TO: Tommaso Costello

FACSIMILE NUMBER: 66279

TELEPHONE NUMBER: 66611

FROM: Marvin Kriskar - 2M

TELEPHONE NUMBER: 6-7903

PAGES (WITH COVER): 7

COMMENTS: \_\_\_\_\_

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Approved  
Approved as amended  
Accepted  
Notice served  
Deferred  
Withdrawn  
Disapproved

**SP-1**

**OFFICE OF THE SECRETARY**

**July 12, 1995**

**TO THE BOARD OF REGENTS:**

**ITEM FOR ACTION**

**For Meeting of July 20, 1995**

**ADOPTION OF RESOLUTION: POLICY ENSURING EQUAL TREATMENT-  
ADMISSIONS**

**Regent Connerly recommends that the following resolution be adopted:**

**WHEREAS, Governor Pete Wilson, on June 1, 1995, issued Executive Order W-124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit"; and**

**WHEREAS, paragraph seven of that order requests the University of California to "take all necessary action to comply with the intent and the requirements of this executive order"; and**

**WHEREAS, in January 1995, the University initiated a review of its policies and practices, the results of which support many of the findings and conclusions of Governor Wilson; and**

**WHEREAS, the University of California Board of Regents believes that it is in the best interest of the University to take relevant actions to develop and support programs which will have the effect of increasing the eligibility rate of groups which are "underrepresented" in the University's pool of applicants as compared to their percentages in California's graduating high school classes and to which reference is made in Section 4;**

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**Section 1. The Chairman of the Board, with the consultation of the President, shall appoint a task force representative of the business community, students, the University, other segments of education, and organizations currently engaged in academic "outreach."**

**Board of Regents  
July 10, 1995**

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SP-1

The responsibility of this group shall be to develop proposals for new directions and increased funding for the Board of Regents to increase the eligibility rate of those currently identified in Section 4. The final report of this task force shall be presented to the Board of Regents within six months after its creation.

**Section 2.** Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University or to any program of study.

**Section 3.** Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for "admissions in exception" to UC-eligibility requirements.

**Section 4.** The President shall confer with the Academic Senate of the University of California to develop supplemental criteria for consideration by the Board of Regents which shall be consistent with Section 2. In developing such criteria, which shall provide reasonable assurances that the applicant will successfully complete his or her course of study, consideration shall be given to individuals who, despite having suffered disadvantage economically or in terms of their social environment (such as an abusive or otherwise dysfunctional home or a neighborhood of unwholesome or antisocial influences), have nonetheless demonstrated sufficient character and determination in overcoming obstacles to warrant confidence that the applicant can pursue a course of study to successful completion, provided that any student admitted under this section must be academically eligible for admission.

**Section 5.** Effective January 1, 1997, not less than fifty (50) percent and not more than seventy-five (75) percent of any entering class on any campus shall be admitted solely on the basis of academic achievement.

**Section 6.** Nothing in Section 2 shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

**Section 7.** Nothing in Section 2 shall prohibit the University from taking appropriate action to remedy specific, documented cases of discrimination by the University, provided that such actions are expressly and specifically approved by the Board of Regents or taken pursuant to a final order of a court or administrative agency of competent jurisdiction. Nothing in this section shall interfere with the customary practices of the University with regard to the settlement of claims against the University relating to discrimination.

**Section 8.** The President of the University shall periodically report to the Board of Regents detailing progress to implement the provisions of this resolution.

**Board of Regents**  
**July 20, 1995**

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SP-1

**Section 9.** Believing California's diversity to be an asset, we adopt this statement: Because individual members of all of California's diverse races have the intelligence and capacity to succeed at the University of California, this policy will achieve a UC population that reflects this state's diversity through the preparation and empowerment of all students in this state to succeed rather than through a system of artificial preferences.

Approved  
Approved as amended  
Accepted  
Notice served  
Deferred  
Withdrawn  
Disapproved

**SP-2**

**OFFICE OF THE SECRETARY**

**July 12, 1995**

**TO THE BOARD OF REGENTS:**

**ITEM FOR ACTION**

**For Meeting of July 20, 1995**

**ADOPTION OF RESOLUTION: POLICY ENSURING EQUAL TREATMENT-  
EMPLOYMENT AND CONTRACTING**

Regent Connerly recommends that the following resolution be adopted:

WHEREAS, Governor Pete Wilson, on June 1, 1995, issued Executive Order W-124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit"; and

WHEREAS, paragraph seven of that order requests the University of California to "take all necessary action to comply with the intent and the requirements of this executive order"; and

WHEREAS, in January 1995 the University initiated a review of its policies and practices, the results of which support many of the findings and conclusions of Governor Wilson;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**Section 1.** Effective January 1, 1996, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria in its employment and contracting practices.

**Section 2.** The President of the University of California is directed to oversee a systemwide evaluation of the University's hiring and contracting practices to identify what actions need be taken to ensure that all persons have equal access to job competitions, contracts, and other business and employment opportunities of the University. A report and recommendations to accomplish this objective shall be presented to the Board of Regents before December 31, 1996.

**Board of Regents  
July 20, 1995**

-2-

SP-2

**Section 3.** Nothing in Section 1 shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

**Section 4.** Nothing in Section 1 shall prohibit the University from taking appropriate action to remedy specific, documented cases of discrimination by the University, provided that such actions are expressly and specifically approved by the Board of Regents or taken pursuant to a final order of a court or administrative agency of competent jurisdiction. Nothing in this section shall interfere with the customary practices of the University with regard to the settlement of claims against the University relating to discrimination.

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**REGENTS' DIVERSITY COMMITMENT**

**ADOPTED BY THE BOARD OF REGENTS  
JULY 20, 1995**

**The following statement was adopted to apply to the Policy Ensuring Equal Treatment—  
Admissions and the Policy Ensuring Equal Treatment—Employment and Contracting:**

**Believing California's diversity to be an asset, we adopt this statement: Because individual  
members of all of California's diverse races have the intelligence and capacity to succeed at the  
University of California, this policy will achieve a UC population that reflects this state's diversity  
through the preparation and empowerment of all students in this state to succeed rather than  
through a system of artificial preferences.**

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TRANSCRIPT  
July 23, 1995  
TELEVISION NEWS PROGRAM  
LEON PANETTA  
WHITE HOUSE CHIEF OF STAFF  
WASHINGTON, D.C.

LEON PANETTA, REPS BILL MCCOLLUM (R-FL) AND CHARLES SCHUMER (D-NY) DISCUSS WACO AND WHITEWATER HEARINGS.  
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FACE THE NATION

JULY 23, 1995

SPEAKERS LIST: Bob Schieffer, CBS News, Chief Washington  
Correspondent  
Leon Panetta, White House Chief of Staff  
Rep. Bill McCollum, (R-FL)  
Rep. Charles Schumer (D-NY)  
Gloria Borger, U.S. News & World Report

(+)

SCHIEFFER: Today on FACE THE NATION, Leon Panetta, the White House Chief of Staff, after a tough week for the administration on Capitol Hill and abroad.

It started out as hell week for the administration at the Capitol, as hearings opened on Whitewater, Waco, and the ``Good Ol' Boys Round Up.'' We'll talk with two Congressman, who are playing key roles in the Waco hearings, Republican Bill McCollum, and Democrat Charles Schumer. And we'll get the President's side of it from his Chief of Staff, Leon Panetta. Who's been dealing with all that, and the crisis in Bosnia, which only seems to get worse.

Are Americans headed to a war in Bosnia, and what next on Waco and Whitewater? On FACE THE NATION.

ANNOUNCER: FACE THE NATION, with Chief Washington Correspondent, Bob Schieffer. And now from CBS News in Washington, Bob Schieffer.

**START**  
SCHIEFFER: And welcome again to the broadcast. Joining us first in our Washington studio, the White House Chief of Staff, Leon Panetta, joining in the questioning this morning, Gloria Borger, ``U.S. News & World Report.''

Well, let's start with Bosnia, Mr. Panetta. And I wonder could you just clear up some confusion for us. The allied leaders said that there would be a substantial response. Secretary of State Christopher said a massive bombing attack if the Bosnian Serbs attack the safe haven of Gorazde. But, now they're shelling the capital of Sarajevo. What is the trigger here? What

should they not do in order to stave off a bombing attack?

PANETTA: The allies arrived in an agreement. The United States along with the French and the British, and the rest of our allies who arrived at an agreement that basically makes the following points: That if there is an attack on Gorazde, there will be a substantial and decisive response. That with regards to Sarajevo, that with Sarajevo we will keep the land routes open. And I think it's clear that the main point here, is we are going to provide, forceful response, in terms of Serb actions that go after the safe areas. That's the main point.

SCHIEFFER: Not just Gorazde?

PANETTA: It is clear right now that the allies are committed to a much more forceful response in terms of the safe areas -- particularly, Gorazde, particularly Sarajevo, but I think that decision can extend to the other safe areas as well. So I, if I were the Serbs, I would not assume that they have any room for maneuvering in other areas.

BORGER: Well, are you talking air strikes in the other safe areas, then, or are you just saying air strikes for Gorazde, not for the, but not for the other safe areas, like Sarajevo.

PANETTA: The air strikes are right now clearly targeted towards any action that would go after Gorazde. But, they ought not to assume that those same air strikes, would not apply to other safe areas as well. The main point here is that, on principle mission has not changed. But, the means of protecting that mission, has changed. It is much more forceful. We are going to use air strikes. There will be significant air strikes. They will be directed to military force -- military command and control centers. And we are clearly sending a signal here. That we will not tolerate further attacks on the safe areas.

SCHIEFFER: But what constitutes an attack? I mean what's the trigger? Is it a heavy attack by the Bosnian Serbs? Is it a couple of shells somewhere?

PANETTA: Bob, I'm not going to speculate as to what will trigger that. All I can tell you is that if there continues to be these assaults on the safe areas, the allies are going to respond.

BORGER: Well, who's going to make the specific decision? There's been some confusion about the so-called dual-key system, where UN and NATO commanders have to agree on who's going to make the decision.

MORE

\*\*\*\* filed by:RB--(--) on 07/23/95 at 14:37EDT \*\*\*\*  
\*\*\*\* printed by:WHPR(JMAS) on 07/24/95 at 10:29EDT \*\*\*\*

BC-CBS FACE-HEARINGS 1STADD  
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XXX make the decision.

BORGER: Have you streamlined this at all? This has been a real problem.

PANETTA: That was one of the fundamental changes that was made in order to insure that we could have a substantial and decisive response when it came to air power -- was the elimination of the dual key, so that we would not have now the check and counter check that would have to be done by the UN. What we're now going to rely on are the commanders in the field. They will determine...

BORGER: But they have to agree though. You still don't have one person making the decision.

PANETTA: It will be the UN commanders in the field that will determine that. But we will not have to go through other UN checkpoints, as we had in the dual key. The dual key is done away with, and that frankly is what gives us the ability now to respond in a substantial and decisive way.

SCHIEFFER: Let me ask you about lifting the arms embargo. Senator Dole was planning to introduce that in the Senate last week. The President asked him to postpone that vote because of this meeting that was taking place in London. Are you going to ask him to postpone it again?

PANETTA: I would hope that the Senate and Senate Majority Leader Bob Dole would take another look at whether or not they ought to proceed here. Here we have the allies coming together on a strong action to try to counter what's happening in Bosnia.

They're agreed; we're going to use this kind of decisive air power to confront this situation. We ought to give that a chance, and we ought not to undermine that.

I think what every Senator has to ask themselves is this question. If you were a citizen of Gorazde or any other safe area, would you not be more comfortable knowing that the allies were going to use significant air power to protect you? Or would you want to face the uncertainty of having a move toward unilateral lift? In which event, you would have great uncertainty.

The British have made very clear that UNPROFOR, their forces in UNPROFOR, would pull out. We would have to have the United States help in that pull out. There would be an uncertain period as to what would fill this vacuum. I think if you were a citizen of Gorazde, and I think every citizen needs to ask that question, if you were a citizen of Gorazde, would you not prefer a unified commitment to air power, as we have now.

SCHIEFFER: So you hope that he won't bring it up. But will you ask him not to bring it up?

PANETTA: Well, I think we are going to continue to have conversations with Senator Dole. He was good enough last week to postpone the vote. I hope they will reconsider whether or not they ought to proceed with this resolution.

BORGER: Just one quick follow up. What happens if he does bring it up, and it passes, as a lot of people expect. What would you do then?

PANETTA: Well, again, if the Senate is intent on moving a resolution, then it would be our hope that we could work with the leadership to try to design a resolution that in fact is in keeping with the agreement that has

been arrived at with our allies.

If we can develop that kind of unified approach, then perhaps we can develop a resolution that we can support. But if it's just a straight unilateral lift, the President has indicated we oppose that.

SCHIEFFER: And what do you do when you oppose that? I've never been quite clear on what happens, if indeed they do pass that. How do you oppose it? Can the President veto that?

PANETTA: It's called the veto.

SCHIEFFER: And the House would have to pass a similar resolution?

PANETTA: That's correct.

SCHIEFFER: I assume there is a sentiment in the House for doing that.

PANETTA: I assume that if the Senate passed it, that the House would then take action on it. If it came to the President in a kind of straight unilateral lift form, the President would veto that, and I think we could sustain it, particularly in light of the agreement with our allies.

SCHIEFFER: Let's turn to domestic matters and this whole business of Whitewater. This was an extraordinary week on Capitol Hill, where you had hearings into the Waco affair in the House.

MORE

\*\*\*\* filed by:RB--(-- ) on 07/23/95 at 15:01EDT \*\*\*\*  
\*\*\*\* printed by:WHPR(JMAS) on 07/24/95 at 10:29EDT \*\*\*\*

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XXX in the House.

SCHIEFFER: You had hearings on Whitewater in the Senate. Now we are told that a lawyer that used to work in a White House Counsel's office, Stephen Neuwirth, has told Senator D'Amato's Whitewater investigating committee that indeed Hillary Rodham Clinton was concerned about searching Vince Foster's office in those hours and days after he committed suicide. Can you tell us if, in fact, that's true? And if so, why was she concerned about a search of that office?

PANETTA: Bob, I'm not going to comment on back door leaks that kind of drip out of the committee to newspapers. I mean, I think that's the kind of thing we've seen in the past. I think all of the facts will be presented in the course of this hearing. I think all of these hearings give a whole new meaning to the word summer re-runs. The reality is that there is no news here. There, you know, everyone, we've been through this issue before. Yes, there were mistakes made. Those were mistakes of judgement, mistakes of inexperience. There were obviously mistakes made because of tremendous remorse about the loss of a friend. But, the bottom line is that there were no legal or ethical violations involved here, and I think ultimately these hearings will establish that.

SCHIEFFER: Well, I don't disagree with you that there has been very little hard news so far, but in fact, it has come out that even members of the President's own Justice Department were concerned about what the White House Counsel's office was doing and was pressing the White House Counsel's office to let the people in and find out what was in that office. What was the reason for all of that? I understand you were not there at the time, but why were people so concerned about this?

PANETTA: Well, again, I think you have to let this obviously present itself during the course of these hearings, and hopefully Senator D'Amato will provide an objective view here. But, I think the bottom line is exactly what everybody knows it to be -- that there was a lot of inexperience here. There was a lot of reaction to the fact that someone dear to them had been lost, and a lot of mistakes in judgement were made in the course of that. But the bottom line is that there were no legal or ethical violations. There is not new news here.

At some point, Bob, I think the Republicans have found time to have Waco hearings. They've found time to have Whitewater hearings. They've found time to have roundup hearings. When are they going to find time to do the business of the country? When are they going to find time to pass the budget which is already very late in the process? We're heading towards a train wreck now in October. When are they going to find time to do that? When are they going to find time to do welfare reform? When are they going to find time to do the line item veto which they promised they would do and are now backing away from? When are they going to find time to do political reform? Those are the issues that the American people care about.

BORGER: Can I just ask you one more follow-up on the Whitewater issue which is that, you know the Republicans are complaining that you folks at the White House have not been forthcoming with these documents. And now, in fact, you have the majority counsel and the minority counsel for the committee going down in the White House to look at these documents. Can you say that nothing more is going to emerge from these documents, that the White House has fully disclosed everything that it has needed to disclose?

PANETTA: As far as I know, Gloria, everything has been disclosed. We are

cooperating as closely as we can with the committees on this issue. The bottom line is that for whatever excitement may be involved here, the bottom line is -- I don't think there will be any new news. Now again, it's OK for members of Congress, my old colleagues, to go through this process. They find ways to do that every summer. But, the bottom line, again, is -- When are they going to start turning to the business of the country? That's what the President is concerned about, and that's what they should be concerned about.

SCHIEFFER: Let's talk about affirmative action. Pete Wilson and the regents of the University of California system took a very significant action this week in which they voted to roll back all of the affirmative action requirements for admission in to the university system.

MORE

\*\*\*\* filed by:RB--(--) on 07/23/95 at 15:09EDT \*\*\*\*  
\*\*\*\* printed by:WHPR(JMAS) on 07/24/95 at 10:30EDT \*\*\*\*

BC-CBS FACE-HEARINGS 3RDADD  
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XXX the university system.

SCHIEFFER: I haven't heard the White House say anything about that. How do you feel about that?

PANETTA: Well, I think it's a terrible mistake. I think it's very disappointing. As a Californian, whose three sons went to the University of California system, it is a major retreat, in terms of a university and a state that has always been on the leading edge of moving forward -- moving forward in terms of education and research and in equal justice. And now, you've got a governor who obviously is running for President on this kind of issue, who has forced the board to basically back away from that kind of position. I think it's wrong, and I think it's divisive, and I think it's really going to set that state back.

BORGER: Mr. Panetta, is the state now going to lose its research and grant money, if it ends affirmative action?

PANETTA: Gloria, I don't know the answer to that. Obviously we're going to be reviewing our contract laws and the provision of resources to that state. The bottom line here is what the President said this week, and he said it very strongly. We ought not to back away from the commitment of this country to equal justice and equal opportunity.

Affirmative action done right is a major tool in eliminating discrimination. I hear the governor talk about preferences, and what have you. But he never says where there's discrimination, we ought to correct it. And that's a fundamental principle in this country. If there's discrimination, let's correct it. We don't have to do preferences based on unqualified credentials. We don't have to do reverse discrimination. But for goodness sake, let us at least use the tools we have to deal with discrimination.

SCHIEFFER: So the Justice Department will review this action to see if the system is remaining in compliance.

PANETTA: Well, what I can tell you, Bob, right now, is that obviously the Justice Department and the other agencies are going to review that relationship with the state.

SCHIEFFER: OK. Let me ask you also quickly about Waco and the hearings into the Waco affair. How do you feel about that? Is the White House going to cooperate on those hearings, because the Republicans seem to be concerned that perhaps you're not.

PANETTA: Well, again, we're fully cooperating. We've been working with the committee to provide whatever documents are necessary, but again this is a lot like the Whitewater hearing. This is basically a re-run.

But I think probably more important, it points out something that's very discouraging here. If there was one witness that defined these hearings, it was Keri Jewell, a young girl who was raped by Koresh. And it goes to point out, why isn't the committee spending more time looking at what went on in that compound. What drove law enforcement officials to finally take action against that compound -- the use of illegal weapons, the hoarding of grenades, and the abuse that was going on in that compound.

There is a danger here, there is a danger in this kind of hearing, that we could really undermine law enforcement in this country. We depend on law

enforcement, and the reality is that law enforcement in the vast majority of situations, does the right thing -- brings suspects to justice and fights the criminal element in this country. These hearings are beginning to undermine our confidence in law enforcement, and that's wrong. The committee itself, I think, is undermining its own credibility by not dealing with the whole issue of what was the NRA's involvement here. Why should the NRA be involved in this kind of situation? They've got to explain that.

SCHIEFFER: I want to leave it right there, because we're going to talk about this some more with people on both sides of the issue in that committee doing the investigating.

We'll be back in just a moment.

MORE

\*\*\*\* filed by:RB--(--) on 07/23/95 at 15:18EDT \*\*\*\*  
\*\*\*\* printed by:WHPR(JMAS) on 07/24/95 at 10:30EDT \*\*\*\*

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XXX just a moment.

SCHIEFFER: We're back now with Representative Bill McCollum of Florida, he is the co-chairman of the House Judiciary Committee panel investigating the governments handling of the Waco siege. Joining us also, Democratic Congressman Charles Schumer of New York, he is the leading Democrat on the House Judiciary Committee. Well, Mr. McCollum I think I owe it to you to give a response to what Leon Panetta just said. He made a very serious charge, it seems to me. He said these hearings are a re-run, and they are beginning to undermine law enforcement. What's your response?

MCCOLLUM: Well, I think the problem with all of this is the fact the White House has been trying to damage control from day one, and they have been responsible largely for the spin that's been that's been going on out there to distract the public from what's really happening. We had ninety Americans killed at Waco. Four of them were ATF officers. Twenty two of them were children.

Yes, David Koresh was not a good guy, he was a terrible man, and there was child abuse going on in there. And, one could argue that none of these deaths would have occurred, but for Koresh. On the other hand, one could equally argue none of these deaths would have occurred if the proper procedures had been taken, ATF had done its job, Treasury had done its job overlooking it and other mistakes hadn't been made in this. We're trying to walk through these hearings in order for eight days to demonstrate to the American public what happened, to put an end to some of the wild conspiracy theories that are out there, and to restore confidence in federal law enforcement at the end of the day. If we are going to be able to succeed in doing that, we're going to need the cooperation of the White House, and I'm writing a letter with Congressman Zeliff who is my co-chairman, on Monday, tomorrow, to the President asking him to stop some of this nonsense. We had John Podesta hired right after we started these hearings, or maybe just before it, at the White House, just for the purpose of putting some spin on this. What do we see as a result of that?

I don't know directly, but I certainly see some of it.

We saw Secretary Rubin who apparently, according to Congressman Brewster called him last week -- Brewster is a Democrat from Oklahoma -- and asked him not to ask any embarrassing questions, then we saw them bring up a bunch of Texas rangers to prep them for their testimony next week, then we saw them take on the issue at the Justice Department of bringing up a bunch of guns, from the Waco setting, just so Mr. Schumer could have a prop next week, then we saw Mr. McCurry come out, the spokesman of the White House, and spin along with Mr. Schumer all this NRA stuff, saying these hearings are bought and paid for. They are not letting the bottom line get through, and the bottom line is embarrassing if they let that get through to them.

SCHIEFFER: So, you're taking the position it's the White House that's playing politics. Do you buy that Mr. Schumer?

SCHUMER: Well, not really. I mean, there's some politics on both sides obviously. You know to say oh ``spin control'' in Washington is like the line in Casablanca when the man in charge of the gambling joints says, ``Gambling here?'' Of course, everyone does spin control.

The bottom line is this, Bob. These hearings will be good hearings, constructive hearings if they are used to make our law enforcement agencies better and stronger. I think what the White House is worried about, what I am

worried about is that some -- and I don't put Bill McCollum in this category. I think he's been a fair chairman going after the facts -- but some on the other side, with the NRA's aiding and abettance want to use the hearings not to find out mistakes to improve law enforcement but to cripple ATF. And why? Not because they care so much about Waco because we have had extensive hearings on it already although new hearings are fine with me. But rather because the ATF is the premier agency enforcing the Brady law and the assault weapons ban which some of those who are NRA allies hate.

SCHIEFFER: Well, let me just ask you, Mr. McCollum. What about this charge that the NRA has somehow taken over these hearings? And clearly, they did aid your people in some of the investigation, and that seems clear.

MORE

\*\*\*\* filed by:RB--(--) on 07/23/95 at 15:46EDT \*\*\*\*  
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BC-CBS-FACE-HEARINGS 5THADD

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XXX that seems clear.

SCHIEFFER: And I'm told you will not let the Democrats subpoena some of the people who could talk about that. Is that true?

MCCOLLUM: Well, the NRA has not taken over these hearings and that's a side show, that's all part of the spin, as far as I'm concerned out of The White House. They have a 'war room' going on over there and they're trying to dream up things to focus the attention there.

There's no question there may be one or two incidences that the NRA was involved they maybe shouldn't have done, not with the Committee, but on their own. They apparently may have, I don't know this, now, had one woman mis-represent...

SCHIEFFER: You didn't ask them for that?

MCCOLLUM: No, no, no. Did not. They may have had one woman mis-represent the facts of what her role was and I think the quote was 'I'm with the Waco hearing team and I want to ask questions of a certain person.'

But let me get to the point of what I think's really here that needs to be addressed. We are bringing out new material. I would like to say to predicate though, I don't think you have to bring out a single new fact to have these hearings to be successful for the purposes of walking chronologically to get through this for the American public -- that they need to have to end some of this apprehension about law enforcement and to solve the facts.

But one of the most startling things that's come out of this is Secretary Bentsen testifying on Friday before us told us that he had no awareness whatsoever of the ATF raid on February 28th before it happened.

Not only that, but Higgins, who was the head of the ATF, told us that at no time in the 30 days or so that Bentsen had been Secretary of the Treasury before this raid had he even met with the man. Hadn't there even been a meeting with Deputy Secretary Altman.

If there had been, I hate to say this because I like Secretary Bentsen a lot, I've always had a lot of respect for him as a Senator and as a Secretary. But if there had been, I can't help but wonder if they had sat down and had one of these routine meetings that you'd expect a Secretary to have at the beginning of his administration with his ATF law enforcement people, his Secret Service folks, the IRS heads, his law enforcement people generally, if he wouldn't have asked generally to somebody like Higgins, 'you know, how about telling me what problems have you got? What am I going to face? What's going on?' And this would have come out and maybe none of these deaths would have occurred.

SCHIEFFER: Let me ask of Congressman Schumer. Congressman, the ATF, the Alcohol, Tobacco and Firearms Agency, has come under intense criticism. Do you think that that agency needs to be overhauled?

SCHUMER: Well I think they have to make certain changes. I mean, they made serious mistakes at Waco. They've admitted they made mistakes. In fact, a number of people were fired, including the head of the ATF for that reason.

SCHIEFFER: But I mean, is that enough or does it need to go more?

SCHUMER: No, I think they need more overhauling and that's the very point, Bob. The point is if these hearings can be made constructive so the overhauling makes them more effective in enforcing the gun laws and other laws they're in charge of, they'll be good hearings.

If, on the other hand, they're used to sort of destroy their morale, destroy everything... One poignant moment at the hearings was from an agent named Buford. He lead the charge, the first charge, you know, on trying to serve the warrant on Koresh. And he was wounded, he saw three of his colleagues in his twelve-member team die and I asked him how he felt about the hearings and about what the talk after Waco. He said, 'Look mistakes were made, but I feel, like I did when I came back from Vietnam,' he said. 'I feel I'm being vilified for trying to do my duty. And if I did it incorrectly, I'm willing to change, but don't vilify me.' That's the key point, here. Not to prevent ATF from changing, but to prevent it from being weakened, vilified and even eliminated as some on the far right would like to do.

SCHIEFFER: Final question, about 30 seconds. Do you think the Agency needs a major overhaul?

SCHUMER: We're going to look at that this fall. We think that maybe it needs to be brought under the Justice Department instead of the Treasury Department. It's not completely clear whether that's true or not.

One thing that is clear in all of this is there is something that's going on that's wrong here. We've noticed, for example, the Justice Department in its investigation, came out in this process and trial procedures involving the aftermath of ATF and the raids, have asked the Treasury Department to stop its investigation and not interview people because some of the interviews might actually prove harmful to their case in the criminal procedures where, of course, these folks were acquitted.

MORE

\*\*\*\* filed by:RB--(-- ) on 07/23/95 at 15:47EDT \*\*\*\*  
\*\*\*\* printed by:WHPR(JMAS) on 07/24/95 at 10:30EDT \*\*\*\*

BC-CBS FACE-HEARINGS 6THADD  
Federal Document Clearing House  
XXX folks were acquitted.

MCCOLLUM: There are some real problems here. A lot of new information has come out, and I think we're going to see a lot more come out this week, that I hope in the end will give us some predicate to make any changes we need to to make sure we have the strongest possible law enforcement.

SCHIEFFER: We have to end it there. Thanks to both of you.

Back with the final word in just a minute.

END

\*\*\*\* filed by:RB--(-- ) on 07/23/95 at 15:57EDT \*\*\*\*  
\*\*\*\* printed by:WHPR(JMAS) on 07/24/95 at 10:30EDT \*\*\*\*

# Office of Lt. Governor Gray Davis

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State Capitol, Room 1114  
Sacramento, CA 95814  
916/445-8994  
Fax: 916/323-4998

## FAX TRANSMISSION COVER SHEET

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**Date:** July 26, 1995 via fax 202/456-5558  
**To:** John Emerson, Deputy Assistant to the President  
**From:** California Lt. Governor Gray Davis  
**Re:** UC Board of Regents/affirmative action decision

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YOU SHOULD RECEIVE four Pages (in addition to cover sheet)

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SAC BEE 7-26-95



DAN WALTERS

## Wilson racks up a big score

**I**t probably won't elevate him into the presidency, but Pete Wilson is emerging from the confrontation over affirmative action at the University of California as a political winner.

Wilson not only won when UC regents voted to do away with race-based affirmative action in hiring, contracts and — most significantly — admissions, but benefited from the sharply adverse reaction of civil rights leaders and an obviously confused Clinton White House.

The UC regents' action occurred late Thursday and for the next five days, including the television networks' weekend political talk shows, Wilson's leading role was Topic A.

When you're running for the Republican presidential nomination and trying to impress GOP voters with your partisan credentials, what could possibly be better than being denounced by Jesse Jackson and President Clinton's chief of staff?

The latter, former California Congressman Leon Panetta, even went so far as to threaten to withhold federal funds from the University of California if its new policies violate federal affirmative action guidelines.

Calling the UC board's action was "a terrible mistake," Panetta said the Clinton administration may attempt to compel a reversal by withholding federal funds.

**G**iven the unpopularity of affirmative action among voters in California — a state whose electoral votes are critical in next year's presidential elections — Panetta's threats were tantamount to tossing gasoline on a raging fire. However much they cheered those on the Democratic left, such threats alienate middle-of-the-road voters — a prime example of the issue's wedge effect.

Wilson couldn't have asked for a better reaction from his standpoint; it would not only make him a bigger hero to anti-affirmative action voters but played into another of his campaign themes, the supposed arrogance of the federal government in dealing with states.

Wilson seized upon Panetta's remarks immediately, milking them for every drop of political gain. And on Tuesday, he dispatched a letter to Clinton asking for a "clarification" of what Panetta meant and unloading the heavy rhetorical barrage.

"Mr. President, this is the second time in less than a year that your White House has made such outrageous attempts at political blackmail in order to coerce the people of California into forfeiting a public policy position with which you happen to disagree," Wilson wrote, referring to an earlier dust-up over services to illegal immigration after California voters enacted Proposition 187.

"The people of California deserve a direct answer: Does your administration plan to cut off federal funding to our state as your chief of staff has threatened? Or was Mr. Panetta not speaking with your authority on this matter?"

**I**t was a political "gotcha" because, as Wilson noted, Clinton administration officials — apparently recognizing the political peril posed by Panetta's remarks — had been trying to back track.

Department of Justice officials said there's no federal law requiring affirmative action by colleges receiving federal research funds, as Panetta's remarks implied.

Therefore, Wilson emerged from the five-day exchange as both the leading critic of an unpopular social policy and the object of public scorn by those Republicans love to hate the most — and forced the White House into a tactical error to boot.

It was Wilson at his highest level of political competence, putting his opponents on the defensive. And it illustrates why he'd be big trouble for Clinton if he was the GOP nominee.

But that's still a huge "if" given Wilson's almost invisible standing in polls of Republican voters.

DAN WALTERS' column appears daily, except Saturday. Write him at P.O. Box 15779, Sacramento, 95852, or call (916) 321-1195.

SP UNION TRIB 7-25-95

# Panetta is off base

## *White House should stay out of UC business*

**T**he rhetorical brawl over racial preferences at the University of California turned deplorably ugly over the weekend, with advocates on opposite sides trading threats and insults that served only to heighten tensions.

As if the clash weren't politicized enough already, White House Chief of Staff Leon Panetta declared in a network interview that the administration might cut off federal funds to UC campuses because of the Board of Regents' vote to abolish race-based favoritism in admissions, hiring and contracting.



**Leon Panetta**

Panetta's high-profile intervention in an issue that clearly is the purview of the UC's governing board, not federal regulators, was entirely inappropriate. His remarks appeared to be intended to intimidate the regents into reconsidering their policy shift.

Although it is doubtful the Clinton administration has the legal authority to interfere in the UC's admissions standards, any disruption in federal funding could have serious repercussions for the nine-campus system. UC San Diego, for example, ranks among the top 10

U.S. universities in the amount of federal research grants it receives.

Certainly nothing in the regents' new policy would conflict with completely proper federal laws barring racial discrimination. Quite the contrary, the revised rules eliminating race as a factor in admissions, hiring and contracting expressly prohibit all forms of discrimination, in conformance with a recent U.S. Supreme Court ruling that narrowed the permissible scope of affirmative action.

Nor has the debate on this wrenching issue been helped by the extent to which it suddenly has become ensnared in presidential politics.

From Bill Clinton to Pete Wilson to Jesse Jackson, the inflammatory charges and countercharges in recent days have only added to the voters' cynicism about politicians. Nearly every potential presidential aspirant seems eager to exploit this issue for his own advantage. And the most egregious offender over the weekend was Jackson, who branded Wilson "the Susan Smith of national politics" for his crusade against affirmative action.

Enlightened discussion of this difficult issue is impossible when personal epithets and heavy-handed threats replace rational argument. A reasoned public debate on the complexities of affirmative action is sorely needed. Anything less risks further polarizing Californians along racial lines.

SAC BEE 7-26-95

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**Leon Panetta**

# Plan to Restructure Thrifts Nears Accord

## Merger of Insurance Funds, Bank and S&L Charters Is Backed by Lawmakers

By JOHN R. WILKE

Staff Reporter of THE WALL STREET JOURNAL.  
WASHINGTON — Regulators, bankers and lawmakers, working to shore up the savings and loan deposit-insurance fund, neared agreement on a proposal that would eliminate thrifts as separate financial institutions.

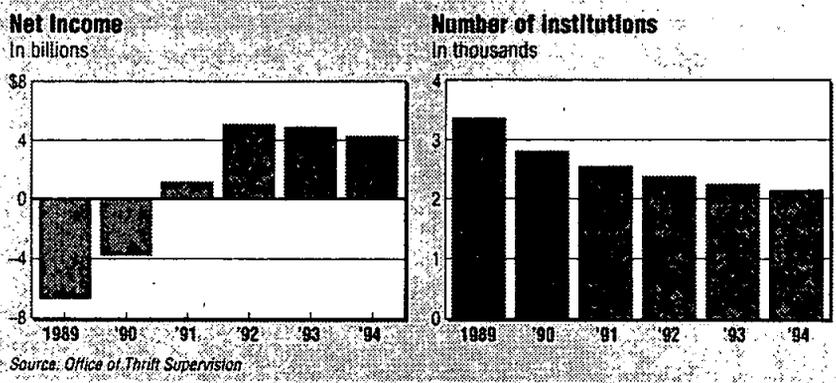
The plan calls for an eventual merger of the thrift and bank deposit-insurance funds and — under an approach embraced by key Congressional Republicans — would merge the bank and thrift charters and shutter the thrifts' key regulator, the Office of Thrift Supervision.

The evolving plan would also require thrifts to pay a one-time charge of \$6.2 billion — or about 85 cents for every \$100 of deposits — to recapitalize the depleted insurance fund, said John Hawke, the Treasury Department's senior banking official. The proposal would apply to both state and federally chartered S&Ls insured by the thrift fund.

"Taxpayers have already spent well over \$100 billion to bail out the thrift

### Declining Thrifts

Thrift industry net income and the number of institutions:



industry, and they aren't going to want to spend another nickel," said Mr. Hawke, Treasury undersecretary for domestic finance.

The plan also would force commercial banks to shoulder part of the burden for the \$780 million annual cost of bonds that were issued as part of the S&L bailout. Banks had bitterly complained that this was unfair, because their industry wasn't responsible for the S&L mess.

The plan emerged after weeks of intense talks between Treasury officials, the Federal Deposit Insurance Corp., which administers both funds, and Republican lawmakers, particularly Sen. Alfonse D'A-

mato of New York, chairman of the Senate Banking Committee, and Rep. Bill McCollum of Florida, vice chairman of the House Banking Committee.

Rep. McCollum has filed a bill that would accomplish much of what is currently under discussion. And Sen. D'A-mato, who has been pressuring banks and thrifts to resolve the issue, may address it in a pending budget-reconciliation bill, insiders say. He has called hearings for this Friday to discuss the various approaches.

Still, people familiar with the discussions say details could still change. "This is going to be painful, and there are some very large institutions around the country that are just waking up to how much this plan is going to cost them," said William Seidman, who is a former chairman of both the FDIC and the Resolution Trust Corp.

The major thrift-industry trade association estimates a typical thrift with deposits of \$350 million would have to pay a one-time premium of nearly \$3 million. "That's a big chunk of earnings," said an economist with the association, America's Community Bankers.

For larger thrifts, or banks that hold thrift deposits as a result of acquisitions, such as Bank of America, the payout could be much larger. The trade group says that of 1,750 affected institutions, about 50, most of them small ones, would fall below minimum regulatory capital standards after paying the one-time assessment.

In 1994, an amount equal to nearly a third of the thrift industry's net income of \$4.3 billion went to pay deposit-insurance premiums. For the much larger commercial banking industry, which had its best year ever with \$47.6 billion in earnings, insurance premiums amounted to 2.3% of net income.

Bank deposits are insured up to \$100,000 by a larger and much healthier fund that is near the required level of \$1.25 for each \$100 of deposits. Bankers believe the fund reached that level in June, which will trigger a sharp drop in premiums from 23 cents per \$100 of deposits to four cents. This will boost bank earnings and put thrifts at a disadvantage if the higher insurance costs continue.

While thrifts have recovered from the huge losses of the late 1980s, Ricki Helfer, the FDIC's chairman, has warned it would take only one major failure to deplete the thrift fund's reserves. She has also said the FDIC will move to cut bank premiums in September.

The most contentious part of any final plan for the thrift industry will be crafting a new, single charter for both banks and thrifts. Thrifts may now do things banks cannot, including selling insurance or affiliating with industrial companies. Banks desperately want those freedoms, while thrifts won't want to give them up.

Another hot potato will be the fate of more than \$10 billion of leftover funds at the Resolution Trust Corp., which is scheduled to go out of business at the end of the year. The money, intended for the S&L bailout but never used, was a key part of earlier proposals to shore up the thrift-insurance fund. Now, however, said Treasury's Mr. Hawke, "there's zero chance of using that money for the fund."

## UC Vote to Ban Race Criteria Has Shades of Gray

By SARAH LUBMAN

Staff Reporter of THE WALL STREET JOURNAL.  
The vote to abolish racial preferences for University of California admissions starting in 1997 could turn out to be more smoke than fire.

To be sure, last week's vote was a big symbolic victory for California Gov. Pete Wilson, whose antiaffirmative action stance is a keystone of his presidential campaign. But the actual language of the proposal approved by UC's governing Board of Regents allows considerably more wiggle room than advocates on either side of the debate have conceded.

Although UC admissions officers can't use race or ethnicity as entry criteria after Jan. 1, 1997, campuses will be able to give preferential treatment to students with economic and as-yet undefined "social" disadvantages, "such as an abusive or otherwise dysfunctional home or a neighborhood of unwholesome or antisocial influences," as the proposal states.

While it's up to UC's president and Academic Senate to come up with definitions that the regents must approve, some observers say concepts of social disadvantage could easily serve as subtle proxies for race.

"The administration may draft policies designed to reach minorities without targeting the race of individuals, and the way the proposal reads would permit that," concurs Robert Cole, professor emeritus at UC Berkeley's law school.

Daniel Simmons, head of UC's Academic Senate, said such a strategy would be "dishonest and unethical." Some UC officials were befuddled by the new policy's gray areas. "There's no common

definition I'm aware of of what a dysfunctional home is, and I'm also unaware of what would constitute a neighborhood of unwholesome influences," says Nicholas Aguilar, director of student affairs and judicial policy at UC San Diego. But such things as being raised by a single mother and growing up in a high-crime neighborhood are two disadvantages that affect minorities more than whites.

Some academics argue that new social criteria could exacerbate the very sense of entitlement that the regents sought to abolish. Asking college applicants to document the abusiveness of their surroundings "strikes me as an awful idea," says Paul Brest, dean of Stanford Law School. "It will just encourage them to state what victims they are on their application essays."

The debate stirred by the regents' vote has pitted many blacks and Hispanics against whites and Asians. "People support a guarantee of equal opportunity, but they're against the concept of equal results and proportional representation," says Lee Cheng, a UC Berkeley law student and member of a local Democratic club who supports the regents' decision. Some Asians feel that they pay the price for preferences given to other minorities at UC schools. Asian-Americans from a variety of socioeconomic backgrounds constituted 35% of all undergraduates in 1994 — more than double their proportion of all California high-school graduates. A UC report says those numbers would be higher were it not for affirmative action.

But State Sen. Diane Watson, a black Los Angeles Democrat, asked the board rhetorically last week: "If this university reverts to an all-white male and Asian male institution... why should we as taxpayers want to support it?"

Yesterday, on CBS-TV's "Face the Nation," White House Chief of Staff Leon Panetta criticized the California regents' decision as "a terrible mistake" and said the Justice Department and other agencies would consider whether it will affect the flow of federal funds to the state.

# Long-Distance Companies Can't Get Through To Congress in Telecommunications Bill Debate

By DANIEL PEARL

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — To reach out to the new Congress, long-distance telephone companies assembled a multi-million dollar Dream Team of Republicans, including Howard Baker, the venerable former Senate majority leader, and Vin Weber, a former representative from Minnesota and a close friend of House Speaker Newt Gingrich.

Still, the long-distance companies are on the losing end as a sweeping rewrite of

## Midwest Maneuvering

An Ameritech executive said the company may drop its plan to open the local phone market in Chicago to competition if favorable telecommunications legislation is adopted. Article on page B5.

telecommunications laws draws nearer to a vote on the House floor. New language being drafted by House leaders would allow the seven regional Bell phone companies to enter the long-distance market without first having to show that their local phone systems face widespread competition.

And long-distance companies haven't enjoyed particularly smooth communications with Republicans still in power, despite their hired guns' impressive credentials. Also working for AT&T Corp. and its smaller brethren are former New Hampshire Sen. Warren Rudman, former Nevada Sen. Paul Laxalt, and former Bush White House officials Nick Calio and Marlin Fitzwater.

## Baker Couldn't Reach Gingrich

Long-distance companies thought they had assurances from House leaders that language they liked would remain in the bill despite Bell opposition, so AT&T launched a newspaper and television advertising campaign telling people to support the House bill. Barely a week later, after being told the favorable language would be removed, long-distance companies vowed to oppose the bill. Now they're launching radio and television ads criticizing it.

In the midst of the turnabout last week, Mr. Baker, head of the Competitive Long Distance Coalition, spent three days trying

without success to get Mr. Gingrich on the phone.

Mr. Baker's deputy, former Reagan White House aide John Tuck, finally did reach an aide to Mr. Gingrich. And House Republican staffers, seeking to calm the outcry from long-distance forces, have been trading proposals with them on language that would spell out how much competition a Bell must have before selling long-distance. AT&T officials said Friday they were still optimistic they could win back some ground.

But Bells remain in the driver's seat, according to Scott Cleland, a telecommunications analyst with Washington Research Group, a unit of the brokerage firm Lynch, Jones & Ryan. He says the bill will give Bells a big advantage since they'll be able to get into long-distance, buying access from AT&T or its rivals wholesale, before long-distance companies have a real choice of companies from which to buy local access. All that remains for long-distance lobbyists is "damage control," he said.

"We were headed toward a clear bipartisan victory in the House and Senate," says James Lewin, vice president of government affairs for Sprint Corp. "The Bells were able to take advantage of us to a much greater degree than anybody expected."

To be sure, the Republican takeover of Congress last November gave the Bells a big advantage. Barred from the long-distance market since the 1982 breakup of AT&T, the local companies are arguing against government restrictions as they get back into the lucrative market. That fits well with the anti-regulation rhetoric of conservatives such as Mr. Gingrich and his top lieutenants, Texas Congressmen Richard Arment and Tom DeLay.

Bells also have a stronger grass-roots network of employees, who tend to be active in local clubs and causes. Of course, Bells have also hired their share of Republican politicians, but their Washington lobbying team is headed by Gary McBee, a career Pacific Bell executive.

Bells haven't had much trouble getting through to Mr. Gingrich on their own, though. Raymond Smith, chief executive of Bell Atlantic Corp., is among a group of executives that has met with Mr. Gingrich

for informal dinner talks about the future. Philip Quigley, chief executive of Pacific Telesis Group, met the House speaker in February to talk about the Bell company's efforts to bring advanced telecommunications to California schools. Mr. Gingrich invited Mr. Quigley to join him on an Empowerment Television cable-TV show last month; before the show, Mr. Quigley complained to Mr. Gingrich about the restrictions the House bill placed on Bells selling long-distance service.

This weekend, Mr. Gingrich was at Mr. Quigley's home helping raise campaign money for California Republicans. Mr. Quigley said Friday the event was a "private matter totally unrelated to work."

## Bells More Blunt

Long-distance companies, meanwhile, pinned their hopes on Thomas J. Bliley Jr., the chairman of the House Commerce Committee, who has an AT&T plant in his Richmond, Va., district, and has long been distrustful of the Baby Bells. In May, as the committee was preparing to vote on the telecommunications bill, Mr. Bliley's staff inserted language forbidding Bells from offering long-distance service until they had a local competitor offering services "comparable in price, features and scope."

The following month, the Senate took up a bill less favorable to the long-distance companies, but the Competitive Long-Distance Coalition stuck to an official position of support for the Senate bill, which passed. After all, long-distance forces were getting their way in the House, which would tend to call the shots in an eventual reconciliation process if both bills passed.

"Their messages and signals are

## Adjusting the Bill

Republican leaders are seeking the following changes in the way a House telecommunications bill would let regional Bells into the long-distance market:

- Before selling long-distance, Bells would have to have local competition, but the competitor wouldn't have to match the Bell network in price, features and geographic reach.
- Bells could apply for long-distance entry after six months instead of 18 months.
- Bells could merge their long-distance and local operations in 18 months, instead of three years.
- The wholesale rates Bells charge a local phone competitor for access to its network of lines and switches would be based on the Bells' costs, instead of what is "economically feasible" for the competitor.
- Smaller companies would be allowed to market long-distance services jointly with local service they bought from Bells. But the four largest long-distance companies would still be barred from such joint marketing.

mixed," says Aubrey Sarvis, a Bell Atlantic lobbyist. The Bells were much more blunt, threatening to kill the House bill unless changes were made. House Telecommunications Subcommittee Chairman Jack Fields of Texas, took the Bell complaints seriously. And top House Republicans, upset that the House bill kept a strong role for government regulators, were receptive to "deregulatory" changes.

## Firms Try to Sound Deregulatory

Long-distance companies tried to make their position sound deregulatory, calling monopolies "the highest form of regulation." But Mr. Bliley delivered the bad news to them in a July 13 meeting, saying the changes he was outlining stemmed from discussions with the House leadership, according to people who were present.

Bells were winning another battle, too. Republican leaders had concluded the Justice Department should have no power to reject Bell requests to sell long-distance service, people familiar with the discussion say. Long-distance companies fought harder for a strong Justice Department role than they had fought to remove regulations in the bill that favor the Bells.

Last week, the long-distance coalition voted to oppose the bill. AT&T got employees from its Norcross, Ga., fiber-optics plant to sign petitions to Mr. Gingrich protesting the changes. The companies' chief executive, Robert E. Allen, fired off an angry letter of his own, warning the House speaker, "Competition can develop without legislation."

## Bill Hard to Kill

It's unlikely long-distance companies will be able to kill legislation, though, especially after supporting it for so long. The administration and consumer advocates have opposed the bill for months, saying its deregulation would result in higher cable-TV rates and local media monopolies. But it's a shaky alliance.

"We're going to be very careful how we step with them," says Bradley Stillman of the Consumer Federation of America.

Long-distance forces may not have much time either. Before last week, it seemed unlikely that House leaders could get a break from spending bills to consider the telecommunications legislation before the August recess. Now, not wanting to give the bill's opponents an extra month to lobby, House leaders are pushing hard for a vote by next week.

# U. of Calif. Ends Racial Preferences

## Pioneer in Diversity Adopts Stance Urged By Gov. Pete Wilson

By William Booth  
Washington Post Staff Writer

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SAN FRANCISCO, July 20—The regents of the University of California, the state system of higher education that led America into the modern age of affirmative action, voted today to end race-based admissions at its campuses. It was a historic shift away from the racial set-asides that revolutionized higher education.

Urged on by Gov. Pete Wilson (R), who is defining his presidential bid with a call to end affirmative action, the University of California regents voted 14 to 10 to stop university officials from using race-based admissions practices at the UC system's nine campuses. The practices had allowed members of underrepresented minorities, namely blacks and Hispanics, to enter the universities with lower test scores and grades than their white or Asian competitors.

The giant UC network, which has 162,000 students, is one of the country's largest and most prestigious systems and stands at the center of the nationwide debate over affirmative action in universities and colleges. It is also one of the country's most demographically diverse and complex systems; its student population is 52 percent white, 23 percent Asian, 12 percent Hispanic and 4 percent black, with the remainder of the students unidentified by race.

"We can't tolerate policies that trample on individual rights," Wilson told the regents, six of whom he appointed. "What we want to do is celebrate the individual."

To both applause and hisses, Wilson called affirmative action unfair and discriminatory and said it was wrong for university officials to admit unqualified students on the basis of race alone, while denying opportunity to qualified applicants.

Before the vote, the 26 regents listened to more than 60 speakers attack and defend the use of race as a criteria in university admissions, in often painfully personal ways.

Today's meeting, which came a day after President Clinton vowed continued federal support for the concept of helping minorities and women in hiring and education, was interrupted by a bomb threat that cleared the building. Several hundred protesters ap-

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### CALIFORNIA, From A1

peared outside and six were arrested for blocking the entrance.

As the vote approached, several audience members shouted: "You're voting for racism!" After the regents voted 15 to 10 to abolish affirmative action in hiring practices, the audience, filled with affirmative action advocates, including students, ministers and Rainbow Coalition founder Jesse L. Jackson, broke into chants and singing that disrupted the meeting. The regents reconvened in another room to take the 14 to 10 vote on admissions policies.

The proposal to end race-based admissions policies was introduced by Ward Connerly, a Wilson appointee and black businessman who said affirmative action was polarizing the nation and needed to be curtailed. He said he was shocked to find that on some UC campuses, only 40 percent of the students are selected on grades and test scores alone. The rest fall under other selection categories, some of them racial or ethnic.

Connerly said racial preferences no longer serve their original purpose of righting old wrongs and have instead become an "obsessive preoccupation."

Nowhere is the preoccupation as great as at universities, he said.

The issue has come to dominate the political landscape in the nation's largest and most racially diverse state. A statewide vote on affirmative action is expected next fall.

Many speakers, as well as the president and all of the vice presidents, chancellors and the entire academic senate of the University of California system, challenged the governor's contention. They argued that affirmative action was producing a diverse student population and that the universities, far from suffering, were world-class.

"We are a public institution in the most demographically diverse state in the union," UC President J. W. Peltason told the regents in his defense of racial considerations. "Our affirmative action and other diversity programs, more than any other single factor, have helped us prepare California for its future. . . . To abandon them now would be a grave mistake."

Many speakers said the regents should not be forced to tackle such a highly politicized issue—especially one being pushed by a presidential contender. "We're in the cross-fire between national campaign politics and

the politics of protest," caught in "the rhetoric of anger," said Ralph Carmona, a regent who supports affirmative action.

California has led the nation on affirmative action and the University of California's campuses have been at the forefront, producing at the universities of Los Angeles and Berkeley some of the most diverse student populations in the world.

In the past three decades, UC-Berkeley, for example, has undergone dramatic change, from an almost all-white student body to today's numbers: 39 percent Asian, 32 percent white, nearly 14 percent Hispanic, 6 percent black and 1 percent American Indian.

If affirmative action were to end, it is widely assumed that enrollments of whites and particularly Asians would climb, while blacks and Hispanics probably would suffer. One UC study predicted that the number of blacks would decrease by 60 to 70 percent at Berkeley.

One by one, politicians, students, academics, activists and executives stood before the regents and made impassioned pleas on affirmative action.

End it, said Naō Takasugi, a Japanese American state assemblyman. "It is nothing more than state-mandated discrimination and no different than the internment of me and my family," said Takasugi, who like 125,000 other Japanese Americans was placed in camps here during World War II.

The arguments cut across racial stereotypes. White males spoke in support of affirmative action, and some blacks against. Asian Americans quoted the Rev. Martin Luther King Jr. Others Asians, such as Lee Cheng of the Asian American Legal Foundation, said affirmative action had caused discrimination against Asians. "It's blatant racism," Cheng said.

But many speakers declared: "I am here today because I am a beneficiary of affirmative action."

Barbara Lee said just that. A black state assemblywoman from Oakland, Lee said "affirmative action works." She warned against turning back to "the dark days of exclusion."

Jackson also lectured the regents, directing many of his comments directly toward Wilson.

"I do not wish to be colorblind," Jackson said. Society should not be "race-neutral," he said, "but race-caring."

# Hearing Focuses on Search of Foster Office

## Park Police Say White House Aides Failed to Tell Them of Frantic Action

By Serge F. Kovaleski  
Washington Post Staff Writer

AT

Two years to the day after the death of Deputy White House Counsel Vincent W. Foster Jr., three U.S. Park Police officers who investigated it said yesterday that presidential aides failed to tell them that Foster's office had been hurriedly searched in the hours after his body was found.

Two of the officers testified before the special Senate Whitewater committee that they told White House officials that night that Foster's office needed to be secured so investigators could look for possible clues to his death—a suicide note, psychiatrist appointments, a journal, insurance documents or even the way in which papers and other items were left in his office.

But the officers described a level of White House uncooperativeness that raised serious concerns about their ability to get at the facts surrounding Foster's apparent suicide. The officers, who took over the sensitive probe after Foster's body was found at Fort Marcy Park in Northern Virginia, have complained that they were shut out of Foster's office while White House lawyers sifted through his files and personal effects. Their concerns about White House conduct—which they considered far from typical in the face of an unexplained death—made their way to the Justice Department and have fueled many of the subsequent allegations and theories about a White House coverup of materials kept in Foster's office.

Although the basic outlines of their testimony have been known, yesterday Park Police were questioned extensively about their version of the events of late July 1993—an account that is still at odds on

See **WHITEWATER, A6, Col. 4**

some points with the recollections of White House aides. They offered the most vivid picture yet of the obstacles the White House posed as investigators gathered evidence in the Foster case.

In the third day of tedious testimony, the sharply divided special committee has tried to reconstruct the movements of White House aides in the hours after Foster's death. It learned from former associate attorney general Webster L. Hubbell, a close friend of Foster's, that he too warned then-White House Counsel Bernard Nussbaum to seal off the contents of Foster's office and was surprised to learn after Foster's funeral that Nussbaum had reneged on an agreement about how documents would be handled.

Park Police Detective John C. Rolla complained yesterday that he came up against reluctance to provide information as soon as he reached Foster's Georgetown home on the night of the suicide. White

House officials and family friends had gathered there to comfort Foster's wife, Lisa, and the phones were constantly ringing. Rolla went there with another officer to help inform the family and gather initial facts about Foster's state of mind. It "would have been simple to take us aside" and tell us about the depression and medication," he said.

In an earlier deposition, Rolla had spoken of being "stonewalled" when he began asking questions. Yesterday, he told Sen. Lauch Faircloth (R-N.C.) that this was perhaps too strong a word, although "having knowledge and not giving it I would interpret as stonewalling."

Park Police Maj. Robert H. Hines testified that he spoke with White House Deputy Chief of Staff Bill Burton and asked him to secure Foster's office on the night of his death. He said Burton assured him that would be done.

The officers testified that they believed they had no legal authority to require that the office be closed but had expected that no one would be allowed in by White House officials out of cooperation. "We are not looking for national or state secrets," Rolla said he told them. "We are basically looking for something that says, 'Goodbye, cruel world.'"

Hines testified that a senior Park Police criminal investigator complained to him that officers were "hardly allowed to look at anything" when Nussbaum went through documents in Foster's office July 22 while police were told to stand back at a significant distance. Nussbaum, a New York lawyer who left the White House amid controversy about his contacts with the Treasury Department on the Whitewater case, is expected to be called to testify.

"I just wondered why we didn't have any cooperation because we were just looking for . . . information on why he would commit suicide," Hines said. When asked by Sen.

Richard C. Shelby (R-Ala.) whether he thought the investigation was "incomplete," Hines told the hearing "yes, it was."

Hines expressed frustration that Foster's suicide note—a lamentation about the pressures of political life in Washington—was not found until six days after the White House lawyer's death. The note was torn into 27 pieces and found in the bottom of Foster's soft black leather briefcase. Nussbaum had peered into the briefcase two days after Foster's death and declared it empty but refused to let police, FBI agents and Justice Department lawyers see it or any of Foster's office papers. Four days later, one of Nussbaum's aides spotted the note and police were told about it the next day.

"Our oldest and blindest detective would have found the note," Hines

quoted Park Police Capt. Charles Hume as saying. "I agree with Hume."

Park Police Sgt. Cheryl A. Braun testified that she had a brief conversation with former White House official David Watkins the night of Foster's death in which she asked him to see that the office was secured. Investigators, she said, were anxious to find indications of depression that might have led Foster to take his own life, "anything to show that he was down in the dumps."

She said Watkins "said yes, he acknowledged my request." But Watkins says he doesn't recall the request. The former aide, who left the White

See **WHITEWATER, A7, Col. 1**

**WHITEWATER, From A6**

House over a flap involving his use of a government helicopter for a golf outing, is scheduled to appear as a witness later in the hearings.

During testimony yesterday, Braun said Watkins made no mention of the fact that he had asked his deputy, Patsy Thomasson, to go into Foster's office a few minutes before Watkins and Braun talked about looking for a suicide note.

Thomasson, another expected committee witness, was joined in the controversial search by Nussbaum and Hillary Rodham Clinton's chief of staff, Margaret Williams, who re-

ceived a call from the first lady that night about 9:45 p.m. from Arkansas, where she was visiting.

Nussbaum has said that no documents were removed from the office and Williams also has denied removing anything when they left about 11:42 p.m. although a Secret Service officer on duty that night says he saw her depart carrying documents.

The Park Police officers testifying yesterday said they didn't know about the White House search of Foster's office on the night of his death until they read about it in the newspapers.

In a letter yesterday to D'Amato and Sen. Paul S. Sarbanes (D-Md.),

Whitewater independent counsel Kenneth W. Starr declined the committee's request that he release reports of a polygraph given to Williams. The polygraph reportedly shows Williams to give truthful responses to questions about her activities in Foster's office.

Starr, a Republican, has come under attack by Democrats this week for allowing committee members to use Foster's briefcase during the hearings as what one member called a "theatrical prop."

Staff writer Susan Schmidt contributed to this report.

# California Regents Aren't the Last Word

*Discretion Is Still the Better Part of College Admissions, Officials Say*

By Rene Sanchez  
Washington Post Staff Writer **A1**

The University of California Regents' historic vote last week to end race-based admissions policies on all of its campuses has been praised as a bold strike that will wipe out inequities of affirmative action and denounced as a devastating setback for minority students. It may turn out to be neither.

There is no question that the decision, which California Gov. Pete Wilson (R) vigorously campaigned for as part of his presidential bid, will change the landscape for minority

students seeking admission to the state's universities and could ripple to campuses around the nation. The Clinton administration said yesterday that it will review whether the decision jeopardizes federal grants and contracts to the state.

Higher education officials say they are certain that once the new policy takes effect, there will be fewer minorities—notably blacks and Hispanics—on academically selective campuses such as UCLA and UC Berkeley.

But the intense rhetoric surrounding the vote has shifted attention away from a few key facts: First, even with the change the regents made, university officials still will have the discretion to choose between one-quarter to half of their students on criteria besides grades—so long as none is based strictly on race or ethnic origin.

What is more, virtually every university chancellor or president in the California system adamantly opposed the regents' action Thursday. And there is nothing to stop their campus admissions offices from trying to maintain diversity in the same subtle ways in which they already are expert—by admitting students

See COLLEGE, A6, Col. 1

## COLLEGE, From A1

in part because they have disadvantaged backgrounds, or live in rural areas, or are stars in science, music or sports, or a variety of factors that have little to do either with grades or race.

"You can have all the laws you want on the books, but if there's no will to enforce it, it won't have the impact that people expect," said C. Peter Magrath, president of the National Association of State Universities and Land-Grant Colleges. "That looks like the case here. Most university leaders in California still have a very strong commitment to diversity, and the new law still gives them running room to achieve it."

The University of California, which has 162,000 students spread across its nine campuses, is one of the nation's largest and most prestigious public higher education systems and serves one of the most racially diverse student populations. It has long been a focus of national debate over affirmative action because the racial preferences in its admission policies have been a model for universities nationwide.

The university system must choose between 40 and 60 percent of its students solely on academic achievement. The change that the California regents made last week, in a tumultuous 14 to 10 vote that followed a marathon hearing and a wave of protests, will require universities to admit between 50 and 75 percent of their students strictly based on academic marks—and it eliminates race as a consideration. Those new distinctions will take effect Jan. 1, 1997.

It is the first public university system in the nation to take such a broad step.

Wilson hailed the change as "the beginning of the end of racial preferences" and the start of a new era of fairness in admissions. Opponents, led by Jesse L. Jackson, said it will deal a crushing blow to minority access to higher education.

Yesterday, White House Chief of Staff Leon E. Panetta called the regents' vote "a terrible mistake" and said the Justice Department will review whether the change violates the terms of any federal grants or contracts that California receives.

Funds for research, for example, could be affected.

"It is a major retreat, in terms of a university and a state that has always been on the leading edge of moving forward in terms of education and research and in equal justice," Panetta said on CBS's "Face the Nation." "I think it's divisive, and I think it's really going to set that state back."

Wilson, appearing on ABC's "This Week With David Brinkley," dismissed Panetta's remarks and said a Justice Department review of the admissions changes would not sway him or the regents. "I think these threats are rather pathetic," Wilson said.

Universities had been closely watching the debate unfold for months, and many higher education leaders said they were greatly dismayed by its outcome.

"The eyes of higher education have been upon California," said Robert H. Atwell, president of the American Council on Education, which represents more than 1,600 colleges and universities. "Many other campuses are struggling with this issue and were looking to that debate for guidance. Now, we fear that the ill wind blowing out of California

could touch down in other places as well."

Several studies by university officials in California have detailed how the student population could change under the new rules. They conclude that the number of white and, in particular, Asians students will rise while the numbers of blacks and Hispanic students will plummet. One UC study predicted that the number of black students at the Berkeley campus—which is now 6 percent black—could decrease by more than 60 percent if race is eliminated altogether as a basis for admission.

For this reason, Regent Ward Connerly, a Wilson appointee who is black and who proposed the changes, also asked the university system to develop new criteria to give consideration to students who meet minimum entrance requirements and have overcome such disadvantages as an abusive home or an impoverished neighborhood.

Magrath and others said that move and the fact that most university leaders oppose the change could limit its impact. "They don't want to backslide, and this gives them a margin not to," Magrath said. "It may not be the end of the world."

But hundreds of demonstrators who stormed the regents meeting in San Francisco and leaders on campuses around the nation still fear the worst—particularly because this change follows other recent and controversial decisions on race and college admissions, such as the court rulings that overturned the University of Maryland's race-based Banner Scholarship program.

UC President J.W. Peltason pleaded with the regents not to make the change, calling it a "grave mistake" that could destroy much of the progress the system has made in student diversity and send the wrong message to other campuses nationally.

Today, for example, the UC Berkeley campus is 39 percent Asian, 32 percent white, about 14 percent Hispanic and 6 percent black, with the remainder unidentified by race. University officials said it would be impossible to convert to an admissions policy based on academic performance alone because by that measure, they perennially have far more equally qualified applicants, regardless of race, than they can admit.

"Universities have to be subjective," Atwell said. "They have no other choice."

# Chinese Exercises Raise Fears in Asia, U.S.

THE WASHINGTON POST  
MONDAY, JULY 24, 1995

## Despite Military Upgrades, Economic Progress Is Beijing's Priority

By Steven Mufson  
Washington Post Foreign Service

BEIJING, July 23—China has fired four surface-to-surface guided missiles to kick off week-long military exercises just north of Taiwan, raising a question for Asian and American policymakers: Is China a military threat?

It's an issue that has become more acute with Chinese purchases of new hardware, its development of three or four divisions of rapid-reaction forces, new nuclear weapon tests, and a rhetorical assault on the United States and Taiwan, including

a threat Friday that China would respond with force if Taiwan spurns the Chinese goal of reunification and declares independence.

Many countries in the South China Sea area were also upset by recent Chinese moves to strengthen its presence in the disputed Spratly Islands.

Although China's military capability is modest compared to U.S. might, it can still intimidate smaller Asian nations. The specter of a "China threat" has already unified China's anxious neighbors, spurred talk about a new "containment" policy in the United States and rallied U.S.

congressional support for a tougher policy toward China and closer relations with Vietnam. Those concerns won't be calmed by the maneuvers that started Friday with a display of Chinese ships, subs and warplanes.

But specialists say the 3 million-man Chinese military is handicapped by outdated equipment that lags anywhere from 15 to 25 years behind American military technology. The Chinese military's budget increases, while substantial, have failed to keep up with inflation over the past two decades.

Moreover, specialists on Chinese  
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### CHINA, From A1

strategy doubt that the giant of Asia would take action that might disrupt the nation's economic progress and social stability unless it were pushed hard. A major military initiative would undoubtedly disrupt trade relations, and more than 15 percent of China's gross domestic product is intended for export. Indeed, the military itself has displayed a penchant for making money, not war.

"There has been no credible 'China threat,'" said Charles W. Freeman Jr., former U.S. assistant defense secretary and a diplomat familiar with China. But, he warned, "by positing the existence of such a threat from China, we may now inadvertently be helping to create one."

China's size and its economic success have helped make the possibility that it might pose a threat an issue.

"China is a big country. Its first goal is to raise the living standards of its people, develop the economy and defend the sovereignty of its territories," said Cui Liru, director of the division for North American Studies at the Chinese Institute of Contemporary International Relations. "But be-

cause it is a big country, when it develops, the reality is that it will be getting stronger and more powerful."

In the eyes of China, this is a natural development. The Chinese believe, with much reason, that for most of the past 3,000 years, their nation was the largest, most prosperous, best governed and militarily most proficient society on the planet. The loss of that status more than three centuries ago and China's eclipse by European powers has always been regarded as a temporary aberration.

To the rest of the world, however, a more powerful China is unsettling. "How do you deal with an ascendant power?" asked Rand Corp.'s Jonathan Pollack. "International systems don't deal with that well."

China believes it is entitled to aspire to military parity with the United States and other major powers, even though it recognizes that can't be achieved until the middle of the next century.

"If you're talking about a strategic threat to U.S. forces or interests in Japan or Korea, China is nowhere near that and won't be for 15 or even 25 years," said Michael Swaine, a China analyst at Rand Corp. But he said there is "real concern over local threats."

China could flex its military muscle as one element in a modern-day equivalent of gunboat diplomacy, the 19th-century strategy used by Western powers and Japan to wring concessions from Beijing.

That's where this week's military exercises fit in. The exercises are about 120 miles north of Taiwan, and only 40 miles from a sparsely populated island that Taiwan controls. Fishermen have been warned away from the area and commercial airlines have been forced to change their routes.

"The Chinese prefer shots across the bow that produce sensible adjustments in opponents' policies, to shots that strike and sink them," says Freeman. "The Chinese choice of an uninhabited island north of Taiwan as the place to demonstrate their military power is a classic instance of this."

Anxiety about the People's Liberation Army (PLA) has been heightened by improvements in its equipment, most of which dates from the 1960s.

■ **Submarines.** China has acquired four Russian-built Kilo class submarines, considered among the best of the world's diesel-powered subs.

■ **Missiles.** China recently developed a mobile intercontinental ballistic missile capable of hitting Europe or California. Worried about the missiles, Taiwan has been negotiating the purchase of Patriot missiles.

■ **Planes.** Last year China purchased 26 Su-27s, Russia's most advanced fighter jet. A dispute over payment terms has postponed delivery of a second batch. China wants to make an agreement to produce up to 300 of the planes in China, but Russia has been balking for both commercial and strategic reasons.

China is trying to make its own J10 fighter, a clone of an F-16 given

to China by Pakistan. Some analysts believe Israel is contributing avionics from its own aborted Lavi project.

But the J10 is at least 10 years from production and previous Chinese efforts at reverse engineering have failed. A copy of a Boeing commercial plane that never flew stands rusting near a military runway in Shanghai. The mainstay of the Chinese air force remains the F-6, the equivalent of a MiG-19, first introduced in the 1960s and inferior to planes in Singapore, Malaysia or Taiwan. Pilots receive little training, perhaps 30 to 40 hours a year.

Despite hardware advances, military specialists say China's forces remain in a defensive posture. That is a legacy of four decades during which China has fought on almost every border—with Russia, India, Vietnam, Japan and Korea. It also has troops deployed to deal with potential unrest in the regions of Tibet and Xinjiang. In addition, China uses troops for civilian missions such as flood control and tree planting.

"The PLA is tied down by these tasks," says Freeman. "It is not, in any event, a highly mobile force. It has been deployed and equipped to fight a war against an invader inside China, not at its borders, still less beyond them."

In measuring the "China threat," politics loom as large as the military's manpower and equipment.

The People's Liberation Army was founded as an arm of the Communist Party. With the fading of paramount leader Deng Xiaoping from the political scene, the military might play a greater political role than ever before.

Now, for the first time, the country's political leaders have no military experience. President and party chief Jiang Zemin, Vice Premier Zhu Rongji and Premier Li Peng all built their careers in state industries and central planning.

Since becoming party general secretary in 1989, Jiang has worked to strengthen his ties to the military. Within 10 months after becoming party chief, Jiang had toured every one of the seven regional military commands. Many commanders he met then have been moved to senior positions in the central command.

Yet analysts say the military could assert a more independent role. The Clinton administration might have hastened that development by giving Taiwanese President Lee Teng-hui a visa to visit the United States. Just days before the decision, Foreign Minister Qian Qichen had been assured by Secretary of State Warren Christopher that no visa would be issued. When he brought that message back to Beijing, the Chinese military criticized him for being gullible. A visa was issued two days later, Chinese sources said. Jiang has made a "self-criticism" over the Taiwanese policy fiasco. Western sources here said. The self-criticism exercise, a tradition for the Communist Party but rare for senior leaders, indicates a severe setback and pressure on the president, who had launched an initiative for reunification with Taiwan in January.

While few Chinese leaders really expect to reunify mainland China with Taiwan any time soon, no one wants to go down in history as the person who "lost" Taiwan to independence. If the United States is in danger of miscalculating Chinese intentions, China runs the risk of misunderstanding U.S. intentions. Chinese leaders believe that the United States is pursuing a neo-Cold War policy of containment, a view that many Western specialists believe is unfounded but could also become self-fulfilling if China reacts by taking a more aggressive posture or selling weapons to countries like Iran.

The Chinese side's concern about American policy has increased with the reestablishment of U.S. relations with Vietnam, justified by some members of Congress as a counterweight to Chinese power. The visa for Taiwan's Lee also appeared to be part of a containment chess game.

"In China, more and more people are wondering: what are the Americans up to?" said Cui at the Institute of Contemporary International Relations. "Quite a number of Chinese people at various levels tend to believe that the Americans regard a powerful China as a hindrance to the United States in its bid to maintain world dominance and so are trying hard purposefully to keep China weak and even divided."

If China reacts with a military buildup, it would mean a shift in priorities. Ever since Deng launched reforms in the late 1970s, the military has come last on Deng's list of "four modernizations." Between 1985 and 1989, the number of Chinese in military uniform was slashed by a million, to a quarter of its previous size. The modernization program relies heavily on imported capital and technology.

"Modernization would be set back in many ways by the consequences of military confrontation with Taiwan, China's other neighbors or the United States," says Freeman.

Some American policy makers say that means the United States and Taiwan can brush aside Chinese threats as bluster. But that might be underestimating the seriousness of Chinese leaders, especially when it comes to Taiwan, and the danger of resurgent Chinese nationalism, especially at a time of political transition.

"Chinese nationalism dictates a strong response to perceived challenges to sovereignty and national dignity," says Freeman.

# Obstacles Arise to Switch By California on Diversity

## Loopholes and Aid Threat May Soften Impact

By B. DRUMMOND AYRES Jr.

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Continued From Page A1

LOS ANGELES, July 23 — Three days after the University of California Board of Regents ostensibly did away with all campus affirmative action programs based on race or sex, the intended goal of that mandate was threatened on two fronts: the loss of Federal largess and perceived loopholes in the order itself.

This morning, President Clinton's chief of staff, Leon E. Panetta, said that the University of California made a "terrible mistake" on Thursday in its affirmative action vote, and he said that the Justice Department would begin a review of the billions of Federal dollars that flow to the state's universities.

The University of California System receives about \$2.5 billion a year in Federal money.

"Obviously the Justice Department and the other agencies are going to review the relationship," he said.

At the same time, some University of California officials said that after taking a second look at the regents'

decision, it appeared to them that abolition of the programs might not have the dire consequences on student and faculty diversity or on university contracting that some supporters had predicted.

Those officials said they believed that the order that killed the programs is so loosely worded that affirmative action can still largely be accomplished — and Federal requirements met — mainly by substituting various socio-economic factors for considerations base on race or sex.

And in any event, the officials said, there is a prohibition in the order that rules out any changes in programs that might result "in a loss of Federal or state funds for the university."

"I am not yet ready to concede that we will not be able to pursue diversity, even with these new rules," said Larry Vanderhoef, chancellor of the University of California at Davis, one of nine campuses in the system.

Another university official, at the system's headquarters in Oakland, who requested anonymity, said that admission officers were sure to figure out a way to "wriggle around" the new rules.

Gov. Pete Wilson, who pushed the University's Board of Regents to kill its programs, bristled at Mr. Panetta's talk of a Federal inquiry, saying that the state would not be intimidated by an implicit threat of losing the huge largess in student aid and research funds that that university system receives from Washington. He declared that the university would follow through with dismantling the programs because they are "wrong and unfair."

"These threats are rather pathetic and will certainly not sway me," the

Governor said.

Under Federal regulations, colleges and universities that receive Federal funds for students, administration and research contracts must, in many instances, have affirmative action programs in place. Otherwise the money is forfeited.

Whether or not the highly politicized regents' decision on Thursday to kill such programs, when based on race and sex, turns out to be more talk than deed, the full-throated apocalyptic rhetoric that has infused the affirmative action debate — and made it a major early factor in the 1996 Presidential race — continued today.

Both sides issued new pronouncements. Both, pro forma, sent representatives to do battle on the many Sunday talk shows.

"I think it's a terrible mistake," Mr. Panetta, appearing on CBS's "Face the Nation," said of the Thursday decision.

"It's a major retreat," he continued, "in terms of a university in a state that has always been on the leading edge of moving forward in terms of research and education and in equal justice. Obviously we're going to be reviewing our contract laws and the provision of resources to that state."

Then, Mr. Panetta — a former California congressman whose boss, President Clinton, plunged deeply into the debate last Wednesday with a major defense of affirmative action programs — accused Governor Wilson, a Republican Presidential contender, of "divisive" political opportunism. He urged him not to back away from "the commitment of this country to equal justice and equal opportunity."

"You've got a Governor," Mr. Panetta said, "who obviously is running for President on this issue, who has forced the university board to basically back away from that kind of position."

Mr. Wilson, appearing on ABC's "This Week" with David Brinkley, countered that "affirmative action surfaced long before I was a candidate."

"It is the issue that is dividing people," Mr. Wilson asserted, adding that it troubled him that the affirmative action debate was degenerating into what he termed "childish name-calling."

As for Federal punitive action because of Thursday's decision, he said he did not think it would be legal.

His barbed comment about name-calling seemed aimed at the Rev. Jesse Jackson, another guest on the Brinkley show, a possible Presidential contender and the most outspoken defender of affirmative action to testify before the Board of Regents on Thursday.

In an opinion article published today in The Los Angeles Times, Mr. Jackson wrote that Mr. Wilson was "the Susan Smith of national poli-

tics," an allusion to the South Carolina mother convicted of murder on Saturday in the drowning her two sons.

He accused the Governor of "reaching for a racial scapegoat" in an effort to take the lead in the Republican nominating contest and asserted that he had unfairly used the immigration issue to win re-election last year.

"You are desperate," Mr. Jackson added in today's television appearance. "There is no compelling evidence that there is discrimination by race and gender in affirmative action."

A third guest on the Brinkley show, Deval Patrick, the Justice Department's Assistant Attorney General for Civil Rights, said that he had been consulting "for some time now" with Federal education officials about the legal consequences of any California action to modify or eliminate affirmative action pro-

'These threats are rather pathetic and will certainly not sway me.'

grams. But he denied those consultations constituted a threat to the state.

"No one is interested in punishing anyone for private decision," he said, "and in terms of what we can do, that's something we just have to sort out."

The Governor was not persuaded. Immediately after the television show, he issued a statement charging the Clinton Administration with

"abusing power and engaging in threats and intimidation, arrogant, gross abuse of power."

"We are not going to give in to White House extortion," he declared. "If they actually move from threats to pressure tactics, we will fight them in court and in the halls of Congress."

While the politicians produced the greatest noise and heat, many in the academic community appeared to be convinced that they could merely do an end run around the regent's mandate.

"We have very creative faculties," said Cornelius Hopper, vice president for health affairs in the University of California system "I am hopeful that they will be able to find ways to achieve diversity. This can result in a student body that will be substantially the same as it is today."

Dr. Hopper, who is involved in outreach programs, said that his biggest worry was that the decision of

the regents last week would "send a message to minority students that the door is closed."

Chancellor Vanderhoef of Davis summed it up this way: "We've got a problem, but that doesn't mean nothing can be done."

But some university officials doubted that the campuses would be able to nullify the effect of the regents' decision.

Chancellor Charles Young of the University of California at Los Angeles said: "Whatever supplemental criteria you use, African-American and Chicano-Latino students will be hurt. I'm not saying you can't to some extent minimize the impact, but you can't overcome it. It will result in lower numbers of black and Chicano-Latino students, and a small increase of Asians."

# Bosnian War Bewilders a Midwestern Town

By SARA RIMMER

MERRILLVILLE, Ind., July 22 — Donna Stath was embarrassed. "I try to follow the war in Bosnia, but it's so confusing," she said in response to questions about the conflict. "It's been going on for 300 or 400 years. I know there are atrocities going on. I understand Serbs are raping Muslim women, and kidnapping their sons."

"I think it's sad," Mrs. Stath, who has three teen-age children, and is the secretary of the Merrillville Community School Board, went on. "I think, 'Golly, is this a similar situation to Nazi Germany?' And everybody ignored that for how many years?"

But when it comes to the question of American involvement in Bosnia, Mrs. Stath, who is a Republican, said she feels deeply reluctant. "I think it would be another Vietnam," she said. "I don't think our sons and fathers should be losing their lives over it. I think we should continue the dialogue."

In random interviews conducted over two days in this blue-collar town, a traditional Republican stronghold where the steel mills of nearby Gary loom to the north and strip shopping centers give way to cornfields in the south, most people expressed similar feelings.

Most of those interviewed said they had not been paying close attention — the distant ethnic war seems to be a burning issue here only among the Eastern European community, which includes many Serbian- and Croatian-Americans. But no one in this town of 30,000 expressed indifference to the war.

The recent television images of atrocities in Bosnia have horrified them, people said. They talked about

the rapes of Muslim women, the young men with their throats slit, the homeless children. As sharply focused as the television images are, this war bewilders people.

They want to understand it better, they said. They don't know what the United States should do, they said. In the next breath, however, they said they did not think that it was the responsibility of the United States to resolve what seems to them an endlessly complicated — and endless — war. Their views reflect recent surveys in which a substantial majority of American respondents said this country had no moral obligation to

Continued on Page A7, Column 1

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intervene in Bosnia.

"I'm not really following it that closely," said Ruben Alcala, a 64-year-old retired steelworker, talking in his front yard, where there were miniature American flags stuck in flowerpots. "I can't understand why it's going on so long, or why. It's a shame so many people are suffering."

## Merrillville, Ind., Feels Sympathy for Victims but Fears a Morass

Asked whether the United States should step in, Mr. Alcala, who said he votes Republican or Democrat, depending on the candidate, hesitated.

"Sometimes I think maybe we should," he said. "Then I think, 'No, let them take care of their own.' Let someone else solve it. The U.S. is the greatest country in the world. Should we be the world's policeman? No, that's what we got the U.N. for."

"Why should our kids go over there and get killed? There's been wars ever since time began. If it goes on, maybe we should step in, and help one of them. I don't know which one is wrong. I don't know that much about the country."

In his house across the street, the Rev. Sammie Maletta, the priest at the neighborhood Catholic church, St. Joan of Arc, said he felt anguished by the war. "I don't have any clarity in my mind about what's right," Father Maletta said, seated in his living room, surrounded by books on theology.

"I see what's going on there. You feel so helpless. You see these children getting butchered. Part of me thinks there's a lot of racism. If it weren't Muslims taking the brunt, would the world sit by?"

He does not know what his stand should be, Father Maletta said. "If I condone the bombing of the Serbs, or the arming of the Bosnians, am I not saying 'it's O.K.' to violence?" he said. "If nothing is done, am I not being passive to genocide? I don't have the answers. It's painful."

In church on Sundays, he said, he asks his parishioners to pray for the Bosnians. "One of my primary jobs is to get people to think about it," he said. Mostly, he said, they don't think about the war in Bosnia.

At the American Legion post in town, Lou Wojcik, a bank vice president, overheard Bill Ward, the post commander, talking to a reporter about the war. "There are too many other things to worry about," Mr. Wojcik, 53, broke in. "Your family, employment, things at home."

Behind the bar, with the American flag on the wall, Kim Jurasevich, 31, the bartender, was apologetic. "I should know more about it," she said. "I just know there's problems going on."

Jim McKay, who drives a fire truck, has strong opinions about what should be done. "I say, 'Move, stop it,'" he said, sipping his beer. "I don't want to see any of our ground troops in Bosnia. Use air power to back up the U.N. forces."

But there are plenty of people here, like Father Maletta, who do worry about the war. Debbie Shurr is one of them. Partly, she said, it is because of her job. She is a reception manager at the Croatian community center. Still, she has not taken sides.

"I see the pictures on television of the homeless children, the ones that are starving," she said Friday evening at the community center, where she was setting up tables for a wedding. "The other day I read about the young men they had taken away. The first thing I thought was that the Nazis had done the same thing when they killed the Jews."

Ms. Shurr, who says she is of Irish and German descent, looked as if she were about to cry. "Is this that all over? What can the U.S. do? What is the reason they're fighting? Does anyone even know?"

But when she considers the idea of the United States' becoming involved, she said, she is reminded of another war. "I'm torn," said. "What if it's another Nam and there are no winners? What was the point of all those thousands of boys being killed?"

Across the field from the Croatian center is the Serbian Orthodox church, with its onion dome, and community center. Fleeing Communism, Serbs and Croats arrived here in the 1960's, as they did in Gary and Chicago, and found work in the steel mills. On the surface, at least, there is little tension between the two groups.

Few people here seemed to take seriously President Clinton's threat of massive air strikes against the Serbs — if they were aware of it at all. They had heard too many threats before, they said.

"He hasn't taken a firm position," said Rosalie Berger-Levinson, a Democrat, who is a constitutional law professor at the Valparaiso University School of Law. "He's been wishy-washy. Until it actually happens, I don't know if it will happen."

Professor Berger-Levinson's parents are Holocaust survivors. Her mother was at Auschwitz. "My mother saw the cruelty of the Croats to the Jews in World War II," she said. "But I don't think that justifies genocide today. I'm concerned about the comments of Croatian leaders and Muslims that sound anti-Semitic. I don't know how much of it is true. I'm confused. I've been reading about this on and off for months."

Should the United States get involved? "That's a real tough call," she said. "Would this be another Vietnam? We're learning more and more that F.D.R. knew a lot more before he intervened in World War II. Morally, that leads me to think we should be involved. Certainly, we have U.N. troops just watching. It's upsetting. It's so emotionally divisive."

The Persian Gulf war, which she supported, was much easier to understand, Donna Stath said. "The difference was oil," she said.

# Calif. vote draws review

## White House affirmative action step called 'threat'

By Kevin Johnson  
USA TODAY

AI

The Justice Department will review federal contracts held by the University of California after its decision to end affirmative action programs, White House Chief of Staff Leon Panetta said Sunday.

The governing board made "a terrible mistake," Panetta said, but as federal contractors, the schools still must meet federal affirmative action rules.

Failure to comply could jeopardize streams of research and grant funding.

California Gov. Pete Wilson, who engineered the regents' vote, told CNN Panetta's statements were "absolutely shameful threats."

The university's governing board Thursday declared that race, gender and ethnicity would no longer be considered in school admissions, hiring and university contracting.

But any changes that would mean losing federal or state funds for the university were exempted.

Panetta said the regents' vote marked a "major retreat" for a state that has always been on the "leading edge" of issues such as civil rights.

Panetta accused Wilson of forcing the regents to turn against the university's long-held principles to help his bid for the Republican presidential nomination.

Wilson has made his stance against affirmative action the centerpiece of his campaign.

Others also questioned Wilson's motives:

► "I don't think there's any question that he is stirring the pot of racial turmoil," Sen. Bill Bradley, D-N.J., told NBC's *Meet the Press*.

► Wilson has "the burden of proof," said Rep. J.C. Watts of Oklahoma, one of two black Republicans in Congress. "We have to be very careful how we use the policy of race."

Wilson, a regent by virtue of his state office, said Sunday he would not back down.

"What is being called affirmative action are, in fact, racial preferences," Wilson said on ABC's *This Week with David Brinkley*. "It is wrong."

## Too few saving retirement plan payouts

By Anne Willette  
USA TODAY

Most traditional pensions don't offer lump sum payments when workers retire or change jobs.

But 401(k) plans do, although there are tough rules on withdrawing the money. Workers don't understand the importance of saving retirement money, says Labor Secretary Robert Reich.

A bright spot: The greater the lump-sum payment, the more likely people are to save it. Among those getting more than \$10,000, fewer than 1 in 10 spend it.

For the first time, more people are getting company retirement benefits in a single cash payment than in monthly checks, a new federal study shows.

But less than half are investing that money to provide retirement income. The Department of Labor report says of people older than 40 who received retirement benefits last year, 7.6 million, or 51%, got all the

money in a single check. That's up from 40% in 1989. But only 32% of workers put all their lump-sum payment into a retirement account and only 14% put it into other savings or investments. The rest put most into a home, business, debts or spent it on consumer goods.

The increase in lump-sum payments follows the growth of 401(k) saving plans, which allow workers to choose where to invest their retirement money, and the decline of traditional pensions.

## COVER STORY

# The real test will come with sentencing

### Investigation of corruption reaches into the highest branches of government

By Sam Vincent Meddis  
USA TODAY

AI

BOGOTA, Colombia — Gilberto Rodriguez Orejuela, founder of the world's most powerful drug trafficking organization, sits in a forlorn cell deep within the gray walls of La Picota prison.

Since his arrest last month, entertainment for the Cali cartel billionaire has consisted

mainly of a few books, a radio and a 14-inch TV to satisfy his passion for soccer.

In contrast to his stark surroundings, the ranch-style national prison that once held Medellin druglord Pablo Escobar boasted a whirlpool bath, 60-inch TV, personal gym and soccer field.

Colombian officials hope that Rodriguez's maximum-security accommodations — along with the recent arrest and surrender of several other cartel leaders — will help convince a wary public worldwide that their newly revived drug war is being fought in earnest.

Already, the media here boldly proclaim that the Cali cartel, a \$7 billion-a-year empire that supplies 80% of the USA's illegal cocaine, appears to be on the run.

"I am very optimistic about the future," said prosecutor general Alfonso Valdivieso, who took office just 10 months ago, in a recent interview in his heavily guarded office. "I think narco-trafficking is in the way of disappearing from Colombia."

The crackdown took on even greater significance over the weekend when Valdivieso acknowledged that documents seized in a raid on Rodriguez's apartment show traffickers had thousands of people — including politicians, police and journalists — on their payroll. He said ongoing investigations could even lead to President Ernest Samper.

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Continued from 1A

Rodriguez, known as "the Chess Player" because of his strategic prowess, denies being leader of a drug cartel and says he is nothing more than a pharmacy-chain magnate. A trial date likely won't be set until more members of his gang are rounded up, experts say.

Some U.S. officials say the disruption of cartel leadership could cause shortages of cocaine on U.S. streets, though it may take several months because of stockpiles.

Others maintain it's too soon to tell, since aggressive competitors are maneuvering to step into the Cali power vacuum.

But all officials seem to agree that the Rodriguez arrest is a victory for weary drug warriors — particularly if he receives a stiff sentence.

"This is the thing we've all been hungry for," says Doug Wankel of the Drug Enforcement Administration in Washington. "A lot of people thought this could not take place."

Paulo Galindo remains unconvinced. A doorman at a seedy downtown Bogota hotel, Galindo reflects the view of many Colombians when he says he is "very pessimistic" about his nation's ability to defeat the well-entrenched drug trade.

"It'll never end," says Galindo, who wears a rumpled red coat and looks much older than his 40 years. "If they end the Cali cartel, we'll get new cartels from other places."

Carlos Toquica Ramirez, an 18-year-old national police aide who helps direct traffic in a high-crime stretch of cheap restaurants and shops, is more blunt.

"This is a narco-democracy," Ramirez says. "Drug traffickers rule the country."

In the United States, experts say Colombia's assault on the cartel appears real, but they also wonder whether the traffickers will inexorably regain the upper hand.

Says Raphael Perl, a senior congressional anti-drug specialist: "The bottom line is whether they have the power to keep the traffickers in jail."

#### Tentacles of corruption

Colombia became a drug superpower in the 1970s, when ruthless traffickers began catering first to the USA's huge appetite for marijuana, then cocaine, and now heroin.

Shipping thousands of tons of drugs over the years created Fortune 500 wealth for traffickers, allowing them to spin a broad web of bribery and intimidation over Colombia's judges, police and politicians. In 1993, there were more than 15,000 active corruption investigations against government officials. Few led to prosecutions.

The drug trade "has profoundly altered social and moral values," says Daniel Garcia-Pena, an adviser to the government agency trying to negotiate peace with guerrilla groups, some of them used by traffickers to guard crops. "It's easier to mention those sectors of Colombian society that have been immune."

By the early 1980s, traffickers had earned a social cachet as latter-day Robin Hoods, spreading their wealth to help local economies boom, building housing projects and soccer fields for the impoverished.

But there was another side.

Before he was killed in 1993 by an elite Colombian police and military task force, Escobar and his syndicate lashed out against the government efforts to prosecute them by bombing a jetliner and killing two presidential candidates, along with hundreds of police, judges and other government officials.

In the USA, their flood of cocaine fed millions of users, leading to record numbers of hospital overdose emergencies and unprecedented drug-related bloodshed.

Here in Bogota, a capital of South American culture set against the breathtaking beauty of the towering Andes mountains, crime is so pervasive that police and security guards with assault weapons and shotguns are common sights on street corners.

Assassins can be hired for \$50. Cab drivers routinely lock their doors af-

ter taking on fares. Having a bodyguard is a status symbol.

All with good reason.

#### Violence a way of life

With right-wing death squads, guerrillas and narco gunmen operating almost at will, Colombia has a well-earned reputation as one of the world's most violent countries.

Based on population, Colombia's murder rate — averaging about 94 a day — is eight times higher than the USA's. And up to 99% of the killings go unsolved, largely because anti-drug efforts have pushed the judicial system close to gridlock and sapped law enforcement resources. The carnage has even generated a field of study for "violentologists."

Says Carlos Alonso Lucio, a former member of Colombia's M-19 guerrillas who is now a member of congress: "In Colombia, there is a risk for everybody — for everything." Lucio, whose rebel group disbanded in 1990 in exchange for the right to form a political party, says he has received death threats because of his anti-corruption efforts.

The drug trade has also distorted the workings of Colombian economic life, spawning a mentality of lawlessness that ranges from tax avoidance to bribery for contracts, says Francisco Thouni, a drug trafficking expert at the University of the Andes. We have "a situation where accepted social behavior differs widely from accepted legal behavior."

While the nation's rich coffee, mining and oil industries thrive, honest business finds it hard to compete with companies subsidized by laundered drug money.

Social mobility has been inextricably linked to the drug market, says Garcia-Pena. "The sad truth is that an honest, hard-working Colombian who is born in the lower class will die in the lower class."

#### Arrests bring hope

But with the surprise arrest of Rodriguez, thanks to two informants seeking a nearly \$2 million reward, some think Colombia might stir from its national nightmare.

More recently, Cali kingpin Jose Santacruz-Londono was captured by police in one of the city's upscale restaurants early this month.

The arrests are especially notable because they come at a time when Colombian traffickers are at their pinnacle of power, aggressively ex-

panding their cocaine trade to Europe and the former Soviet Union while forging ties with groups like the Italian Mafia.

South American heroin production — mostly in Colombia — accounted for 32% of the total heroin seized in the USA. Five years ago, nearly all of it came from Asia. And Colombia's marijuana production has soared 286% over the past five years, from 986 metric tons in 1990 to 3,803 last year, say U.S. officials.

Cartel leaders have raised trafficking to new heights of sophistication, hiring former Israeli intelligence officers to teach them surveillance techniques. Some U.S. officials suspect that even the U.S. Embassy may have been bugged.

"They're becoming a global criminal enterprise we've never seen before," says Wankel.

Joseph Toft, whose life was portrayed in the 1992 TV miniseries *Drug Wars II: The Medellin Cartel*, caused a diplomatic tiff in October when he left his post as head of the DEA's Bogota office publicly complaining about widespread corruption. Now a security consultant, Toft is excited by the recent turn of events. "I think they're trying to do the right thing."

But will it last?

"That's the question Washington has," says Myles Frechette, U.S. Ambassador to Colombia. While the arrest of Rodriguez was "a good first step," he says, a more concrete sign .. will be whether Cali leaders receive stiff sentences.

The State Department on March 1 for the first time decided to to remove Colombia from a list of countries said to be cooperating in the drug war. The United States stopped short of imposing economic punishment — including a cutoff of U.S. aid and vetoes of World Bank loans. But the move was a warning that severe sanctions might lie ahead.

More displeasure from Washington is likely if life-long traffickers are punished by a few years in prison.

For prosecutor general Valdivieso, the question is whether his government can focus on drugs amid other social problems.

Also, waiting in the wings for the Cali cartel's demise are nearly a dozen other drug gangs scattered around the country. There are "a whole bunch of half-pins waiting for king-pin status," says Frechette.

But, if the Colombian government can continue its attack, Valdivieso insists, the cartels can be dismantled by the dawn of the next century.

That's because the public itself is beginning to turn against their once-romanticized narcos, he says.

"Being a narco — it's not good, it's dirty money" says Ingrid Betancourt Pulecio, a member of Colombia's congress. "You don't want your children to play with somebody who is rich but is dirty."

In a swank real estate office in an upscale part of the city, broker Conqelo Garzon Dloz points to an unlikely barometer of faith in the government's crackdown: a drop in sales of resort condominiums.

She applauds Rodriguez's arrest, "even though it's bad for business. . . . Everybody outside thinks that if you're Colombian, you're a drug dealer or a drug junkie. In the end, things will change."

## Today's debate: PHONE, CABLE DEREGULATION

# Monopolies win, you lose

**OUR VIEW** Stamped by lobbyists, Congress may allow phone-cable mergers. That's bad news for consumers.

Don't be surprised if someday soon your cable TV bill jumps and you can get your telephone service and cable TV from only one company.

The reason: Congress is in the process of deregulating the nation's telecommunications industry, and a 10-year, \$20 million lobbying campaign by cable and local phone firms has tipped the legislation against consumers.

That isn't what was supposed to happen. Just the opposite. The aim of deregulation was to spur phone and cable companies to get into each other's businesses. Doing so would create competition. That in turn would lower prices and improve service.

Instead, the deregulation bill passed last month by the Senate and the one moving toward enactment this week in the House encourage local cable-phone monopolies. Not just a cable monopoly and a phone monopoly, as exists in most places today, but a single monopoly controlling both.

Instead of throwing the two industries at each other's throats, the Senate bill would let them buy large shares in each other's systems. Worse, both House and Senate bills would let cable and phone firms merge in communities of less than 50,000. Thus, nearly 40% of the nation's homes could end

up with monopolies providing them both services.

The result is not hard to predict. From 1984 to 1992, cable rates shot up at double the rate of inflation. Studies submitted to Congress back then showed customers with only one choice of cable provider were paying up to 30% more than customers with choices.

As if that's not bad enough, even as the legislation would discourage competition, it would lift most of the federal rate regulation enacted three years ago because customers felt monopoly operators were ripping them off.

The legislation is a blatant giveaway to two favored industries. And it doesn't take a genius to figure out who will pay the bill. Instead of getting two choices, many consumers will get none.

Even the biggest cable and phone operators never dreamed they'd be handed such a gift. Just two years ago, when Bell Atlantic (one of the seven regional Bell telephone companies) and Tele-Communications Inc. (the nation's largest cable company) were proposing to merge, they promised to sell to competitors those parts of their systems that overlapped — ensuring two lines would reach into each home.

That was the right idea. Make businesses compete in a free market. Give consumers a choice. Remove the need for regulation.

Those are the kinds of principles this Congress said it would defend. Somewhere along the way, the consumers' interest got lost.

## Let the market rule

**OPPOSING VIEW** Free markets, not government, should determine telecommunications services.

By Rep. Jack Fields

There are still some in Washington who believe government regulation — rather than the free market — best ensures that Americans receive the advanced telecommunications services that will carry us into the 21st century. I am not one of them.

The telecommunications bill the House will soon consider sharply reduces the federal government's role in the telecommunications industry. By providing new incentives for private industry to innovate, experiment and compete, the bill will reduce the price, improve the quality and expand the array of services available to consumers. And it will do so far more efficiently than government regulation.

As a general rule, the telecommunications bill prohibits local telephone companies and cable systems in the same service areas from buying or merging with one another. Among the bill's few exceptions is one that allows a local telephone provider to operate or engage in joint ventures with a local cable system but only in the smallest, most sparsely populated communities.

This exception is in the best interest of rural America. Only by permitting such

joint ventures will the investment capital necessary to upgrade the telecommunications infrastructure be available in rural communities. Prohibiting such joint ventures would deny rural residents the benefits of advanced telecommunications services that urban and suburban residents will soon learn to take for granted.

Increasingly, voice, data and video services are being provided to consumers by satellite wherever they live. Recent government spectrum auctions will make more telecommunications services available to anyone, anywhere, who has a few hundred dollars to purchase a satellite dish. Such wireless voice, data and video services already compete with cable, and they are likely to become a stronger and more aggressive competitor in the future.

In years past, the government dictated who obtained which telecommunications services, when they obtained them and how they paid for them; and, too often, rural residents were at the end of the line. The free market, not the government, should determine which telecommunications services are available to consumers, when and at what price. If there is a market in rural America for advanced telecommunications services, companies — existing corporations and start-up ventures alike — will discover that market and serve it.

*Rep. Jack Fields, R-Texas, is chairman of the House Telecommunications and Finance Subcommittee.*

**Los Angeles Times first-edition Page 1 for Monday, July 24, 1995:**

Top of page:

Col 1: Feature on racial issues in sports. (May move later in week.)

Cols 2-4: Taking a major step to strengthen its forces in Sarajevo, the U.N. deploys hundreds of combat troops armed with heavy weapons to the besieged capital of Sarajevo as rebel Serbs launch attacks across Bosnia. (BOSNIA-TIMES, moving). (With art).

Cols 5-6: White House Chief of Staff Leon E. Panetta says the federal government will review whether to keep funding California in the wake of the University of California regents' decision last week to eliminate race as a factor in hiring and admissions. (AFFIRM-TIMES, moving.)

Above fold:

Col 4: Despite record apathy, Japanese voters push to the forefront a new opposition conservative party and hand both Prime Minister Tomiichi Murayama's Socialists and his left-right coalition a severe blow in an upper house election, vote returns show. (JAPAN-TIMES, moved.)

Col 6: Many analysts say President Ernesto Zedillo's strategy of subjecting Mexico to cold-turkey economics is a race against time, a gamble that increased investments and exports will save the nation's producers before accumulated debt, high interest rates and higher taxes destroy them and precipitate social turmoil. (MEXICO, moved.)

Below fold:

Col 3: Behind the lines of war in central Bosnia, American doctors and nurses are teaching Bosnians how to run their country's first emergency room; but the learning runs both ways. (BOSNIA-AID, moved.)

Cols 5-6: San Diego and Tijuana, Mexico compose a tale of two cities which the border joins, as well as divides; together, they form the largest, wealthiest and best-educated metropolis of the entire 2,000-mile borderlands an economically dynamic, culturally fascinating region that has been called "El Tercer Pais," or The Third Nation. (MEXICO-BORDER, moved.)

Bottom of page:

Cols 1-2: Eighteen months into office, New York's first Republican mayor since 1966, Rudolph W. Giuliani, has managed some solid achievements but has also caught criticism for "hurting the little guy." (GIULIANI, will move Monday.)

Cols 4-6: Local art of landslides.

**Calif.'s Affirmative Action Decision Could Cost State Funds By Ronald J. Ostrow and Sonia Nazario= (c) 1995, Los Angeles Times=**

WASHINGTON White House Chief of Staff Leon E. Panetta said Sunday the federal government will review California's eligibility for federal funds in the wake of the University of California regents' decision last week, eliminating race as a factor in hiring and admissions.

Panetta branded the regents' decision "a terrible mistake"

which "is really going to set the state back."

It was unclear whether Panetta was referring to all federal resources, which could run well into the billions, or just those related to education, such as research grants to the University of California system.

Panetta, appearing on CBS's "Face the Nation," added: "Obviously, we're going to be reviewing our contract laws and the provision of resources to that state."

The possibility of federal funding cutoffs came as a surprise because on Friday, Justice Department officials were indicating they lacked authority to stop the regents' action, under the Supreme Court's decision last month on affirmative action.

California Gov. Pete Wilson, responding to Panetta's comments, said in a statement issued Sunday that Washington can't legally cut off funds. "Once again, the Clinton administration is abusing power and engaging in threats and intimidation," the 1996 GOP presidential contender said. "Their threats to withhold grants and contracts to force the regents to continue racial discrimination in contracting and admissions is an arrogant, gross abuse of power."

Calling Panetta's comments "pathetic," Wilson added: "We are not going to give in to White House extortion acting yet again through the most flagrantly politicized Justice Department in history." If the department moved to block the regents' action or cut off state contracts and grants, he said he would fight the move on two fronts in court and in the Congress.

And it is still unclear what the potential effect of the decision to bar race and gender considerations in school admissions, hiring and contracting might be. The board specifically exempted any changes that would lead to "a loss of federal or state funds for the university." A spokesman for Wilson said the governor doesn't consider the exemption an issue because he believes the regents' recent actions are squarely in keeping with recent Supreme Court decisions on affirmative action.

The University of California is the nation's first college system to formally abolish race-based preferences in student admissions. A study by university officials, commissioned by the regents, showed that such a move could reduce the number of black students in the nine-campus system by up to 50 percent.

Last week, President Clinton delivered an impassioned defense of affirmative action, instructing federal agencies to continue their policies but also pledging to end preferences or quotas for unqualified candidates.

(Optional add end)

Wilson and Jesse Jackson who last week compared Wilson to Alabama Gov. George Wallace, who barred the doors of the state university to blacks in the 1960s kept up their denunciations of each other's views in sharp exchanges throughout the day on various news programs.

"These threats are rather pathetic. They will certainly not sway me," Wilson said, appearing from Sacramento, Calif., on ABC's "This Week with David Brinkley."

Wilson, whose attack on affirmative action has attracted attention to his presidential bid, renewed his attack, saying affirmative action "is in fact racial preferences, racial discrimination. It is wrong, and it is unfair."

Jackson, who urged the regents to keep affirmative action, said on the same show that affirmative action had become "a scapegoat for economic downsizing that is putting people out of work."

Telecon Nancy McPadden Aug 28, 1955

Stew, Stew mode

Isabelle Pinster to call me.

Last time I looked - very little lead came  
in from agencies - They're not looking to find  
much.