

NLWJC - Kagan

Counsel - Box 016- Folder 006

Paula Jones Certiorari Petition [2]

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Elena Kagan to Jack Quinn et al; re: Jones Litigation (1 page)	05/29/1996	P5
002. memo	Elena Kagan to Jack Quinn et al; re: Jones Litigation (1 page)	05/29/1996	P5
003. memo	Elena Kagan to Jack Quinn et al; re: Jones Litigation (1 page)	05/29/1996	P5
004. draft	re: William Jefferson Clinton v. Paula Jones (15 pages)	05/23/1996	P5
005. memo	Elena Kagan to Jack Quinn; re: Jones Brief et al (1 page)	05/22/1996	P5
006. notes	re: Handwritten Notes - Meeting (1 page)	n.d.	P5, P6/b(6)
007. notes	re: Handwritten Notes - Draft Under Review (1 page)	n.d.	P5

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Clinton Presidential Records
 Counsel's office
 Elena Kagan
 OA/Box Number: 8285

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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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Politics and the Press

Every once in a while, a more or less ordinary citizen finds himself in a position to see first-hand the workings of our political system. I recently found myself in that position. It was enlightening.

I am one of several lawyers representing the President of the United States in the Supreme Court in the Paula Jones sexual harassment case. The President's argument in the case is that the litigation should be deferred until he leaves office in order to preserve the constitutional principle of separation of powers.

Although this question has never expressly been decided by the Supreme Court, the Court has indicated in related contexts that courts "traditionally have recognized the President's constitutional responsibilities and status as factors counseling judicial deference and restraint," and that "the diversion of" the President's "energies by concern with private lawsuits would raise unique risks to the effective functioning of government."

The Framers of our Constitution were acutely aware of these concerns. As Thomas Jefferson observed:

The leading principle of our Constitution is the independence of the Legislature, executive and judiciary of each other. . . . But would the executive be independent of the judiciary, if he were subject to the commands of the latter, & to imprisonment for disobedience; if the

several courts could bandy him from pillar to post, keep him constantly trudging from north to south & east to west, and withdraw him entirely from his constitutional duties?

Relying on this and similar expressions of concern, the Supreme Court has observed that "nothing in [the Framers'] debates suggests an expectation that the President would be subjected to the distraction of suits by disappointed private citizens."

The lower court judges in this case divided sharply on the question. Some rejected the President's position and concluded that the separation of powers concerns can be avoided by "judicial case management sensitive to the burdens of the presidency and the demands of the President's schedule"; others accepted the President's position and concluded that private civil suits against sitting Presidents should be deferred because they "create opportunities for the judiciary to intrude upon the Executive's authority, set the stage for potential constitutional confrontations between courts and a President, and permit the civil justice system to be used for partisan political purposes." The case is now pending before the Supreme Court of the United States.

This brings me to my point. One of the challenges to the President in this case is to demonstrate that the relief he seeks -- deferral of litigation to serve an important public purpose -- is no stranger to the law. To show this, the President's petition to the Supreme Court lists five examples of situations in which the law defers litigation in this manner. The examples come from bankruptcy law, administrative law, the intersection of civil and criminal

law, the law of immunity, and the Soldiers' and Sailors' Civil Relief Act of 1940 (which provides that civil claims against military personnel are to be deferred while they are on active duty). The discussion of these analogies covers two pages in a petition that is 21 pages in length. The reference to the Soldiers' and Sailors' Civil Relief Act consists of a single paragraph. The Act is cited, not because the President is seeking relief under the Act (he is not), but because the Act, like the other examples cited in the petition, demonstrates that relief of the sort the President seeks is not at all uncommon in the law.

It was therefore with more than a little surprise that I learned that Representative Robert Dornan had taken to the floor of Congress to attack the President for allegedly claiming that the litigation in this case should be deferred under the Soldiers' and Sailors' Relief Act. I was surprised, not because such a claim by the President would be implausible (he is, after all, the Commander in Chief), but because he hadn't made the claim at all. To the contrary, from the very beginning of this litigation the President has eschewed any protection he may be entitled to under the Act. His claim at every point has been that his right to defer this litigation is based, not on legislation that Congress could withdraw at will, but on the fundamental constitutional principle of separation of powers, a principle that has "deep roots in our traditions" and that the President has an obligation to preserve. Surely, the record would quickly be set right.

Wrong. Within hours of Dornan's speech the issue was the subject of extensive coverage on the network news, it was the topic of debate on Crossfire and similar programs, and it spread quickly to the news and editorial pages of newspapers across the nation. The press echoed

Representative Dornan's characterization of the matter, despite repeated efforts of the White House to state the facts, and despite the fact that the petition is a public document, readily available to the press, and thus easy to check either to verify or to refute Dornan's assertion. But this was a good story. Why let the facts get in the way?

The complex interaction of press and politics was made exquisitely evident when the Republican National Committee produced a television ad vilifying the President for allegedly invoking the protection of the Act. The ad states: "[The President is] trying to avoid a sexual harassment lawsuit claiming he is on active military duty. . . . Newspapers report that Mr. Clinton claims as Commander in Chief he is covered under the Soldiers' and Sailors' Relief Act of 1940. . . ." Note how the ad attributes the claim, not to the President's petition, but to what "newspapers report." Although the Republican National Committee probably had figured out the truth by the time it produced the ad, it could happily ignore the truth by citing the press.

I want to make clear that this is not an attack, in particular, on the Republicans. I have little doubt that this is a two-way street. It is, however, an attack on politics, politicians and the press. Rather than try to understand the truth, politicians leap to take advantage of any opportunity. Rather than try to clarify and to enlighten the public, the press serves itself. I suppose there are no surprises here. But the American people deserve better.

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The Washington Times

★ WEDNESDAY, MAY 29, 1996

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The verdicts in Little Rock

The White House seems to have been stunned by the 24 guilty verdicts out of 30 counts in the Little Rock Whitewater trial. How else to explain the Clinton spin machine's uncharacteristic and lengthy silence?

Of course the spin had been going strong well before the jury made its determination, to the usual effect that every question about the Clintons' shady Arkansas dealings was a political smear, that Whitewater independent counsel Kenneth Starr is nothing but a Republican hatchet man, and that the verdict would be inconsequential (if it was guilty, that is) because Mr. Clinton was not actually a defendant in the trial. Yesterday's verdicts dealt a serious blow not only to defendants James (18 of 19 counts) and Susan (four of four) McDougal and Arkansas Gov. Jim Guy Tucker (two out of seven) but also to Bill and Hillary Clinton — for a number of reasons.

For one thing, the guilty findings, after obviously serious and thorough deliberation by 12 ordinary Arkansas citizens of every political, economic and racial stripe, put paid once and for all to White House claims that Mr. Starr's investigation is a politically motivated witch hunt.

For another, the verdict makes it pretty clear that the jury believed David Hale's testimony — and the 700 pages of evidence — about fraudulent loans he made to the McDougals and Jim Guy Tucker. This

has particular weight in relation to the four counts against Susan McDougal: It was the illegal \$300,000 loan to her Master Marketing company that Hale accused Bill Clinton of pressuring him to make.

Besides which, the verdicts put some powerful wind in Mr. Starr's sails; and he is by no means finished following the slimy financial and political trail laid down by an Arkansas political elite that very much included the Clintons. In fact, Mr. Starr's next Whitewater-related foray into an Arkansas courtroom — for a trial of bankers who also threaten to call Mr. Clinton as a defense witness — is a mere three weeks away.

The guilty verdicts won't do any damage either to the ongoing investigation of the Senate Whitewater Committee, scheduled to close shop by the middle of June. And the clear evidence of bank fraud uncovered in the trial is giving new life to House Banking Committee investigations of Whitewater as well.

In sum, after dismissing the serious questions raised by their business, tax and political dealings as figments of the Republican imagination, and after trying to tar any and all questioners with a partisan brush, Bill and Hillary Clinton are faced with the plain and naked fact that their good friends and business partners, and one of their longtime political allies, have been found guilty of fraud and conspiracy. However you might try to spin that, it just doesn't look good for the first couple.

Clinton for quotas

Three decades after civil rights activists laid out their colorblind dream for society, it's been postponed again, perhaps indefinitely. The same week the Clinton administration vowed to tighten the use of race-based preferences for government contractors, it was quietly filing court papers to perpetuate the use of racial quotas with respect to college admissions.

The administration did not put the matter quite so baldly, of course. What Solicitor General Drew S. Days actually said Friday in a petition to the Supreme Court was that the University of Texas law school has "a compelling educational interest in maintaining a racially diverse student body [emphasis in original]." To put the matter in black and white, the administration asked the high court to overturn an appellate ruling which said explicitly that the institution "may not use race as a factor in law school admissions." How much longer people should be judged on their color rather than the content of their character, Mr. Days didn't say.

Interestingly, the Fifth Circuit Court of Appeals, which made the ruling on behalf of four white plaintiffs in *Hopwood vs. Texas*, had no quarrel with the idea of a diverse student population in general. Indeed, the appeals panel went so far as to say school officials might legally take into account certain socioeconomic factors, which may correlate with race, in their admissions decisions. They just couldn't factor in race itself.

In fact, the University of Texas law school, as noted in these pages recently, had gone to acrobatic lengths to maintain quotas. In March 1989, a school official named Mark Gergen put aside his "increasing misgivings" about race-based admissions policies and straightforwardly proposed "what is, in essence, a quota system. It is impossible to make meaningful distinctions between Black and [Mexican-American] applicants without some sort of quota as a reference."

As late as 1992, the school actually had separate admissions committees and separate scoring systems for preferred minorities — in this case blacks

and certain Hispanics. Just being black or Mexican-American was worth an extra 10 points to the racial bean counters. (On the scoring index, a non-minority who scored 199 or above was marked down as a "presumptive admission." Preferred minorities had only to score 189 to be so categorized.)

When rejected white applicants found they had, in effect, received poor grades on skin color, they sued. The law school dropped the segregated admissions committees, but it continued to weigh race as one factor in admissions. Today the administration wants to ensure that the school may still grade on a racial curve.

Why? What is the "compelling interest" to which Mr. Days referred? Better education, for one thing. Believe it or not, Clinton officials claim to be acting in the interests of non-minorities. "The predominantly white University of Texas School of Law may ... conclude today that, absent racial diversity in its classrooms, its students will not effectively be prepared to be lawyers in Texas's (or the Nation's) racially diverse society." The point here seems to be that white students can't get an education in law without the proper percentage of black faces in the classroom. But what about the percentage of Asians, women and left-handed jump shooters? Turning every classroom into a marvel of social engineering may seem like parody, but is grading someone on skin color any less ridiculous?

Another interesting administration argument is that the abolition of race-based remedies would be to "return the most prestigious institutions within state university systems to their former 'white' status, and thereby to prolong, rather than eliminate, the vestiges of unconstitutional exclusion and segregation."

The point of the Fifth Circuit decision seems to be that it is increasingly difficult to distinguish between the constitutional and unconstitutional kinds of exclusion and segregation. The white plaintiffs in this case couldn't do it. The question for the Clinton administration is how much longer they have to try.

Mr. Clinton retires from active duty

We may never know the exact reason President Clinton decided to amend his legal brief to the Supreme Court. It could have been all the excruciating publicity that tipped the scales. Or perhaps the Republican television ads ridiculing Commander in Chief Clinton's claim to being on active-duty military service did the trick. But there might be another explanation altogether — could there have been some nervousness about whether an active-duty Bill Clinton would be bound by the code of military conduct?

Lawyer-in-chief Bob Bennett asserts that the change in the brief wasn't really a change at all: According to Mr. Bennett, the president never did claim to be protected from civil suit under the Soldiers' and Sailors' Relief Act of 1940, and any impression to the contrary is simply the result of Republicans' "grotesque and disgraceful distortion" of the filing. Mr. Bennett's notion of what is disgraceful and grotesque is as fuzzy as his knowledge of what was in the brief he prepared for the president.

Maybe the Soldiers' and Sailors' section of the filing was drafted by a young associate at Mr. Bennett's firm, Skadden Arps. At least, that's one excuse for the political ineptitude of the claim. Mr. Bennett would be able to say, as Mr. Clinton himself has claimed through his spokesman, that he just never did read the darn thing — although if that is the line the legal heavyweight takes, there will be obvious questions about the quality of the work product that Mr. Clinton is getting for all those hundreds of dollars an hour. No wonder Mr. Bennett is in such a testy mood.

No, the claim to relief under the Soldiers' and Sailors' Act is not the crux of the president's legal defense. It was included as part of the lawyer's kitchen-sink strategy, a common enough tactic in

which lawyers routinely throw in every possible argument that could bolster their case, however absurd. A second-year law student with half an hour to spare in the law library would have figured out that there is no way the Soldiers' and Sailors' Act could ever provide the president with immunity from litigation. So why did some of the highest-priced attorneys in the country try to make such a ludicrous argument to the highest court in the land?

Why not? Normally, it doesn't hurt a defendant to grasp at every legal argument within reach. But the president has to worry about how his legal claims are judged outside, as well as inside, the courtroom. And it turns out that the active-duty claim was judged — well, how would Mr. Bennett put it? — grotesque and disgraceful.

Mr. Clinton likely imagines that Mr. Bennett's speedy refile has put the whole tawdry issue behind him. And no doubt Mr. Bennett's work will be more closely vetted in the future by political operatives. But the inescapable fact is that the president continues to attempt living above the laws that apply to every other person in the country. Whether Mr. Clinton argues for his special immunity on the grounds that he is a busy bee or on a claim that he's generalissimo, either way he asserts that the president is above the law. No number of focus group-approved adjustments to the president's legal filings will erase that fact. This assertion — that the president is more equal than the rest of us — will be Mr. Clinton's enduring shame.

■ CORRECTION: In Mark R. Levin's Op-Ed yesterday, "A brief Whitewater tour of the United States criminal code," the "Contempt of Congress" citation should have been 2 U.S.C. 192.

Clinton lawyer drops active-duty argument to avoid harassment trial By William Neikirk Chicago Tribune (KRT)

WASHINGTON President Clinton's lawyer on Tuesday abandoned a politically explosive argument that the president can't face a civil trial on sexual harassment charges while in office because he's on active military duty as commander in chief.

The original legal claim by attorney Robert Bennett in a U.S. Supreme Court appeal had turned into a political liability and become the subject of a Republican television commercial ridiculing Clinton, who avoided the Vietnam War draft as a youth.

Bennett had appeared to claim that as president, Clinton was immune from being tried while in office on grounds that he is covered by the Soldiers and Sailors Relief Act of 1940, which exempts active military personnel.

The legal brief played right into the hands of Republicans, who are making the president's character and credibility major campaign issues.

Controversy over Bennett's appeals brief in the sexual harassment suit unintentionally served to highlight three of the president's potential liabilities: It reminded voters of the draft-avoidance and womanizing controversies that plagued Clinton in the 1992 race and, insofar as the GOP is concerned, called into question his truthfulness in dealing with these and other issues.

In announcing that he had filed papers with the court asking them not to consider the active-duty argument, Bennett accused Republicans of engaging in a "grotesque and disgraceful distortion" of the truth in challenging the president's legal claim.

As he had when filing the brief last week, Bennett said he used the reference to the Soldiers and Sailors Relief Act as an example and did not intend to rely on it, though his original brief contained no reference to it as merely an example. Instead, it could easily be interpreted as one of several arguments made by Bennett in seeking reversal of an appeals court ruling that a trial could proceed while Clinton was in office.

The president is trying to avoid a trial in office on sexual harassment charges by Paula Jones, a former Arkansas state employee who alleges that Clinton propositioned her in a Little Rock hotel suite in 1991 while he was Arkansas governor. Clinton has denied the allegation.

White House spokesman Michael McCurry said "there has been a deliberate and calculated effort by the president's political opponents to misconstrue the brief."

McCurry said the White House counsel's office played a role in the decision to drop the legal argument, although he would not say whether the president or political officials pushed for jettisoning the claim.

"The president long ago, when the matter was in the lower court, had a general discussion of the nature of the claim that Mr. Bennett would make in the brief, but didn't review the cases or the statutes that would be specifically cited, to my knowledge," McCurry said.

Haley Barbour, chairman of the Republican National Committee, said Clinton was trying to hide behind his status as commander in chief in filing the brief.

But the GOP indicated that it may halt an ad campaign that focused on Jones' suit against the president, probably because the Dole campaign is short on money and can't afford them.

The commercial is a sarcastic rendering of Clinton's role as commander in chief, showing him in sunglasses with a saxophone. The narrator says of Clinton, "Isn't he something?"

Sen. Christopher Dodd, D-Conn., chairman of the Democratic National Committee, called the ad "garbage" in an appearance with Barbour on ABC's "Good Morning America."

Clinton's forces countered with a negative ad directed at Dole, saying the senator decided to quit his job in the Senate and leave legislative gridlock behind while launching negative attacks on the president.

McCurry said the president wasn't suggesting that Dole

was a quitter and stands behind his previous praise of the presumptive Republican nominee on his decision to leave the Senate.

But, McCurry said, "the president feels uncomfortable about the very harshly negative and personal attacks that Mr. Dole has launched against him."

He added that the White House hopes the president's commercial attacking Dole "will deter the kind of personal attacks that we saw last week ..."

Bob Dole blasts President Clinton's 'liberal philosophy' on crime By Thomas Hardy Chicago Tribune (KRT)

AURORA, Colo. Sen. Bob Dole lashed out Tuesday at the Clinton administration's "liberal philosophy" on crime, saying it has contributed to Americans' fear of crime, and he charged that Clinton has failed to live up to his promises to remedy the problem.

Dole, a Kansas Republican and presumptive GOP presidential nominee, reiterated previous criticism of Clinton appointees to the federal bench and his choice of federal prosecutors, and defended his attacks against White House complaints that he was trying to politicize the courts.

"The motion is denied," Dole said of the Democratic objections to his campaign rhetoric.

Dole also chided Clinton political strategist Dick Morris for moonlighting as a jury selection consultant in the defense case of an alleged rapist and former fugitive in Connecticut.

"The president's top political adviser is also helping an accused rapist beat the rap," said Dole, who is scheduled to bring his tough-on-crime campaign theme to Chicago on Thursday.

The crime issue traditionally has been a potent one for Republicans, but the Clinton White House has taken several steps championing community policing and endorsing capital punishment, for example to neutralize the GOP advantage.

The White House last week said Clinton had received a commitment from Morris that he would do no other work while advising the president.

"Bob Dole should worry more about explaining why he wanted to take cops off the street and put more guns on the street," Clinton campaign spokesman Joe Lockhart said, referring to Dole's vote against the 1994 crime bill.

Even before Dole spoke, the Clinton campaign sent reporters a news release saying the sheriff who introduced the Republican had written to Congress supporting a Clinton plan to put more police on the beat.

In his speech, Dole portrayed Clinton as soft on crime at a time when "many Americans believe our criminal justice system is failing."

"I believe one of the most important legacies any president can leave is who he appoints to the judiciary. They can touch American society for decades," Dole said. "Bill Clinton's record is already clear. It includes a startling number of appointees more faithful to liberal orthodoxy than to traditional notions of crime and punishment."

Dole's remarks, which included a jibe at Clinton for putting less than one-fifth of the 100,000 police officers he had promised on the street, came as he was flanked by police officers outside the police station in Aurora, a Denver suburb.

As president, Dole said, he would appoint conservatives to the federal bench and ranking law enforcement posts; prosecute juveniles who commit violent federal crimes as adults; require drug testing for federal prisoners; enact laws with a GOP-led Congress to speed up death penalty appeals and make sure that evidence obtained in good-faith police work is not ruled inadmissible; push for a victims' rights amendment to the Constitution; and require that those committed of sex offenses be tested for HIV.

The trip to Colorado was Dole's first since wrapping up the GOP nomination and signaled the political importance

of the Rocky Mountain region, a traditional Republican stronghold. Clinton carried Colorado by a narrow margin in 1992.

From Colorado, Dole traveled to southern California for a fundraiser and rally.

Dole had been scheduled to spend two days campaigning in California, but cut it back to make a two-day swing through Illinois and Ohio Thursday and Friday.

U.S. Supreme Court to Rule on Currency Trading By John Schmeltzer, Chicago Tribune Knight-Ridder/Tribune Business News

CHICAGO--May 29--For more than 50 years the U.S. Federal Reserve System, the German Bundesbank and other world banks have used the currency markets unencumbered. The world's businesses now attempt to offset currency fluctuations by trading currency contracts.

Although options and contracts worth billions of dollars are traded on a daily basis, this market is operated essentially without regulation.

On Tuesday, the U.S. Supreme Court agreed to decide whether that should continue.

For the Chicago Mercantile Exchange and its members, millions of dollars in potential commissions are at stake. For bankers and multinational corporations, the stakes are even higher.

"This conflict is for the Supreme Court, not us, to decide," wrote the 2nd Circuit Court of Appeals last year in urging the nation's highest court to sort out conflicting rulings by the 2nd Circuit and the 4th Circuit Court of Appeals.

The 2nd Circuit had ruled that the U.S. Commodity Futures Trading Commission should regulate currency instruments trading. But the 4th Circuit had ruled that currency instrument trading was exempt from the law that gave the CFTC authority to regulate other types of commodities, such as grain.

Currency options give a purchaser the right to buy foreign money at a specific exchange rate on a future date. They are used by banks and businesses to safeguard against foreign exchange fluctuations. It was the tool used in 1994 by the Federal Reserve when it stepped in to support the Mexican peso.

"The Merc has long had the view that currency futures and currency options that are sold and marketed to retail customers ought to be regulated by the CFTC," said Carl Royal, senior vice president and special counsel of the exchange. "There is a distinct possibility that we will attempt to intervene."

For Merc members, it's simply a case of leveling the playing field.

"The contracts are virtually identical to contracts at the Merc, except they are traded by dealers over the telephone," said Royal. Because telephone traders don't have to pay commissions, the costs of trading are lower than if the same options or contracts were traded on the Merc.

However, five of the nation's largest industry associations argued Tuesday that CFTC intervention in the markets is unnecessary.

Uncertainty about the enforceability of option contracts "could drive the United States portion of these activities overseas," they said in a brief filed with the court.

About \$40 billion in currency options are traded each day, about half of them on over-the-counter markets.

The CFTC regulates some foreign-currency options sold on the Merc and other commodity exchanges. Those options involve pre-set amounts of money and expiration dates.

On the over-the-counter market, however, the world's biggest banks and finance companies negotiate the sale or purchase of options for any amount of money and in any time frame.

The dispute that landed in the Supreme Court Tuesday began two years ago, when the CFTC filed a complaint against William C. Dunn and New Jersey-based Delta Consultants Inc., charging that they had defrauded investors in foreign-exchange options. The CFTC alleged

that Dunn and Delta ran a "Ponzi scheme," using money from new investors to pay earlier customers. More than \$180 million in customers' funds apparently disappeared, government officials said in court papers.

Dunn and Delta said the CFTC didn't have jurisdiction over the options they offered, which were sold on over-the-counter markets.

Now it's up to the court to decide.

President Clinton orders victims of Agent Orange to receive extra benefits By Robert A. Rankin and Michael E. Ruane Knight-Ridder Newspapers(KRT)

WASHINGTON President Clinton, broadening protections for victims of Agent Orange, ordered Tuesday that disability benefits be given to Vietnam veterans who suffer from prostate cancer or a rare nerve disease.

Clinton also announced that he will ask Congress to grant disability benefits to Vietnam veterans' children who suffer from spina bifida, a congenital birth defect. If approved, that would be the first time veterans' children are entitled to benefits for combat-related health problems.

Agent Orange was a deadly herbicide made with dioxin that U.S. forces sprayed between January, 1965 and April, 1970 to strip away dense jungle foliage, the better to see the enemy. Many U.S. veterans later blamed exposure to it for many diseases, but scientific studies were long unable to prove definitely that it caused their ailments.

After years of growing political clamor, in 1991 Congress passed a law ordering the Veterans Affairs Department to give Vietnam veterans the benefit of the doubt when science was inconclusive as to whether Agent Orange caused their maladies.

"For years the government did not listen," President Clinton said Tuesday. "Today, we are showing that America can listen and act."

The National Academy of Sciences released a study in March showing that prostate cancer and the nerve disease peripheral neuropathy "may" be linked to Agent Orange, triggering a VA review that led to Tuesday's announcement.

VA Secretary Jesse Brown conceded that evidence proving Agent Orange caused the two diseases "is evenly divided. But we in the VA have resolved all reasonable doubt in favor of the veterans and their families...."

Veterans need not prove they were exposed directly to Agent Orange; service anywhere in Vietnam is presumed as sufficient exposure and will qualify veterans for benefits, Brown said.

Prostate cancer and the nerve disease will be added to seven other diseases previously declared eligible for disability benefits owing to Agent Orange exposure. The seven are: chloracne, Hodgkin's disease, multiple myeloma, non-Hodgkin's lymphoma, porphyria cutanea tarda, respiratory cancers (of the lung, bronchus, larynx and trachea), and soft-tissue sarcoma.

The VA estimates the five-year cost to taxpayers of adding the two new diseases to the eligibility list at around \$350 million. Brown acknowledged that cost estimate is soft because "we built in some assumptions that we have no idea whether or not they're true."

VA officials estimate that perhaps 3,000 children with spina bifida may qualify. They guess that only about 1,500 veterans with prostate cancer will make claims in the next several years because 72 is the average age for diagnosis, and few Vietnam vets are that old yet. They expect very few to cite the nerve disease, because it shows up within one year of exposure.

Any time Clinton mentions Vietnam, it carries political overtones because he avoided service there. Politically, it serves Clinton's interests to side with veterans on benefits issues because that takes the focus away from his lack of military service.

At Tuesday's announcement, retired Adm. Elmo Zumwalt Jr. hailed Clinton for more than 10 years of "constancy" in helping to press the Agent Orange issue forward. Zumwalt, the former chief of naval operations, is a

1940 law provides limited protection

Not all on active duty safe from suits

By Frank J. Murray
THE WASHINGTON TIMES

Even if President Clinton were serving on active duty in military uniform, he would not be entitled to automatic postponement of Paula Corbin Jones' civil sexual-misconduct charges.

The Soldiers' and Sailors' Civil Relief Act of 1940, which his lawyers cited in a May 15 appeal asking the Supreme Court to delay the trial, doesn't confer that privilege unless the defendant is "materially affected" by active-duty service.

"That means a soldier at Fort Bragg probably could not duck a civil lawsuit foreclosing on his house or car, but a guy getting shot at in Bosnia would not lose any rights because he didn't file an answer or show up in court," said a military-law expert who asked not to be named.

The legal source said the law is little-known except in civil courts near military bases and that the flap over Mr. Clinton's effort to employ it could benefit soldiers and sailors by publicizing it.

Although the Supreme Court's inner workings rarely are disclosed, under normal procedure the appeal papers would be distributed today to justices preparing for a conference scheduled for June 14. A reply brief Mr. Clinton filed yesterday would be included, although it came in one day beyond the period allowed for automatic consideration.

Orders from the June 14 conference would normally be announced June 17. A conference one week later is the last sched-

uled for this term.

Unless one justice asks that the case be discussed, the president's appeal will be automatically denied, opening the way for Mrs. Jones' attorneys to begin taking evidence this summer.

If the case is discussed and four justices vote to hear it, it will be placed on the docket for the fall term and probably be heard in December.

Yesterday's reply brief by Mr. Clinton, who avoided military service during Vietnam, said he neither relies on nor claims relief under the law that protects military servicemen from civil actions taken while they are on duty.

On May 15, he ignited a political storm by citing the law's provision to delay legal proceedings. The brief filed that day said, "President Clinton here thus seeks relief similar to that to which he may be entitled as commander-in-chief of the armed forces, and which is routinely available to service members under his command."

Yesterday, in a reply to other arguments raised by Mrs. Jones' attorneys, Mr. Clinton's brief included a footnote: "The president does not rely on, or claim any relief under, the Soldiers' and Sailors' Civil Relief Act of 1940 or any other legislation."

The 1940 law was last upheld March 31, 1993, on the plea of Thomas F. Conroy, an Army officer whose land was seized and sold for nonpayment of taxes in Danforth, Maine. The court made it easier for the officer to recover his land and said the law applied to all members of the armed forces.

Hillary: No diary because it 'could get subpoenaed'

REUTERS NEWS AGENCY

First lady Hillary Rodham Clinton said yesterday she is afraid to keep a diary because it might be subpoenaed.

Asked in an interview on PBS' "The NewsHour With Jim Lehrer" if she kept a diary, she said, "Heavens, no! It could get subpoenaed. I can't write anything."

"It's not a question of hesitation," Mrs. Clinton said. "It's a question of realism."

She said her diary comments would be used to "go after and persecute every friend of mine, everybody I've ever talked with, everyone I've had a conversation with. . . . It's very sad."

Mrs. Clinton said she planned to write another book following up on her best-selling "It Takes a Village."

Tucker felt heat waiting for jury

Governor, who quit, may have left career in courtroom

By Hugh Aynesworth
THE WASHINGTON TIMES

LITTLE ROCK, Ark. — Gov. Jim Guy Tucker might have sensed he was headed for disaster moments before the Whitewater jury effectively ended his political career yesterday.

As they had for more than 12 weeks, Tucker and his wife, Betty, smiled and shook hands with a couple of dozen well-wishers as a packed courtroom awaited the march of the jurors into the sweltering arena.

The heat index was 102 degrees Fahrenheit outside, and it wasn't much cooler inside as marshals packed reporters and onlookers into the courtroom.

Tucker, surrounded by his three attorneys, who among them are said to bill about \$800 an hour, was pensive, visibly nervous.

A minute before the jury entered, Mrs. Tucker walked up to the defense table, her eyes beseeching, her hands slightly shaking. Tucker kissed her lightly on the cheek.

Then the jurors marched in, not a single one of them glancing toward the governor. Once seated, foreman Sandra Wood sneaked a furtive peek at Tucker.

As they passed within 3 feet of Tucker — an entry point where they usually smiled perfunctorily at Tucker and fellow defendant James B. McDougal — each juror

seemed to walk faster.

It was not lost on Tucker. At that point he seemed to have only two hopes left: slim and none.

McDougal's convictions on 18 of 19 felony charges brought an audible gasp from two spectators and a tightening in Tucker's jaw. He held his hands as if in prayer, but it went unanswered. He was convicted on two of seven counts.

Tucker left the building without saying anything and later resigned as governor. He said he needed to resign so he could work on his appeals. "The people of the state should not be put through that," Tucker said.

He will be succeeded by Republican Lt. Gov. Mike Huckabee, who is also the GOP candidate for Senate.

Defense attorney W.H. "Buddy" Sutton, asked if he and the governor's other attorneys erred in not allowing Tucker to testify, said:

"Well, there's no way to ever know that. That's something that — We crossed that bridge, and there's no way to go back and re-cross it — and there's not anything to be gained by talking about 'what if.'"

McDougal's ex-wife and fellow defendant, Susan, who was convicted on four counts, left the courtroom with a big smile but declined to answer questions. One of her attorneys said she respects the system.

The McDougal's were partners

with the Clintons in the failed Whitewater real estate venture.

Outside the courtroom, McDougal, ever the optimist, was asked how he felt.

"Right now?" he replied. "Well I feel glad to be out of the courtroom. Nothing could be more excruciating than that. I suppose I'll just take what the Lord sends my way and continue from here."

He said he was to have an angiogram in the near future and "I anticipate heart surgery ... and we'll have to see how successful that is."

"I said from the start [that] whatever this jury and this judge did I would consider fair," he said. "I accept that, and I assume that we will simply take up the next stage of the fight."

Outside the courtroom, W. Ray Jahn, who led the prosecution, declined to directly address reporters' questions about the impact of the verdict on President Clinton.

"That's for the pundits to decide," he said.

One juror, Risa Briggs, 41, said, "President Clinton is a very credible witness, but his testimony didn't really relate to the transactions we were dealing with." Asked if she had seen reason for any further investigation of the president, she said, "No, I don't think there is enough evidence."

• This article is based in part on wire service reports.

Tucker ends 25 years in Arkansas politics

By James Jefferson
ASSOCIATED PRESS

LITTLE ROCK, Ark. — Gov. Jim Guy Tucker, a Harvard graduate and former Marine who went on to become a congressman and then a millionaire cable-TV operator, always seemed to relish nothing more than a challenge. In the Whitewater trial, he may have faced one too many.

Yesterday, Tucker, the first sitting governor of Arkansas to face criminal charges, resigned just hours after being convicted of fraud and conspiracy. He could get up to 10 years in prison and a \$500,000 fine when sentenced.

Tucker, 52, insisted again that he is innocent and said he will leave office by July 15 to work on his appeals.

"The people of the state should not be put through that," he said.

Republican Lt. Gov. Mike Huckabee is also the GOP nominee for the Senate seat held by the retiring Sen. David Pryor.

When indicted last year, Tucker proclaimed his innocence and swore he would not resign.

Tucker earned an undergraduate degree from Harvard in 1964, and then enlisted in the Marines. However, he suffers from chronic gastrointestinal disease and was discharged for health reasons after three months, despite two appeals to remain on active duty.

In 1965, he went to Vietnam as a war correspondent, and went back for a second tour of duty in 1967.

At 27, after earning a law degree from the University of Arkansas, Tucker was elected prosecutor for the district that includes Little Rock. In 1972, he ran for state attorney general, a job he held for two terms.

In 1975, he married Betty Allen, ex-wife of professional football's Hall of Famer Lance Alworth. Tucker then served two years in Congress before losing a bid for the Democratic U.S. Senate nomination in 1978.

In 1982, he sought the Democratic gubernatorial nomination, but finished third in a five-man primary won by Bill Clinton, who went on to become governor. Tucker then left politics and made millions in cable television.

He returned to politics in 1990, announcing a run for governor. Mr. Clinton, who had been voted out, also opted to run again, prompting Tucker to try instead for lieutenant governor. He won.

Tucker became governor in 1992 when Mr. Clinton resigned to become president. Tucker was elected to a four-year term in 1994 with 60 percent of the vote.



Mike Huckabee

In June 1995, Tucker was indicted on three felony fraud and tax-evasion counts stemming from the Whitewater investigation. The charges were dismissed and then reinstated by a federal appeals court. Trial in that case is pending.

Two months later, Tucker was charged in a separate Whitewater case — this time, with the Clintons' former Whitewater business partners, Jim and Susan McDougal — with 11 fraud and conspiracy violations. Four of those counts were dismissed during the trial, which began March 4.

Tucker was convicted of fraud and conspiracy for his part in a deal involving the purchase of a water-and-sewer utility owned by a subsidiary of Madison Guaranty Savings and Loan, which was owned by the McDougal's.

He is the fourth governor to resign or be removed from office.

The other three were:

• Guy Hunt of Alabama, who was convicted and forced from office in April 1993 for looting his 1987 campaign fund and pocketing the money. He was ordered to pay \$211,000 and perform 1,000 hours of community service.

• Evan Mecham of Arizona, who was indicted in 1988 on fraud and perjury charges for purportedly hiding a campaign loan. A jury acquitted him, but only after he was removed in an impeachment conviction by the state Senate on other grounds.

• William L. Langer of North Dakota, who was removed from office in 1934 by the state Supreme Court after being convicted of obstructing the work of the Federal Emergency Relief Administration and soliciting money from federal employees for personal political purposes.

Appeals may be launched from prison

THE WASHINGTON TIMES

While Arkansas Gov. Jim Guy Tucker and James and Susan McDougal plan to appeal the felony fraud and conspiracy convictions that could land them behind bars for years, they may not be allowed to remain free as they do so.

The defendants will likely be sentenced in 30 to 45 days, when the judge will decide whether they will be allowed to remain out on bond or rescind them and send the defendants immediately to jail.

Attorneys for the McDougal's said they will appeal the verdicts, but they want to see the outcome of several pending motions, including one aimed at a 10-year delay in prosecuting the case.

Tucker, who resigned hours after the verdict, said he did so in order to work on his appeals. "Although I am innocent of all charges, I cannot and should not let the people of Arkansas bear the burden of my appeal," Tucker told reporters.

James McDougal could receive up to 86 years in prison and \$4.7 million in fines, Tucker 10 years and \$500,000 in fines, and Susan McDougal 17 years and \$1 million in fines.

Clinton gives up claim to military privileges

Commander in chief changes tack

By Paul Bedard
THE WASHINGTON TIMES

A1

CLINTON

From page A1

President Clinton's attorney yesterday scuttled his argument that the commander in chief deserves special military privileges to delay a sexual-misconduct suit.

In a new Supreme Court filing evidently trying to quell criticism from veterans, Robert S. Bennett said the president does not seek relief under the Soldiers and Sailors Relief Act of 1940, which helps active-duty personnel postpone civil suits such as divorces until leaving the military.

"The president does not rely on,

or claim any relief under, the Soldiers and Sailors Civil Relief Act," Mr. Bennett said in a footnote of a brief filed with the court.

Just 13 days ago, he said the president "seeks relief similar to that to which he may be entitled as commander in chief of the armed forces, and which is routinely available to service members under his command."

The apparent reversal came as several veterans groups, including one made up of Medal of Honor winners, demanded that the president withdraw the argument.

see CLINTON, page A10

They said they were angry that Mr. Clinton would use the law to postpone the sexual-misconduct suit considering his record of avoiding the draft in 1969.

The change in the argument, made in consultation with White House lawyers, also was aimed at offsetting ridicule of the president in a Republican TV campaign ad and on the Internet.

The ad, which began airing on Memorial Day, showed the president golfing and biking as an announcer said: "Bill Clinton — he's really something. He's now trying to avoid a sexual-harassment lawsuit claiming he is on active military service."

Mr. Bennett said he was fine-tuning his earlier brief in which he argued that the case violates the constitutional separation-of-powers clause.

"I don't think we've backed down," Mr. Bennett said. In any event, he added, the White House never exclusively relied on the act to delay the suit.

Mr. Bennett stressed that the president has for 21 months made the analogy that the commander in chief is eligible for special privileges like those for a serviceman who could use the Soldiers and Sailors Civil Relief Act to fight a suit like the sexual-harassment case facing the president.

"Our point, and emphasize the words 'similar to,' is the responsibilities of the president of the United States are far broader and are far more important to the American people than the actions of one staff sergeant," Mr. Bennett said.

But attorneys for Paula Corbin Jones — the former Arkansas state employee who has charged that then-Gov. Clinton exposed himself to her and asked her to perform a sex act on May 8, 1981, in a Little Rock hotel room — said the president has reversed course under pressure. She is seeking \$700,000 in damages.

"It's a clear flip-flop done because they felt they needed to quell the political fury," said Mrs. Jones' attorney, Gilbert K. Davis.

"The bottom line is that he's giving up the argument," added Mr. Davis' colleague Joseph Cammarata.

Republican National Committee Chairman Haley Barbour added, "Let me get this straight: Clinton never relied on the Soldiers and Sailors Civil Relief Act to postpone the sexual-harassment suit, and to prove it, he is amending the brief to take out the part that he never relied on in the

The Washington Times

★ WEDNESDAY, MAY 29, 1996

first place. That's vintage Bill Clinton."

White House officials, who were confronted yesterday by the convictions in the Little Rock White-water trial in which the president had testified, said Mrs. Jones' suit and the criticism of the Clinton legal argument by veterans groups and the GOP were politically motivated.

"This lawsuit, I think, is just a political attack that's designed to embarrass the president," said Jesse Brown, secretary of veterans affairs.

"There's been a deliberate and calculated effort by the president's political opponents to misconstrue the brief," said White House Press Secretary Michael McCurry.

The White House has complained that the GOP TV ad, funded by the Republican National Committee, wrongly says that the president is claiming to be on "active duty."

Asked if Mr. Bennett made a mistake with the filing earlier this month, Mr. McCurry said, "No comment on Mr. Bennett's work."

A senior GOP aide said that is the "obvious conclusion of the president's legal argument" because the law is only for service members on active duty.

Mr. Barbour also credited five Medal of Honor winners for criticizing the president's legal maneuvering in newspaper ads on Memorial Day.

Clinton adds veteran benefits for exposure to Agent Orange

Offspring eligible for birth defects linked to herbicide

ASSOCIATED PRESS

President Clinton yesterday expanded medical benefits for Vietnam War veterans exposed to Agent Orange and promised to ask Congress to cover their children suffering from crippling birth defects.

Mr. Clinton, who is trying to repair his tattered reputation with the nation's veterans, said his goal was to "ease the suffering our nation unintentionally caused its own sons and daughters" by use of the herbicide during the Vietnam War.

He directed that prostate cancer and peripheral neuropathy, a nerve disease, be added to a list of conditions linked to Agent Orange and covered by the Department of Veterans Affairs.

And he said he would ask Congress to approve benefits for exposed veterans' children who suffer from spina bifida, a crippling birth defect. It would be the first time offspring have qualified for veterans' benefits linked to the herbicide.

"For years the government did not listen. With steps taken since

1993, and the important step we are taking today, we are showing that America can listen and act," Mr. Clinton said.

In recent weeks, Mr. Clinton has repeatedly cast himself as a friend to veterans and those on active military duty, posing with graduates of the Coast Guard Academy, touring the USS Intrepid naval museum and comforting sailors after the suicide of Adm. Jeremy M. Boorda, chief of naval operations.

The president wants to make his case to veterans of both major parties, as well as counter Republican critics who routinely assail him for not serving in the Vietnam War. In this election year, the GOP contrasts Mr. Clinton's non-service against the World War II record of Sen. Bob Dole, the presumptive Republican presidential nominee.

The president has been dogged by such criticism since 1992. The issue was stirred again last week when Mr. Clinton's lawyer suggested that the president's position as commander in chief of the armed forces might be one reason

for postponing a sexual-harassment lawsuit.

Republicans circulated a letter calling the legal argument "a slap in the face" to those serving on active duty. The American Legion and other groups of veterans also criticized Mr. Clinton for the idea of using his commander-in-chief status as a delaying tactic. Mr. Clinton's lawyer filed a new petition with the Supreme Court yesterday stating that no such claim was being made.

Veterans Affairs Secretary Jesse Brown, who served in Vietnam, praised Mr. Clinton's record on veterans' issues, saying the president "has done more for veterans than any president since Franklin Roosevelt signed the GI Bill."

He said Mr. Clinton told him at the start of the administration that he wanted to raise the focus on veterans' concerns "because it's going to be tough times." Critics of his commander-in-chief defense, Mr. Brown said, are staging "a political attack that's designed to embarrass the president."

ent, darkened by Tuesday's verdicts but still
to the outcome of continuing investigations into
duct in Arkansas and after reaching the White

While the White House insisted that the judgment in
the Rock is not a verdict on the president's actions,
the character or his credibility, it certainly gives
momentum to a variety of Clinton inquiries still under
way.

Independent counsel Kenneth W. Starr will attack the
remaining parts of his multifaceted investigation with
renewed vigor and confidence.

Starr, speaking to reporters outside his Washington
office, called the outcome a "vindication" of the
nation's much-criticized system of justice.

Now, "we move forward," Starr said. "The Washington
phase of our investigation is very active."

Starr declined to describe the elements of that
investigation, saying: "We are doing our talking in
court."

But based on appearances of witnesses before a federal
grand jury and on House and Senate investigations of
related matters, the most active aspects include whether
former White House aide David Watkins lied to cover up
Hillary Clinton's role in the firings of White House travel
office employees and whether others engaged in obstruction
of justice or perjury in the matter.

In addition, a defense attorney source who declined to
be identified said that investigators are still actively
pursuing the sudden appearance in the White House of the
first lady's Rose Law Firm billing records on her work for
the savings and loan run by Clinton friend James B.
McDougal, who was convicted of multiple fraud counts in
Little Rock Tuesday. Republicans say the two-year delay in
production of the records suggests that someone in the
White House wanted to conceal them.

(Begin optional trim)

Prosecutors have identified no one, at least publicly,
as a target of that investigation.

Moreover, Starr is still looking into the suicide of
former White House aide Vincent W. Foster Jr., a close
personal friend of both Clintons, and the hurried
disposition of Whitewater-related records in his White
House office.

And a number of former Clinton business associates in
Arkansas face scrutiny for dealings that reach much closer
to the president than the trial just concluded, including
a case involving two bankers accused of funneling illegal
contributions to Clinton's 1990 gubernatorial campaign.

Decisive verdicts such as those rendered Tuesday also
tend to embolden previously reluctant witnesses to come
forward, experienced prosecutors noted.

(End optional trim)

In addition to Starr's inquiries, congressional
investigations into the Clintons' activities in Washington
and Arkansas will be treated with new seriousness.

Rep. Jim Leach, R-Iowa, whose House Banking and
Financial Services Committee spent months investigating
the tangled Whitewater matter, said the verdicts hurt the
president because they reflect on the ethical climate that
prevailed in the Clintons' business dealings in Arkansas.

"In terms of the ethical aspects of the entire
Whitewater affair, it's going to very serious for him,"
Leach said.

John D. Podesta, former Clinton White House staff
secretary who now teaches a course in the politics of
scandal at Georgetown University law school, said that the
verdicts give life to a series of inquiries that appeared
to be expiring.

"It puts breath on the mirror and a pulse in the body
but ultimately things haven't changed that much. No one
has found the president or first lady has done anything
wrong. This decision won't substantially affect his
political fortunes but we'll have an earache for a day or
two as the pundits hash this out," said Podesta, a firm

believer in the president's innocence.

(Begin optional trim)

Clearly, Tuesday's verdicts mark the beginning of the
legal phase of the Whitewater controversy, not its end.

Starr recently hired two veteran white-collar criminal
prosecutors to handle the Washington aspects of the
investigation, indicating that the inquiry will continue
through the fall presidential campaign and almost
certainly beyond.

The new senior counsel for the inquiry is Roger M.
Adelman, who prosecuted attempted Ronald Reagan assassin
John Hinckley and won the conviction of former Rep.
Richard Kelly, R-Fla., in the Abscam political corruption
investigation.

The second seasoned prosecutor to join Starr's
Washington team in April was Eric A. Dubelier, who is
experienced in white-collar and transnational criminal
investigations.

(End optional trim)

In Congress, the Senate Whitewater panel of Sen.
Alfonse M. D'Amato, R-N.Y., will conclude its work next
month and issue its final report.

The summary of its findings is likely to attack the
credibility of the White House and particularly that of
Hillary Clinton, committee sources said. But its hearings
so far have failed to establish any solid potential
criminal charges, such as perjury or obstruction of justice
that could be referred to U.S. prosecutors with any
expectation of an indictment.

Republicans repeatedly have accused White House aides
of concealing documents that have been subpoenaed, or at
least slowing down their production to the committee, in
an effort to thwart the Senate investigation.

Signaling what is likely to be in his final report,
D'Amato charged recently that White House officials
engaged in "a continuing pattern, an unacceptable
pattern, that borders on the deliberate withholding of
information."

(Optional add end)

D'Amato's final report is expected to focus its
heaviest fire on the tardy production last January of
Hillary Clinton's Rose Law Firm billing records. The
committee wanted to examine the files to determine the
accuracy of her claim that she had spent little time
working for Madison Guaranty Savings & Loan, the now
defunct institution that is at the heart of the Whitewater
controversy.

Some Republicans on the panel claim that the mysterious
appearance of the records two years after they were
subpoenaed constitutes evidence of obstruction of justice.
But the evidence so far is circumstantial; the records
were found in the residential quarters of the White House
in an area frequented by Hillary Clinton as well as dozens
of aides and house guests.

Joe Lockhart, chief spokesman for the Clinton
re-election committee, had little to say about the
verdicts. "We're just going to keep talking about the
issues the American people want us to address, just as we
did yesterday and just as we will tomorrow," he said.

Republican National Committee Chairman Haley Barbour,
showing unaccustomed restraint on matters political, said
only: "The verdict speaks for itself."

Clinton Broadens Benefits for Vets Exposed to Agent Orange (Washn) By Paul Richter= (c) 1996, Los Angeles Times=

WASHINGTON President Clinton on Tuesday broadened the federal benefits for veterans exposed to Agent Orange, ordering the government to provide disability payments and health care for Vietnam veterans with prostate cancer or the nervous affliction called peripheral neuropathy.

Clinton added the two disorders after reviewing research from the National Academy of Sciences, which recommended adding them to the seven ailments tied to the deadly herbicide for which veterans are already eligible for aid.

He also said the administration would propose legislation to give benefits to children of veterans suffering from spina bifida, a spinal cord disorder connected to the defoliant. Veterans' advocates said such payments, if approved by Congress, would mark the first time veterans' family members have gotten benefits for an affliction suffered by GIs. They said they were optimistic that the government would follow up the move by extending benefits to family members suffering other disorders.

"Nothing we can do will ever fully repay the Vietnam veterans for all they gave and all they lost, particularly those who have been damaged by Agent Orange," Clinton said. "But we must never stop trying."

(Begin optional trim)

The announcement comes at a time when Clinton would benefit from improving relations with veterans. In recent days, he came under attack from some veterans after his lawyer argued that Clinton as commander in chief of the armed forces should be shielded from a sexual harassment suit by a 1940 law that exempts military personnel from damage suits during their service.

Aides said the timing of the announcement was coincidental. But Department of Veterans' Affairs officials acknowledged that Clinton did not make a personal appearance the last time the administration added illnesses related to Agent Orange to its eligibility list.

(End optional trim)

The defoliant was used in huge quantities during the Vietnam war to clear away the dense jungle undergrowth where the Viet Cong and North Vietnamese soldiers were hiding. Its use was discontinued in 1971.

The Veterans of Foreign Wars said in a statement that it was delighted at the prospect of broader benefits for Agent Orange sufferers. A spokesman for the American Legion hailed the announcement as a highly important expansion of benefits, because of the large number of prostate cancer sufferers, and the prospect that Congress would agree to cover veterans' family members for the first time.

"That could change the whole way benefits are offered," the spokesman said. He predicted that members of Congress would have a hard time turning down an administration legislative proposal aimed at helping disabled children.

The benefits will be offered to any veteran who served in Vietnam or in the surrounding waters.

(Optional add end)

Department of Veterans Affairs officials estimated the first-year costs of the broadened benefits may be about \$65 million, and the five year costs to be \$350 million. That's out of a total VA health care budget of \$13 billion.

Eligibility will give veterans disability payments that range from \$91 a month for a 10 percent disability, to \$1,870 a month for a 100 percent disability.

The government's expenses are likely to be highest for prostate cancer, a disease that is striking American men with increasing frequency.

The department estimates that 1,200 prostate cancer sufferers will apply for treatment in the first five years. But those numbers are likely to rise sharply as Vietnam vets, who are now mostly in their late 40s and early 50s, get older.

By some estimates, one in five American men will contract the disease over the course of their lives.

Clinton Will Not Claim Military Status in Harassment Suit (Washn) By Robert L. Jackson = (c) 1996, Los Angeles Times=

WASHINGTON Confronted with a political furor, the White House said Tuesday that President Clinton will not claim that his status as commander in chief of the armed forces entitles him to stave off a sexual harassment lawsuit.

Robert S. Bennett, the president's lawyer, said a new brief he was filing in the U.S. Supreme Court will clarify that his recent argument in the Paula Corbin Jones sexual harassment case was not based on the 1940 Soldiers' and Sailors' Civil Relief Act. That act frees active-duty service personnel from responding immediately to damage suits against them.

House Republicans and a coalition of Vietnam War veterans had harshly criticized Clinton last week after his initial legal brief seemed to claim that his active-duty military status entitles him to put off Jones' lawsuit.

White House press secretary Mike McCurry said Clinton did not read the original brief before it was filed. Clinton had only "a general discussion" of the first brief but left specific references to his attorneys, McCurry told reporters.

"There's been a deliberate and calculated effort by the president's political opponents to misconstrue the brief," he said. The president did not ask Bennett to file a new brief, McCurry said.

Jones, a former Arkansas state employee, alleges in her lawsuit that Clinton crudely propositioned her in a Little Rock hotel suite in 1991 when he was governor. Clinton has denied the incident.

Bennett said that to support his claim that a president cannot be forced to answer to a civil suit while he is in office, the new filing would clarify that Clinton was relying on the Constitution only not the military relief act. The separation of powers doctrine in the Constitution protects the chief executive from having to answer to such a suit in the judicial branch, according to the brief.

Bennett said the mention of the Soldiers' and Sailors' Act in the original brief was only by way of comparison. The brief said Clinton "seeks relief similar to that which he may be entitled to as commander in chief of the armed forces and which is routinely available to service members under his command."

Last week 160 GOP House members wrote Clinton to demand that he retract "the ignoble suggestion" that he is a member of the armed forces.

Veterans leaders, in view of Clinton's avoidance of the draft during the Vietnam War, also called the legal reference to military relief an outrage.

(Optional add end)

Bennett, appearing Tuesday on ABC's "Good Morning America," labeled the criticism "a grotesque and a disgraceful distortion" of the truth. He said later in an interview that "the basis of our filing was not the Soldiers' and Sailors' Relief Act. We only mentioned that as a similar provision in the law."

Bennett said that because he had to file another brief in the case to reply to one filed on behalf of Jones' lawyers, "we just used the occasion to clarify in a footnote what has been greatly distorted."

Republican National Chairman Haley Barbour was not mollified.

"Let me get this straight," Barbour said. "Clinton never relied on the Soldiers' and Sailors' Relief Act to postpone the sexual harassment suit, and to prove it he is

Clinton Revises Case for Delay of Lawsuit

New High Court Brief Clarifies Earlier Citation of Soldiers' Law

By Ann Devroy and Ruth Marcus
Washington Post Staff Writers

President Clinton's lawyers, trying to quell a week-long controversy over his legal argument in a sexual harassment suit, yesterday filed a new brief explaining that Clinton is not relying on his status as commander in chief to postpone the case.

Clinton attorney Robert S. Bennett said yesterday that Republicans had made a "grotesque and disgraceful dis-

tortion" of his argument at the Supreme Court that a sexual harassment lawsuit by Paula Corbin Jones should be delayed until Clinton leaves office.

Bennett's original brief included language suggesting that the president, as commander in chief, might be covered by a law shielding active duty military personnel from being sued.

Republicans seized the opportunity to raise two issues highly embarrassing to Clinton: questions about his alleged womanizing and about his efforts

to avoid the draft during the Vietnam War. With the Memorial Day holiday weekend on the horizon, they charged that Clinton was trying to duck the sexual harassment suit in an election year by claiming a prerogative of an active-duty military officer.

Yesterday's filing was in part an effort at damage control. White House officials privately made clear that the ferocity of the public response to the Supreme Court brief had taken them

See JONES, A6, Col. 1

JONES, From A1

by surprise and that they viewed Bennett's original language, as one senior official put it, as "politically inartful."

Bennett was to file a "reply brief" at the high court in any case. He used yesterday's brief as an opportunity to clarify his earlier argument and, the White House hopes, put the political controversy to rest.

The brief repeats what the White House and Bennett have said all along—that Clinton is not relying on the military issue in seeking a delay but rather contending that postponement is warranted by the constitutional principle of separation of powers and Clinton's unique role as president. In the original brief, Bennett argued that lengthy delays in civil lawsuits are not extraordinary. Among the "numerous instances" of such delays cited by Bennett is the Soldiers' and Sailors' Civil Relief Act of 1940, which provides that some lawsuits against service members must be postponed until they leave active duty. "President Clinton here thus seeks relief similar to that to which he may be entitled as Commander-in-Chief of the Armed Forces, and which is routinely available to service members under his command," Bennett wrote.

In a footnote in yesterday's filing, Bennett said he was not arguing that Clinton was covered by the law. "The President does not rely on, or claim any relief under, the Soldiers' and Sailors' Civil Relief Act of 1940 or any other legislation," he said.

The controversy over the brief illustrates the potentially volatile mixture of law and politics in an election year, when otherwise routine legal arguments can be transformed into political land mines.

Both Bennett and the Justice Department had used the Soldiers' and Sailors' Relief Act to buttress their legal arguments in the lower courts.

Bennett noted in earlier court filings, for example, that President John F. Kennedy contended he was covered by the law in seeking dismissal of a case against him and said it was "arguable" that the law applied to Clinton, although he was not relying on it.

The Justice Department, calling the law "instructive," said the "public interest considerations" underlying it "apply with far greater force to a civil action that threatens to impair the attention to duty of the President, who is the Commander in Chief."

But the appearance of the argument in a Supreme Court brief six months before the presidential election proved explosive. Jones's lawyer, Joseph Cammarata, said yesterday that, although he thought Bennett's original Supreme Court filing "pushed it [the argument] a step further, we're just amazed that it's sort of taken off here. These arguments . . . have been made for two years."

The Republican National Committee produced a television ad ridiculing Clinton on the issue; veterans groups held news conferences questioning the presidential use of the issue; and, over the weekend, a group of five Medal of Honor recipients took out full-page ads in some newspapers calling on Clinton to renounce the argument. Virtually all the attacks made reference to Clinton's avoidance of the draft during the Vietnam War. The RNC ad, heavily aired for the media, made its way onto weekend news shows but never appeared as a paid ad over the holiday weekend.

Jones, a former Arkansas state employee, alleges in her lawsuit that Clinton lewdly propositioned her in a Little Rock hotel suite in 1991 when he was governor of Arkansas. Clinton has denied the allegation.

A federal appeals court rejected Clinton's effort to postpone the case. The issue of whether to proceed with the case or grant the delay is before the Supreme Court.

Bennett said the GOP had "scored some short-term political points" in what he called "distortions" of his brief. Bristling at the suggestion Clinton's political interests might have been better served without the reference, Bennett said, "Look, when you write a brief for the United States Supreme Court you don't filter them through a pollster first to see how they fly."

Exactly how the language appeared and whether there was a political vetting of it was the subject of some dispute yesterday. White House press secretary Michael McCurry said Clinton had not seen the brief before it was filed. Other sources said the White House counsel's office and the Solicitor General's office had approved the use of the soldiers' and sailors' law.

But a Justice Department source said the Solicitor General's office had no role in approving a brief filed by a private lawyer and had not seen a final copy containing the controversial sentence.

Asked yesterday whether there had been a political blunder, McCurry said, "Sure, we maybe should have predicted the Republicans would go out and run ads and misconstrue the nature of the president's brief."

The RNC said that since Bennett had amended his argument, it would pull the Jones ad and use a balanced budget spot.

"Let me get this straight," RNC Chairman Haley Barbour said, "Clinton never relied on the Soldiers' and Sailors' Relief Act to postpone the sexual harassment suit, and to prove it he is rewriting the brief to take out the part that he never relied on in the first place. That's vintage Bill Clinton."

THE WASHINGTON POST
WEDNESDAY, MAY 29, 1996

P.G. Officials Quash Justice Thomas's Visit to School

By Lisa Frazier
Washington Post Staff Writer

AT

A scheduled appearance by U.S. Supreme Court Justice Clarence Thomas at a school awards ceremony in Prince George's County was canceled after invitations naming him as the speaker were distributed and a school board member threatened to organize a protest, two board members said yesterday.

Board member Kenneth E. Johnson (District 6), whose district includes the Thomas G. Pullen

Creative and Performing Arts School in Landover, where Thomas was to speak June 10, said he complained to School Superintendent Jerome Clark and asked him "to be personally involved with uninviting" Thomas.

"There's no place for Clarence Thomas anywhere in my district," Johnson said. "He has done everything he can to undermine the things that are important to the people in my district. There is nothing he has to say that I would want to hear.

"I don't want him to have a forum in Prince

George's County. He certainly hasn't represented us in Prince George's County on the Supreme Court."

Thomas, the only African American on the court, was appointed in 1991 by President George Bush and generally is regarded as one of the court's most conservative justices. He was part of the court majority that struck down a "black majority" voting district, set in motion a rollback of federal affirmative action programs and rejected a Kansas City, Mo., school deseg-

See THOMAS, A13, Col. 1

THOMAS, From A1

regation plan—decisions that have been controversial in majority-black Prince George's County.

Johnson said he told Clark that "if [Thomas] wasn't uninvited, [Thomas] will be embarrassed June 10."

Thomas does not respond to media inquiries, a spokesman for the Supreme Court said. Clark could not be located last night. Telephone messages left for Clark and Pullen School Principal Kathy Kurtz at their homes were not returned.

Schools spokesman Christopher Cason said he could not provide any details.

"I just know he's not coming," Cason said of Thomas.

Board Chairman Marcy C. Canavan

(District 9) said she was furious when she heard what happened.

"That's outrageous," Canavan said. "If we can get a Supreme Court justice to speak, we should count our blessings. We don't go uninviting him."

The school board is supposed to be nonpartisan, Canavan said. Speakers ranging from then-President Ronald Reagan to President Clinton have visited Prince George's County schools without incident. The superintendent should not have bowed to the threat of a protest, she said.

"That's a real swell lesson to send kids," Canavan said. "He's one of the nine most powerful people in the country."

Armstrong Williams, a radio talk show host and an old friend of Thomas's, said the school system's decision

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to revoke the invitation was "outrageous and small-minded," and he equated it with censorship.

"Are they so afraid of his ideas that they don't want the students to hear him and decide for themselves? It's an insult to the students," Williams said.

"If they want to protest, let them protest. They have that right. . . . But to take back an invitation? The arrogance is astounding."

Sources said Thomas was invited after a group of students from Pullen—a magnet school for elementary and middle school students—met him briefly during a field trip to the Supreme Court. But school board members said they did not know specifically who extended the invitation.

Staff writer Philip P. Pan contributed to this report.

Clinton Drops Military Issue In Request For Suit Delay

By ALISON MITCHELL

WASHINGTON, May 28 — In the face of Republican attacks, lawyers for President Clinton filed new papers with the Supreme Court today saying his effort to delay trial of a sexual harassment suit against him until he leaves office did not rely on his status as Commander in Chief.

In response, the Republican National Committee immediately said it would not televise a commercial, unveiled to the press last Friday and due for telecast in coming days, that ridiculed the President over the issue. The committee also declared a victory for veterans, some of whom, given Mr. Clinton's avoidance of service during the Vietnam War, had been offended by what they saw as his use of the role of Commander in Chief as a legal shield.

The filing by the President's lawyers, and the response by the Republicans, were the latest in a series of skirmishes over what has so far been a losing effort by Mr. Clinton to win postponement of a suit brought against him by Paula C. Jones.

Ms. Jones has accused Mr. Clinton of making crude sexual advances to her in 1991, when he was Governor of Arkansas and she a clerical employee of the state. Mr. Clinton has denied the accusations and has said he cannot remember meeting her.

In their original papers seeking a postponement from the Supreme Court, the President's lawyers argued that the case raised the issue of separation of powers, and cited Jefferson's warning that the President's independence would be threatened "if the several courts could bandy him from pillar to post."

They also said that in ruling against postponement, a Federal appeals court had made a mistake in regarding Mr. Clinton's request for a delay as "exceptional." Delays, they said, are routine in some kinds of litigation: Suits against a debtor who has filed for bankruptcy are indefinitely delayed, their petition noted, and a Federal law, the Soldiers' and Sailors' Civil Relief Act of 1940, ordinarily requires postponement of civil litigation against active-duty members of the armed forces.

"President Clinton here thus seeks relief," the original brief said, "similar to that which he may be entitled to as Commander in Chief of the armed forces and which is routinely available to service members under his command."

The Republicans seized on that language as a political issue, with two members of the House calling it an insult to the armed forces. Last Friday the Republican National Committee unveiled a television commercial, for use after Memorial Day, in which a voice-over said: "Bill Clinton, he's really something. He's now trying to avoid a sexual harassment lawsuit claiming he is on active military duty."

The commercial featured pictures of Mr. Clinton biking, golfing, hunting and, in a Blues Brothers imitation, wearing sunglasses, while someone whistled "You're in the Army Now" as background music.

Appearing to presage a new level of negativity in the Presidential campaign, the advertisement was the subject of much free news coverage over the Memorial Day weekend, as was a Democratic commercial that also went on the attack. That commercial said Bob Dole's decision to leave the Senate, and with it his post as majority leader, to mount a full-time campaign for President amounted to "quitting, giving up."

Today Robert S. Bennett, the President's chief lawyer in the Jones case, said he had included in a routine reply brief submitted to the Supreme Court a footnote stating that Mr. Clinton was seeking to have the Jones suit postponed on constitutional grounds and not under the Soldiers' and Sailors' Act.

Mr. Bennett called the footnote in the new brief "an opportunity to reassert what I thought we had been saying all along": that the act offered merely an example of what the President might be entitled to assert, not that he was asserting it.

"Obviously, with this flap," Mr. Bennett said of the political furor that had greeted the original brief, "I was sure I was being as clear as I'm capable of being."

He acknowledged that with his new papers, he had been responding to the political atmosphere. "Would I have put it in quite that way if the flap hadn't occurred?" he said. "I don't know. Probably not." He accused the Republicans of staging a "phony political stunt."

In response, the Republicans announced that starting Wednesday, they would televise on CNN and local stations in Washington a commercial dealing with a balanced budget instead of the more biting ad about Mr. Clinton, never publicly shown.

But they could not resist a parting shot. "Let me get this straight," said Haley Barbour, the Republican national chairman. "Clinton never relied on the Soldiers' and Sailors' Relief Act to postpone the sexual harassment suit, and to prove it he is rewriting the brief to take out the part that he never relied on in the first place. That's vintage Bill Clinton."

Clinton Voices Sympathy For Whitewater Figures

By ALISON MITCHELL

WASHINGTON, May 28 — President Clinton expressed personal sorrow this evening for his three Arkansas compatriots who were convicted today in the first trial of the Whitewater investigation, and he deflected questions about his own credibility to the jury and the political repercussions of the verdict.

Appearing briefly on the White House lawn, Mr. Clinton, who had testified for two and half hours on videotape in the defense of his former partners in the Whitewater land venture, said he "did what I was asked to do."

Asked if he thought that the jurors had believed him, he said: "You ought to ask them that. I doubt that was what was going on."

Mr. Clinton expressed particular sympathy for Jim Guy Tucker, a onetime political rival who succeeded him as Governor of Arkansas. "On a personal level, I'm very sorry for Governor Tucker," he said.

For weeks, White House aides have been concerned about the political implications of President Clinton's appearance, under the order of a Federal judge, as a defense witness in the criminal trial and how it could be used by the President's political foes. His lawyers have fought to keep the videotaped testimony under seal.

Mr. Clinton was in a scheduling meeting inside the Oval Office when the White House counsel, Jack Quinn, and Jane Sherburne, also of the counsel's office, interrupted to bring him news of the convictions.

Almost immediately, White House officials swung into action to emphasize that Mr. Clinton had been accused of no wrongdoing in

the case, which also involved James B. McDougal and his former wife, Susan, who had been the Clintons' partners in the Ozarks real estate venture known as Whitewater.

Mark D. Fabiani, special counsel to the President, said: "There was one thing everyone involved with this trial — prosecutors and defense — could agree on: the President had nothing to do with the allegations that were the subject of the trial. As the prosecutor noted in his closing argument: 'The man occupying the position of the Office of the Presidency of the United States is not on trial here.'"

Mr. Clinton's political advisers conceded that the verdicts would probably embolden the Republicans, who have already mounted a campaign to question the President's character, even as the Clinton campaign has started to run commercials calling Senator Bob Dole a quitter for leaving his post as majority leader.

Ann F. Lewis, the deputy campaign manager, predicted that while the Whitewater verdict would bring the Republicans a "flurry of hope" that "some of this is going to stick, it's going to be unsuccessful."

In a television interview on the "The NewsHour with Jim Lehrer" taped before the verdict, Hillary Rodham Clinton said that "it doesn't really matter which way it comes out for us."

Asked whether she agreed that acquittals would end Whitewater as a political issue while convictions would prolong it, she said, "I don't have any doubt that since so much of this is politically inspired, it will go on almost regardless of what happens anywhere. It has a life of its own."

Speaking to Veterans' Groups, Clinton Orders an Expansion of Agent Orange Benefits

By TODD S. PURDUM

WASHINGTON, May 28 — President Clinton ordered that disability benefits be expanded today to cover veterans who served in Vietnam and suffer from prostate cancer or a nerve disease that may be associated with the defoliant Agent Orange.

Prostate cancer and the nerve condition, peripheral neuropathy, will be added to a list of seven other ailments linked to Agent Orange for which the Department of Veterans Affairs already provides benefits. Under Government policy, all of the 2.6 million veterans who ever served in Vietnam and adjacent waters are deemed to have been exposed to the herbicide; individuals need not prove particular exposure.

Mr. Clinton, who has strained relations with the military during his term, made the announcement to veterans' groups in a White House

ceremony the day after Memorial Day intended to highlight his support for veterans' causes. He was flanked by Adm. Elmo Zumwalt, retired, whose son Elmo Jr. died of cancer after exposure to Agent Orange.

"For years, the Government did not listen," Mr. Clinton said, adding, "We are showing America can listen and act."

"Nothing we can do will ever fully repay the Vietnam veterans for all they gave and all they lost, particularly those who have been damaged by Agent Orange," the President said. "But we must never stop trying. The veterans never stopped taking every step they could for America; now it is our turn to do what we should do. We can and will go the extra step for them."

The President also said he would propose legislation to Congress to provide new benefits for children of

Vietnam veterans who suffer from spina bifida, a congenital birth defect. A recent study found that children of Vietnam veterans may have a higher risk for the disorder, which is characterized by an imperfect closure of part of the spinal column. It would be the first time benefits would be extended to offspring of veterans linked to Agent Orange.

Jesse Brown, the Secretary of Veterans Affairs, said that medical evidence linking Agent Orange to such illnesses is "quite evenly balanced," and has not shown a conclusive causal connection, only a statistical correlation. "But," he said, "the President and I firmly believe that the V.A. needs to be on the side of veterans and their children."

Mr. Brown and other veterans officials had only rough estimates of how many veterans might be eligible for the new benefits. In the case of

the nerve disorder, it must have manifested itself within a year of herbicide exposure, and the department's Under Secretary for Health, Ken Kizer, said there would probably be "very few" cases qualifying.

Because prostate cancer does not manifest itself, on average, until age 72, Dr. Kizer said cases among the Vietnam generation would only now begin popping up and might involve 1,200 to 1,500 people in the next few years. He said the estimates of spina bifida victims ranged up to 3,000.

Altogether, Mr. Brown said, the department estimates the first-year cost of the new program at about \$65 million, rising to about \$350 million over the next five years.

Today's announcement follows a review of a report issued in March by the National Academy of Sciences under contract to the Department of Veterans Affairs into the effects of

Agent Orange and other herbicides. The reviews are required under the Agent Orange Act of 1991, which established the initial benefit requirements. The Government already recognizes seven diseases as related to such herbicides, including various respiratory cancers, Hodgkin's disease and non-Hodgkin's lymphoma.

Veterans who qualify would receive benefits based on a sliding scale intended to measure the effect of their residual disability and its affect on their ability to work.

Asked if today's announcement "closed the book" on the Government's position on Agent Orange, Mr. Brown said, "just about, almost." The Administration cannot extend benefits to the children of veterans without Congressional approval, and will propose legislation.

Dr. Kizer acknowledged that none of the scientific evidence "establish-

es a clear cause-and-effect relationship" between Agent Orange and the various ailments, but added that the law deliberately weighted the doubt in favor of veterans, requiring only that the evidence of a "statistical association" must be equal to or greater than the evidence against it on the basis of reputable scientific studies.

He said it was impossible to predict whether prostate cancer would strike Vietnam veterans in greater proportion than the population as a whole; about 10 percent of the cancer cases in adult men are prostate cancer.

Mr. Brown, himself a Vietnam veteran, said that at the time soldiers had no notion of the hazards of Agent Orange, and were not warned in any way.

"We didn't know anything about it," he said.

The Washington Post

AN INDEPENDENT NEWSPAPER

Memorial Day

LAST WEEK it came out that President Clinton's lawyers were invoking a 1940 law meant to protect members of the armed forces against lawsuits while on active duty to instead protect this president, as commander in chief, against the sexual harassment action that has been plaguing him for some time. Republicans quickly seized on the incident to produce a television commercial, set to the tune of "You're in the Army Now," ridiculing a president who avoided the Vietnam War draft for opportunism.

These excesses of cleverness ("Look what I just came up with, Boss.") may be important less for what they say about the president, his lawyers and the reacting Republicans than for what they confirm about how perilously high the country's embarrassment threshold is these days. The reason we're discussing them under a headline reading "Memorial Day" is that they seem to have some relation, an inverse one, to what it is we're remembering today: the broad sense of community that in times of crisis has impelled people to risk their livelihoods, their health and their lives, not necessarily because they wanted to or because it was the narrow requirement of the law but, quite often, simply because they knew it was expected of them and they'd have been ashamed not to.

America's armed forces, although often conscripted, have been among the most un-coerced

in the world's many wars. The fierce punishments many countries have used to terrify soldiers into fighting harder have been rare in this society. The motive force of those who went forward has, in a way, been just as strong, however: an unspoken, almost instinctive, understanding of mutual obligation in the face of the most difficult and dangerous conditions, and of the dishonor that comes from failing to meet it.

It's hard to maintain this state of selflessness and commonality in times of peace, from the quiet front lines to the rear to our homes, but it's dangerous not to try. The aggressive litigiousness of the times—searching the statute books for a compassionate law that can be plucked out of context and tossed into a legal brief, along with the kitchen sink, as a glittering technicality—is but one of many symptoms of the opposite condition of selfishness that we fall into by not doing so. The nasty, disrespectful, tasteless nature of much of our political campaigning is another.

The less often we hesitate before taking some expedient act to gain advantage—stop to think whether what we're doing will not someday be an embarrassment either to us or to others who care about our good name as much as we do—the less we honor those we are supposed to be remembering today.

Gun Running, Missile Running

CHINA OFTEN professes to feel abused and put upon by the United States, as though American complaints about its policies served some grand hidden purpose to undermine Chinese power. But the latest two matters of Chinese conduct to stir American concern can in no way be attributed to anything but a necessary effort to control dangerous weapons on two fronts.

The first, disclosed by the Pentagon, was that China has been seeking SS-18 nuclear missile technology from cash-hungry Russia and Ukraine under the guise of using powerful Soviet/Russian boosters to develop a space-launch program. The information was sufficiently serious to prompt American officials to caution prospective sellers as well as buyers against transactions that might cut across their obligations to limit nuclear proliferation and control missile technology. This is one more disturbing example that Beijing does not feel bound by the international rules restricting the transfer of critical weapons technology.

Then there was the sensational charge, by American law enforcement authorities, that a couple of Chinese state-owned munitions factories, one run by the senior leader's son, had smuggled 2,000 AK-47 fully automatic rifles into the United States. Their import was outlawed

several years ago. Asked whether the transfer was government-sanctioned, the Justice Department's No. 2 said it was a good question and one that she declined to answer. In China there is a history of asserted official detachment from dubious local enterprises. If it is established that the Chinese government had a hand in, or otherwise countenanced, such a transfer, then this incident could get a lot more serious. Again there is the nagging question of China's respect for international rules.

The other day the secretary of state called for developing "a more regular dialogue" with Beijing to include summits and cabinet exchanges. The appeal underscores a hope to provide a framework of shared purpose to cushion the recurrent daily shocks. The administration has its own inconsistencies and mixed messages to account for. But the Chinese cannot expect to make the connection work for them if they are going to feed the American public a diet of offensive practices. Smuggling illegal weapons? Prowling for missile technology? These from a government looking now for a renewal of its American trading privileges? China is making it increasingly difficult for those Americans who are committed to improving official ties.

The Intelligence Number

CONGRESS AND THE administration are playing an Alphonse-Gaston game over proposals to make public the aggregate figure for U.S. intelligence spending. Each is figuratively stepping aside with a bow and urging the other to proceed first. Since the '70s, assorted experts, legislators and even some intelligence types have argued that the government should be more forthcoming about this figure. The end of the Cold War has strengthened the case for declassification. Yet this information remains under wraps.

Last week, the House made appropriations for intelligence and intelligence-related activities. This includes funding the Central Intelligence Agency, National Security Agency and sections of State and Defense. Much of the text of the bill is classified, as are the precise amounts authorized. Rep. John Conyers offered an amendment to declassify and submit to Congress the total figure for all intelligence activities. No breakdowns and no information about specific operations would have to be revealed. His amendment was defeated.

Those who favor continuous secrecy talk about slippery slopes and the ability of "enemies" to

figure out what this country's secret agents are up to once they have this critical number. But it seems to us they overstate the risks and understate the discipline that will still be in force. Supporters of the Conyers position cite the constitutional provision requiring a "statement and account of the receipts and expenditures of all public money." Citizens should know how much is spent on intelligence the better to make rational choices about the allocation of government funds.

The Senate will consider this issue soon when a companion bill reaches the floor there. But if advocates of this largely symbolic change are stymied in that forum, there is another, obvious solution. The White House has put out word that the president is "determin[ed] to promote openness in the Intelligence Community" and "has authorized Congress to make public the total appropriation." But it is the executive branch that has classified this information in the first place, and the president doesn't need the consent of Congress to declassify it. He may want company in taking this step, but he has the authority to act on his own. If Congress is reluctant to move, he should take the lead.

United Way's Quite Fond Farewell

IN A BURST of puzzling generosity, some unnamed board members of United Way of America have chipped in to give departing president Elaine L. Chao \$292,500—money said to be coming from their own presumably deep pockets. This amount happens to be precisely the same as the salary Ms. Chao would have collected if she had remained on the job another 18 months, for a total of five years' service. United Way Chairwoman Paula Harper Bethea says that is "completely coincidental." But Ms. Bethea isn't saying much more, other than noting that the 35 board members were not displeased with the work of Ms. Chao, who announced her resignation on May 17, nor was the payment a buyout or part of a severance package. So what kind of message is this to United Way donors and would-be contributors? If these benefactors have a loose \$292,500 lying around, why give it to Ms. Chao and not to, say, the United Way?

Ms. Bethea says the gift will not violate the organization's ethics code, which forbids employ-

ees from accepting gifts because by the time Ms. Chao receives her first payment "she will not be an employee." Oral Suer, executive vice president of the United Way National Capital Area—which serves this region and which was one of the first local groups to withdraw from the national organization during the Aramony scandal—says he was unaware of the gift to Ms. Chao until it was revealed in a story Friday by Post staff writers Mary Pat Flaherty and Tracy Thompson. "If it's the board members' personal money, then it's their business," he says.

But what seems to be sorely missing in all this is any sense on the part of those at the top of a major national charitable organization that salaries and hefty gifts like this do not sit well with individuals who have responded to United Way campaigns with far more modest but nevertheless individually generous donations to help the needy in their communities. This gift needs much more explaining.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES,
Plaintiff,

v.

WILLIAM JEFFERSON CLINTON
and
DANNY FERGUSON,
Defendants.

CIVIL ACTION
NO. LR-C-94-290

Judge Susan Webber Wright

MEMORANDUM IN SUPPORT OF
PRESIDENT CLINTON'S MOTION TO DISMISS
ON GROUNDS OF PRESIDENTIAL IMMUNITY

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

WRIGHT, LINDSEY & JENNINGS
220 Worthen Bank Building
200 West Capitol Avenue
Little Rock, Arkansas 72201
(501) 371-0808

WILSON, ENGSTROM, CORUM,
DUDLEY & COULTER
809 West Third Street
Little Rock, Arkansas 72202
(501) 375-6453

Counsel to President William J. Clinton

Filed 8/10/94
in District Court

President is in office represents a far more modest approach to ensuring the unimpeded performance of the Chief Executive's constitutional responsibilities than was afforded by the absolute immunity recognized in Fitzgerald for actions within the outer perimeter of official duty.

[Postponement of the litigation at this juncture is no greater an imposition on this plaintiff than that routinely borne under the Soldiers' and Sailors' Civil Relief Act by claimants against members of the Armed Forces. See 50 U.S.C. app. §§ 501-525 (1988 & Supp. 1994) ("SSCRA" or "the Act"). The Act permits civil suits against service members to be tolled or stayed, in recognition of the fact that civil claims against military personnel must give way, at least temporarily, to more immediate and significant national interests. Yet no one suggests that service personnel improperly are accorded elevated legal status because of this relief. The nation's interest in the undivided attention of the President to official duties is even more compelling than its interest in the undistracted service of an individual member of the Armed Forces serving under the Commander in Chief, and acknowledgment of this fact similarly does not place the President "above the law."]

plicity of such suits that would drain their energy and time. For 219 years, it generally has been presumed that Presidents are immune from private civil suits for damages. If it were now held that a sitting President could be subject to such litigation, many more suits of this nature against incumbent Presidents undoubtedly would follow. See Fitzgerald, 457 U.S. at 753.¹⁹

Most suits against incumbent Presidents, moreover, are likely to be frivolous. Although there are

¹⁹ We are aware of only one recorded civil suit for damages based on private conduct, prior to this one, that even begins to touch on the Presidency, but it was filed 23 years before the Supreme Court's decision in Fitzgerald and before the defendant, John F. Kennedy, became President. Certain delegates to the 1960 Democratic Convention sought to hold then-candidate Kennedy liable for injuries they incurred while riding in a car that had been rented by his campaign. See Attachment 4, Hills v. Kennedy, No. 757201, and Bailey v. Kennedy, No. 757200 (Los Angeles County Superior Court, both filed Oct. 27, 1960 and subsequently consolidated). [After he became President, Kennedy argued that he was entitled to a stay as Commander in Chief of the Armed Forces, pursuant to the Soldiers' and Sailors' Civil Relief Act (discussed infra, at Part IV(B)). A Los Angeles Superior Court judge denied this motion without written opinion.] See Attachment 5, Hills, Motion to Vacate Pre-Trial Date and Stay Further Proceedings (July 5, 1962) and Notice of Denial of same (July 11, 1962). The court did not permit the plaintiffs to take the President's deposition, however, requiring only that he submit to written interrogatories. See Attachment 6, Hills, Order denying motion for deposition (August 27, 1962). Presidential immunity was not invoked in that case, which subsequently was settled.

and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. app. §§ 501-25 (1988 & Supp. 1994) ("SSCRA" or "the Act"), provides that civil suits involving military personnel are to be tolled or stayed while they are on active duty.³⁷ The Act thus provides another example of circumstances in which postponement of private civil damage actions is an accepted means of prioritizing private and public interests.

The purpose of the SSCRA is not to accord military personnel special status under the law, any more than presidential immunity exists to provide a person who serves as President with special treatment. Rather, like

³⁷ The Act provides that the statute of limitations for actions by or against military personnel is tolled unconditionally during their period of service. 50 U.S.C. app. § 525; Conroy v. Aniskoff, 113 S.Ct. 1562, 1564-65 (1993). It also provides that any suit brought against a service member on active duty is to be stayed unless it can be shown that his or her interests would not be materially affected by reason of military service. 50 U.S.C. app. § 521. The Act also permits civil suits against non-military co-defendants to be stayed if proceeding against the non-military co-defendant in the absence of the service member would prejudice the service member's rights. 50 U.S.C. app. § 524.

It is arguable that the Act expressly applies to the President as Commander in Chief, but we do not press that argument here. Our motion rests on constitutional grounds, not on any legislative power or intent of Congress to grant or deny temporal immunity to the President.

presidential immunity, the SSCRA was deemed necessary "to enable such persons to devote their entire energy to the defense needs of the Nation." 50 U.S.C. app. § 510. The public interest demands the "entire energy" of the President just as much, if not more, than it demands the "entire energy" of a soldier or sailor. Acknowledgement of this fact does not place the President "above the law" any more than the SSCRA places military personnel "above the law."

Neither does immunity for Presidents from private suits for civil damages while in office shield them from accountability for alleged personal misconduct. The Supreme Court has observed that there are formal and informal checks quite apart from civil damages that will deter unlawful, tortious or unconstitutional behavior by Presidents. These include the prospect of impeachment in egregious cases, as well as the "constant scrutiny by the press." Fitzgerald, 457 U.S. at 757. Plaintiffs can and inevitably will take their charges to the newspapers and broadcast media, as has been melodramatically illustrated in this case.³⁸

³⁸ See, e.g., Attachments 1, 3. In this regard, we note that the public is well-served by a rule of immunity that encourages purported victims of misconduct by
(continued...)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-1050

PAULA JONES

Appellee,

vs.

WILLIAM JEFFERSON CLINTON

Appellant,

and

DANNY FERGUSON

Defendant.

Appeal from the United States District Court
for the Eastern District of Arkansas
Civil No. LR-C-94-290

**OPENING BRIEF OF APPELLANT
PRESIDENT WILLIAM JEFFERSON CLINTON**

Robert S. Bennett

Carl S. Rauh

Alan Kriegel

Amy R. Sabrin

Stephen P. Vaughn

Skadden, Arps, Slate, Meagher & Flom

1440 New York Avenue, N.W.

Washington, D.C. 20005

Kathlyn Graves

Wright, Lindsey & Jennings

220 Worthen Bank Building

200 West Capitol Avenue

Little Rock, Arkansas 72201

Stephen Engstrom

Wilson, Engstrom, Corum, Dudley &

Coulter

809 West Third Street

Little Rock, Arkansas 72202

Attorneys for the Appellant

President William Jefferson Clinton

Filed
in 8th Cir., 4/5/95

'above the law' because a particular remedy is not available Fitzgerald, 457 U.S. at 758 n.41. Here, where the President would be subject to suit after leaving office, he hardly could be said to be above the law.²⁶

Deferring this litigation, moreover, will not impose any greater hardship on this plaintiff than is borne routinely by those who have civil claims against active duty military personnel, but who have litigation of their claims deferred by statute. Specifically, the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. app. §§ 501-25 (1988 & Supp. 1994) ("SSCRA"), provides that civil suits involving military personnel are to be tolled or stayed while they are on active duty.²⁷ The

²⁶ Indeed, while we seek here only to defer the plaintiff's opportunity to pursue redress, we note that courts have, with few qualms, denied remedies altogether in other cases. "It never has been denied that . . . immunity may impose a regrettable cost on individuals whose rights have been violated. But . . . it is not true that our jurisprudence ordinarily supplies a remedy in civil damages for every legal wrong." Fitzgerald, 457 U.S. at 754 n.37. See also Livingston v. Jefferson, 15 F. Cas. 660, 665 (C.C.D. Va. 1811) (No. 8,411), in which Chief Justice Marshall dismissed a case against former President Jefferson for want of venue, even though the result "produce[d] the inconvenience of a clear right without a remedy."

²⁷ The Act provides that the statute of limitations for actions by or against military personnel is tolled unconditionally during their period of service. 50 U.S.C. app. § 525; Conroy v. Aniskoff, 113 S. Ct. 1562, 1564-65 (1993). It further provides that any suit brought against a service member on active duty is to be stayed unless it can be shown that his or her interests would not be materially affected by reason of military service. 50 U.S.C. app. § 521. It may be said that the Act expressly applies to the President as Commander in Chief, but we do not press that argument here. Our motion rested on constitutional grounds, not on any asserted power or intent of Congress to grant or deny some form of litigation immunity to the President.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 95-1050 & 95-1167

PAULA CORBIN JONES

Appellee,

vs.

WILLIAM JEFFERSON CLINTON

Appellant,

and

DANNY FERGUSON

Defendant.

Appeal from the United States District Court
for the Eastern District of Arkansas
Civil No. LR-C-94-290

REPLY BRIEF OF APPELLANT/CROSS-APPELLEE
PRESIDENT WILLIAM JEFFERSON CLINTON

Robert S. Bennett
Carl S. Rauh
Alan Kriegel
Amy R. Sabrin
Stephen P. Vaughn
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Kathlyn Graves
Wright, Lindsey & Jennings
200 West Capitol Avenue
Little Rock, Arkansas 72201

Stephen Engstrom
Wilson, Engstrom, Corum, Dudley &
Coulter
809 West Third Street
Little Rock, Arkansas 72202

Attorneys for the Appellant
President William Jefferson Clinton

Our Reply Brief Filed 6/5/95
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Our legal system, moreover, has had experience with allocating the burdens of deferring divorce and custody litigation in the event that one party is unable to participate because he or she is called away to serve an overriding national interest. The Soldiers' and Sailors' Civil Relief Act permits litigation involving active duty service members, including divorce and custody proceedings, to be stayed in most circumstances. 50 U.S.C. app. § 521 ("SSCRA"); See Shelor v. Shelor, 383 S.E.2d 895 (Ga. 1989) (temporary order for child support may be entered, but litigation of permanent order appropriately stayed pursuant to SSCRA); Coburn v. Coburn, 412 So.2d 947 (Fla. Dist. Ct. App. 1982) (trial court abused its discretion in refusing to postpone custody proceedings until such time as father would be unhampered by military service to defend the action). These models could be employed in a domestic relations case involving a President as well.¹⁵

¹⁵ The President does not rely directly on the SSCRA, choosing instead to invoke the constitutional protections due the Presidency. Nonetheless, we feel compelled to address certain statements about that Act in the opposing briefs. The plaintiff asserts that the Act "expressly does not establish any protection for the President." (Jones Br. at 38 n.19). Although the SSCRA does not expressly include the Commander-in-Chief, a review of its legislative history reveals no intent to exclude him, and it would be consistent with the overall purpose of the Act to extend its coverage to the commander of the armed forces as well as those who serve in them. See 50 U.S.C. app. § 510. Indeed, it is inconceivable that when Congress re-enacted the SSCRA on the eve of World War II, it affirmatively intended, by not referencing expressly the Commander-in-Chief, to permit private civil
(continued...)

V. LITIGATION OF THIS NATURE THREATENS THE SEPARATION OF POWERS.

The plaintiff asserts that the separation of powers is transgressed only when a court imposes damages for the exercise of a President's official duties. (Jones Br. at 33-35). The test, however, does not turn on the imposition of damages, but on whether judicial branch action of any kind would "prevent[] the Executive Branch from accomplishing its constitutionally assigned functions." Nixon v. Administrator of General Services, 433 U.S. 425, 443 (1977) (Nixon v. GSA). This is the precise situation posed by litigation of the plaintiff's civil claim during the President's tenure in office: a trial court's supervision of the President as a defendant could interfere with functions assigned to the Executive. (Pres. Br. at 30-34).

The plaintiff and supporting amici concede that court orders issued in the course of ongoing private civil liti-

¹⁵ (...continued)

lawsuits to take Franklin Roosevelt away from his duties. It is more plausible that Congress never even imagined lawsuits like this one could be brought against incumbent Presidents, and therefore did not think it necessary to expressly provide additional protection by way of statute. In any event, the SSCRA provides a useful example of another instance in which our legal system subordinates the interests of individual litigants to overriding national interests when circumstances require.

The academic amici who filed in support of the plaintiff incorrectly state that the SSCRA is effective only in time of national emergency. (Law Prof. Br. at 16 n.13). As the text of the Act clearly indicates, it applies to all service members on "active duty," without regard to a state of war or emergency. 50 U.S.C. app. § 511(1).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES,
Plaintiff,

v.

WILLIAM JEFFERSON CLINTON
and
DANNY FERGUSON,
Defendants.

Civil Action
No. LR-C-94-290

STATEMENT OF INTEREST OF THE UNITED STATES

Introduction

This is a private civil suit for damages against the President of the United States, based on claims arising before the President took office. The President has moved to dismiss

We are aware of three instances in which private suits based on pre-presidential conduct have been adjudicated during the President's term of office. A suit against Theodore Roosevelt and the other members of the Board of Police of the Police Department of the City of New York, filed prior to Roosevelt's assumption of the Presidency, was finally resolved (in the Board's favor) in 1904. People ex rel. Hurley v. Roosevelt, 179 N.Y. 544 (1904). The nature of the relief sought is unclear. A damages action against Harry S. Truman, based upon Truman's conduct as a state court judge in 1931, was finally resolved (in Truman's favor) in 1946. Devault v. Truman, 194 S.W.2d 29 (Mo. 1946). A suit against John F. Kennedy, filed in the Superior Court of California, involved claims arising out of an automobile accident during the 1960 Presidential campaign. Although the suit was filed in October 1960, prior to President Kennedy's inauguration, the suit remained pending during his term. In July 1962, President Kennedy moved to stay the suit on

(continued...)

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in District Court

the plaintiff's complaint, with leave to refile after the President leaves office, on the ground that the President is immune from suit during his term of office. The United States submits this statement of interest, pursuant to 28 U.S.C. § 517, to address the issues raised by the President's motion.²

The United States has a fundamental interest in protecting the office of the Presidency and the powers and duties vested in that office by Article II of the Constitution. The United States is therefore directly interested in whether, and under what circumstances, the President may be required to submit to judicial processes. In furtherance of this interest, the United States has participated in other cases that have presented related issues of presidential involvement in judicial proceedings.³

¹ (...continued)

the basis of the Soldiers' and Sailors' Civil Relief Act ("SSCRA"). Notice of Motion To Vacate Pre-Trial Date and Stay Further Proceedings, Bailey v. Kennedy, No. 757,200 (Cal. Super. Ct. July 5, 1962); see p. 12 n.9 infra. The stay motion did not invoke any constitutional or other nonstatutory immunity from suit. The trial court denied the stay motion on July 19, 1962, and the suit was thereafter settled prior to trial.

² In relevant part, 28 U.S.C. § 517 provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States * * * ."

³ The United States participated as amicus curiae in In Re Proceedings of the Grand Jury Impaneled December 5, 1972, Civil 73-965 (D. Md.); our memorandum argued that the Vice President is subject to criminal indictment and trial during his tenure in office but that the President is not. Cf. p. 9 n.5 infra. The United States also participated as amicus curiae in Nixon v. Fitzgerald, 457 U.S. 731 (1982), which involved the immunity of former President Nixon from civil actions for damages based on his conduct in office. See pp. 7-9 infra. The United States

(continued...)

regrettable cost on individuals whose rights have been violated.").° To rebut the presumption that private suits against a sitting President should not go forward during the President's term, the plaintiff must demonstrate both that delay will seriously prejudice the plaintiff's interests and that immediate adjudication of the suit will not significantly impair the President's ability to attend to the duties of his office.

D. Sitting Presidents have given evidences as witnesses in federal criminal cases by means of depositions and interrogatories, while being excused from attending court to testify in person. See generally Rotunda, Presidents and Ex-Presidents As

° An instructive analogy may be drawn from the Soldiers' and Sailors' Civil Relief Act ("SSCRA"), 50 U.S.C. App. §§ 501 et seq. The Act serves "to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." 50 U.S.C. App. § 510. Section 201 of the SSCRA requires federal and state courts to grant a stay in any suit involving "a person in military service," if the court determines that "the ability of the plaintiff to prosecute the action or the defendant to conduct his defense [would be] materially affected by reason of his military service." 50 U.S.C. App. § 521. If the court makes the necessary finding regarding the impact of his military service on the litigation, Section 201 mandates a stay of proceedings, regardless of the effect of the stay on other litigants. See, e.g., Semler v. Oertwig, 12 N.W.2d 265, 270 (Iowa 1943); Coburn v. Coburn, 412 So.2d 947, 949 (Fla. Dist. Ct. App. 1982). The public interest considerations that underlie the SSCRA apply with far greater force to a civil action that threatens to impair the attention to duty of the President, who is the Commander in Chief. U.S. Const., Art. II, § 2. Cf. Fitzgerald, 457 U.S. at 750 (qualified immunity available to other state and federal officers is insufficient to protect the President because "[t]he President's unique status under the Constitution distinguishes him from other executive officials.").

the effect of a stay of proceedings directed at the claims against the President. In our view, therefore, a stay should encompass the claims against Ferguson, as well the claims against the President, in order to protect the public and constitutional interests at stake.¹⁵

¹⁵ By way of analogy, the Soldiers' and Sailors' Civil Relief Act (see p. 12 n.9 *supra*) affords trial courts discretion to determine whether proceedings with respect to a service member's co-defendant should be stayed. See 50 U.S.C. App. § 524. Such relief is appropriate, the courts have held, where a stay of proceedings against the co-defendant is necessary to protect the interests of the defendant service member. See *Heck v. Anderson*, 12 N.W.2d 849, 852 (Iowa 1944); *Register v. Bourquin*, 14 So.2d 673, 675 (La. 1943); *Helberg v. Warner*, 48 N.E.2d 972, 979 (Ill. App. 1943); *Ilderton v. Charleston Consol. Ry. & Lighting Co.*, 101 S.E. 282, 284 (S.C. 1919) (predecessor statute). See also 50 U.S.C. App. 510 (Act provides for "the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in [military] service").

Nos. 95-1050 & 95-1167

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PAULA CORBIN JONES,

Plaintiff-Appellee/Cross-Appellant

v.

WILLIAM JEFFERSON CLINTON,

Defendant-Appellant/Cross-Appellee,

and

DANNY FERGUSON,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

DREW S. DAYS, III
Solicitor General

EDWIN S. KNEEDLER
Deputy Solicitor General

MALCOLM L. STEWART
Assistant to the Solicitor
General

DAVID J. ANDERSON
Director, Federal Programs Branch
Civil Division

SCOTT R. McINTOSH
Attorney, Appellate Staff
Room 3127, Civil Division
Department of Justice
10th & Pennsylvania Ave. N.W.
Washington, D.C. 20530
(202) 514-4052

S.G. in 8th Cir. Filed 4/5/95

relief, the private interest must yield. Cf. Fitzgerald, 457 U.S. at 754 n. 37 (President has absolute immunity for claims relating to official actions even though "absolute immunity may impose a regrettable cost on individuals whose rights have been violated.")⁹ To rebut the presumption that private suits against a sitting President should not go forward during the President's service in office, the plaintiff should have to demonstrate convincingly both that delay will seriously prejudice the plaintiff's interests and that immediate adjudication of the suit will not significantly impair the President's ability to attend to the duties of his office. Absent such a showing, the litigation should be deferred.

⁹ The Soldiers' and Sailors' Civil Relief Act ("SSCRA"), 50 U.S.C. App. §§ 501 et seq., is instructive. That Act serves "to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." 50 U.S.C. App. § 510. Section 201 of the SSCRA requires federal and state courts to grant a stay in any suit involving "a person in military service," if the court determines that "the ability of the plaintiff to prosecute the action or the defendant to conduct his defense [would be] materially affected by reason of his military service." 50 U.S.C. App. § 521. If the court makes the necessary finding regarding the impact of military service on the litigation, Section 201 mandates a stay of proceedings, regardless of the effect of the stay on other litigants. See, e.g., Semler v. Oertwig, 12 N.W.2d 265, 270 (Iowa 1943); Coburn v. Coburn, 412 So.2d 947, 949 (Fla. Dist. Ct. App. 1982). The public interest considerations that underlie the SSCRA apply with far greater force to a civil action that threatens to impair the attention to duty of the President, who is the Commander in Chief. U.S. Const., Art. II, § 2. Cf. Fitzgerald, 457 U.S. at 750 (qualified immunity available to other state and federal officers is insufficient to protect the President because "[t]he President's unique status under the Constitution distinguishes him from other executive officials.").

a case in which the President was merely a witness, since any testimony the President gives during a deposition or at trial is likely to be admissible in a subsequent trial of Jones's claims against the President.

Moreover, the burdens imposed on the President if the claims against Ferguson go forward would extend well beyond the immediate demands of giving testimony. Given the close relationship between the claims against the President and those against Ferguson, the President's counsel would be forced to participate actively in depositions and other aspects of the discovery process in order to protect the President's interests. The President, in turn, would be required to assist his counsel in preparing for discovery -- for example, by providing any relevant background information within the President's knowledge about witnesses and the subject matter of their testimony.

In sum, immediate adjudication of the claims against Ferguson would require the President to devote a significant amount of time, attention, and resources to this case during his tenure in of office. The result would be substantially to undermine the effectiveness of a stay of proceedings directed at the claims against the President. In our view, therefore, a stay should encompass the claims against Ferguson, as well the claims against the President, in order to protect the public and constitutional interests at stake.¹⁵

¹⁵ The Soldiers' and Sailors' Civil Relief Act (see p. 16 n.8 supra) affords trial courts discretion to determine whether
(continued...)

CONCLUSION

For the foregoing reasons, the judgment of the district court: (1) should be affirmed insofar as it stays the trial in this case until the completion of the President's term of office; and (2) should be reversed insofar as it fails to stay discovery and other pretrial proceedings.

Respectfully submitted,

DREW S. DAYS, III
Solicitor General

EDWIN S. KNEEDLER
Deputy Solicitor General

MALCOLM L. STEWART
Assistant to the Solicitor
General

DAVID J. ANDERSON
Director, Federal Programs Branch
Civil Division

SCOTT R. McINTOSH
Attorney, Appellate Staff
Room 3127, Civil Division
Department of Justice
10th & Pennsylvania Ave. N.W.
Washington, D.C. 20530
(202) 514-4052

¹⁵ (...continued)

proceedings with respect to a service member's co-defendant should be stayed. See 50 U.S.C. App. § 524. Such relief is appropriate, the courts have held, where a stay of proceedings against the co-defendant is necessary to protect the interests of the defendant service member. See Heck v. Anderson, 12 N.W.2d 849, 852 (Iowa 1944); Register v. Bourquin, 14 So.2d 673, 675 (La. 1943); Hellberg v. Warner, 48 N.E.2d 972, 979 (Ill. App. 1943); Ilderton v. Charleston Consol. Ry. & Lighting Co., 101 S.E. 282, 284 (S.C. 1919) (predecessor statute). See also 50 U.S.C. App. § 510 (Act provides for "the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in [military] service").

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. draft	re: William Jefferson Clinton v. Paula Jones (15 pages)	05/23/1996	P5

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Elena Kagan
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FOLDER TITLE:

Paula Jones Certiorari Petition [2]

2009-1006-F
jp2025

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR LEON PANETTA, CHIEF OF STAFF
 HAROLD ICKES, DEPUTY CHIEF OF STAFF

FROM: KATHLEEN WALLMAN *KW*

SUBJECT: DEPARTMENT OF JUSTICE FILING IN JONES CASE

DATE: MAY 24, 1996

You asked this morning about the timing of the Justice Department's filing of its amicus brief. As the attached indicates, the brief has not been filed yet, but will be early next week.

THE WHITE HOUSE

WASHINGTON

May 24, 1996

MEMORANDUM FOR KATHY WALLMAN

FROM: ELENA KAGAN *ek*

SUBJECT: SG BRIEF IN JONES

The SG's office wishes to file its amicus brief in Jones on Tuesday or Wednesday of next week. There is no actual filing deadline. But all the parties' briefs will be filed by Tuesday, and if the SG's brief is to be considered by the Court, it must be filed shortly thereafter.

I will send you and Jack, as soon as I get it, the language in the SG's brief concerning the Soldiers' and Sailors' Act. Expect another memo in a couple of hours.

STATEMENT OF ROBERT S. BENNETT

As I said yesterday, my petition on the President's behalf referenced the Soldiers' and Sailors' Civil Relief Act as one of five illustrative examples of the types of stays that can temporarily defer lawsuits.

The President does not rely on the Act, and has no intention of doing so, as the basis for requesting relief in this case. Our petition does not rely on the Act, but is based instead on important constitutional principles. We have no intention of changing our approach in the future.



N E W S F R O M

Congressman
Robert K. Dornan

46th District, California
1201 Longworth Building
Washington, D.C. 20515
(202) 225-2965

Thursday, May 23, 1996
Immediate Release

Contact: Paul Mero
202-225-2965

pg 14
pg 15
FAX: 224-1772

CLINTON'S LATEST DISGRACEFUL DODGE

Washington, D.C. -- "It is disgraceful that while the rest of the nation is honoring our fallen heroes of military service this weekend, Bill Clinton is seeking shelter behind the military he once claimed to loath, in an attempt to delay the sexual harassment lawsuit filed by Paula Jones," commented Congressman Robert K. Dornan, Chairman of the House National Security Subcommittee on Military Personnel, after the announcement that Bill Clinton will use The Soldiers' and Sailors' Civil Relief Act of 1940 as part of his legal defense before the United States Supreme Court.

On May 15, 1996 attorneys for President Clinton filed an appeal with the U.S. Supreme Court seeking to delay the sexual harassment lawsuit filed by Paula Jones, a former Arkansas state employee under the supervision of then-Governor Bill Clinton.

Lawyers for the Clinton contend that the Soldiers' and Sailors' Civil Relief Act of 1940 provides temporary protection from civil suits while the President is in office. This Act requires that civil litigation against members of the armed services be postponed while they are on active duty. According to his plea, "President Clinton here thus seeks relief similar to that which he may be entitled as Commander in Chief of the Armed Forces."

However, the purpose of the Act is to allow the United States to fulfill the requirements of national defense, by enabling "persons in the military service..." to "devote their entire energy to the defense needs of the Nation." Furthermore, this Act clearly states that only members of the Army, Navy, Marines, Air Force, and Coast Guard, and officers of the Public Health Service when properly detailed, are eligible for such relief. This Act goes further in defining the term "military service" to include the period during which one enters "active service" and ends when one leaves "active service."

Under the Constitution, Bill Clinton is the *civilian* Commander in Chief of the Armed Forces. The Founding Fathers wanted to enshrine the principle of civilian control of the military in the Constitution and did so by making the President the civilian Commander in Chief.

"Bill Clinton has never been an active duty member of the military. In fact, in 1969, he dodged the draft and ran from his obligations to both his military and his country. And now as the civilian Commander in Chief, he mocks the honorable men and women who have given their lives to the protection of our great nation."

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005. memo	Elena Kagan to Jack Quinn; re: Jones Brief et al (1 page)	05/22/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's office
Elena Kagan
OA/Box Number: 8285

FOLDER TITLE:

Paula Jones Certiorari Petition [2].

2009-1006-F
jp2025

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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Dole backs limits on welfare

His plan gives power to states

By Laurie Kellman
THE WASHINGTON TIMES

A1

FOND DU LAC, Wis. — Senate Majority Leader Bob Dole yesterday decried the “catastrophic failure” of the nation’s welfare system and proposed his own plan, which would impose a five-year lifetime limit on benefits and allow states to cut off public assistance to unwed teen-age mothers.

“If some enemy of our country wanted to undermine the fabric of American society, it could not inflict anything upon us worse than the welfare system we have inflicted on ourselves,” Mr. Dole said.

He did not call for mandatory drug testing of welfare recipients, as had been reported over the weekend. Instead, the presumptive GOP presidential nominee would scrap the practice of requiring states to gain federal permission to reform their welfare systems and would allow those new programs to penalize recipients who use drugs.

“Above all, I mean trusting the nation’s governors with the flexibility they need to create the laboratories of our democracy,” Mr. Dole said.

His address was pre-empted by President Clinton’s endorsement Saturday of Wisconsin Gov. Tommy G. Thompson’s welfare-to-work initiative as akin to “what welfare reform should look like.”

White House Deputy Chief of Staff Harold Ickes later backpedaled, telling The Washington Post that the details of Wisconsin’s plan “will have to be negotiated” and perhaps changed.

The 31 Republican governors accused Mr. Clinton of election-year opportunism. The president’s

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DOLE

From page A1

welfare proposal, the details of which will come before the House Ways and Means Committee today, lacks Wisconsin’s strict time limits. And, the governors noted, Mr. Clinton has twice vetoed GOP welfare reforms.

Mr. Dole accused Mr. Clinton of duplicity by endorsing Wisconsin’s reform proposal without saying whether he will approve it when Mr. Thompson submits it to the White House.

Wisconsin’s system, called W-2, would encourage people to work. Families who did the least amount of work-related activities would receive a basic payment of \$518 a month plus food stamps. Those who worked their way into private-sector jobs would net \$1,200 a month plus food stamps. Benefits would have a five-year limit.

“Every time it’s had the opportunity in other states, the Clinton administration has blocked firm time limits on welfare,” Mr. Dole said.

Central to Mr. Dole’s plan, which mirrors proposals by other Republicans in Congress, is that states would decide how to reform welfare and would get block grants to implement reforms without seeking federal waivers.

Mr. Dole noted that waiver applications have mired governors in time-consuming negotiations with the Clinton administration. “In a Dole administration, no state will have to play the waiver game,” he said.

Mr. Dole’s plan also would:

- Set a two-year limit — or less, if states desire — for welfare recipients to find work.

- Let states end payments to unmarried teen parents.

- Impose a five-year lifetime limit on welfare recipients “with few exceptions.”

- Deny “illegal noncitizens” all but emergency benefits.

A recent poll of 1,015 women by the conservative group Concerned Women for America revealed strong support for many of Mr. Dole’s welfare proposals.

The poll, conducted by Wirthlin Worldwide, found that 69 percent of women supported limiting cash payments to two years and that 72 percent wanted states to establish paternity before releasing welfare benefits. Sixty-eight percent of the women polled wanted to cap benefits so they would not rise if a welfare mother had additional children.

Earlier in Fond du Lac, Mr. Dole visited Brenner Tank Inc., which manufactures roadway tankers and has hired several people who were on welfare.

With cameras rolling for a campaign commercial, Mr. Thompson and Mr. Dole ate ham-and-cheese sandwiches at a picnic table with three employees trained by the welfare-to-work program and hired by Brenner.

Lisa C. Miesner, a welder, recalled how proud she was “when my check said ‘Brenner Tank,’ not ‘State of Wisconsin.’”

Mr. Dole said that as president he would encourage states to tighten statutory-rape laws and “put teeth” in child-support laws to prevent single parents from turning to welfare.

“We will establish a uniform tracking system, automate child-support proceedings in every state, require that every effort be made to establish paternity and do everything possible to ensure that child-support payments go to those who deserve them,” he said.

Mr. Dole also addressed Democratic criticism that such strict reforms are unfair to the poor.

“Thirty years ago the Great Society was liberalism’s greatest hope and its greatest boast. Today it stands as its greatest shame, a grand failure that has crushed the spirit, destroyed the families and decimated the culture of those who have become enmeshed in its web,” he said.

“It is not compassionate to lead people into a life of drugs, dependency and despair. Real compassion must sometimes take the form of tough love. It’s time to get people out of the destructive lifestyles of welfare once and for all.”

Clinton dodges suit, says he's in military

Critics fume at commander in chief

By Brian Blomquist
THE WASHINGTON TIMES

AI

President Clinton has provoked a furor by asserting in legal papers that as commander in chief he is in the military and a sexual-harassment lawsuit against him must be postponed until his active duty is completed.

The chairman of the House Veterans Affairs Committee is gathering signatures from other congressmen to send a letter to Mr. Clinton criticizing his latest defense in the lawsuit brought by former Arkansas employee Paula Corbin Jones.

In papers filed a week ago, Mr. Clinton seeks to defer the lawsuit under the Soldiers' and Sailors' Relief Act of 1940, which grants automatic delays in lawsuits against military personnel until their active duty is over.

Mr. Clinton maneuvered to avoid military service in 1969, during the Vietnam War.

A petition filed May 15 says, "President Clinton here thus seeks relief similar to that which he may be entitled as commander-in-chief of the armed forces, and which is routinely available to service members under his command."

SUIT

From page A1

trade show at a hotel and asked to go to Mr. Clinton's suite.

She says she went and engaged in small talk with Mr. Clinton, who was then Arkansas governor, before he exposed his genitals and asked her to perform a sex act.

The Supreme Court could decide as early as next month, or as late as September, whether to accept the case, Mr. Bennett said.

The claim on behalf of the president ignited immediate fury from veterans and their advocates.

"You are not a person in military

The petition was filed before the Supreme Court by Clinton attorney Robert S. Bennett. Mr. Bennett said the criticism is misleading because the 1940 legislation is a minor element of Mr. Clinton's claim that he should be immune from civil suits while in office.

"If you read [Mr. Clinton's 24-page petition] through the first time, you would miss" any reference to the law, he said.

The petition cites the law as an example of when a public official — say, a servicemen on active duty who is being sued by his wife — can argue that the legal action must be delayed, Mr. Bennett said.

"The president is on duty 24 hours a day, and you could literally tie up a president in lawsuits all the time," he said.

Mr. Bennett acknowledged Mr. Clinton's petition does argue that if the 1940 law is applicable to a sergeant, it should be applicable to the commander in chief. But "we're not pushing that argument," he said.

Mrs. Jones is suing Mr. Clinton for sexual harassment, contending she was approached by an Arkansas state trooper in 1991 during a

see **SUIT**, page A10

service, nor have you ever been," House Veterans Affairs Committee Chairman Bob Stump, Arizona Republican, wrote in a letter he is sending to Mr. Clinton.

"Bill Clinton was not prepared to carry the sword for his country, but has no hesitancy in using its shield if he can get away with it," said J. Thomas Burch Jr., chairman of the National Vietnam Veterans Coalition.

Mr. Stump and Rep. Robert K. Dornan, California Republican, called Mr. Clinton's legal tactic "a slap in the face to the millions of men and women" who have served. Their letter was circulated to members of Congress last night. Mr. Dornan is chairman of the

House National Security Committee's military personnel subcommittee.

The two congressmen urge Mr. Clinton to "take the honorable course" and withdraw the military-service argument.

"By pursuing it, you dishonor all of America's veterans who did so proudly serve," their letter said.

Federal law defines a person in military service as any member of the Army, Navy, Marine Corps, Air Force or Coast Guard, or any officer of the Public Health Service detailed by proper authority for duty with the Army or Navy.

The law does not explicitly include the commander in chief. Article II of the Constitution gives

the president authority over the military as commander in chief.

But the president is a civilian, not a military officer, which wartime Presidents Woodrow Wilson and Franklin Roosevelt recognized, according to the Congressional Research Service of the Library of Congress.

In 1950, the Surrogate Court of Dutchess County, N.Y., was asked to rule on a claim by Roosevelt's survivors, who sought tax benefits on the grounds that he died in the military.

The court rejected the claim, stating unquestionably that the president is a civilian.

• Warren P. Strobel contributed to this report.

David + Gw7 -

FYI

Elena

The Washington Times

WEDNESDAY, MAY 22, 1996

The Washington Times

★ THURSDAY, MAY 23, 1996

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Bill Clinton, military man?

When President Clinton famously declared that he loathed the military while doing his best to stay out of it, he was obviously not yet familiar with some of the fringe benefits that military service affords. But the president wants those benefits now, even though he has never spent a day in uniform — though perhaps Mr. Clinton thinks that his spiffy leather bomber jacket counts.

The benefit the president is groping for is the protection from civil litigation provided to active duty military personnel under the Soldiers and Sailors Civil Relief Act of 1940. Passed by Congress so that troops wouldn't lose the farm to default judgments in lawsuits back home, Mr. Clinton now claims that the law protects him from having to face Paula Jones in court.

Perhaps Mr. Clinton thought that this new and audacious gambit would go unnoticed. That seems to be what his lawyer, Robert Bennett, was hoping: "If you read [the 24-page petition] through the first time, you would miss" the paragraph pushing the military service claim, Mr. Bennett told *The Washington Times*. But Mr. Clinton can't always be that lucky. The chairman of the House Veteran's Affairs Committee noticed the claim, and has expressed his outrage in a letter to the president. The commander of the American Legion is similarly nonplussed. They plan a press conference today, suggesting that the issue is not going to be dispelled with a wave of Mr. Bennett's hand. According to Joseph Cammarata, who together with Gilbert Davis represents Paula Jones in her lawsuit, "The president's claim is not only legally inappropriate, it is inappropriate in light of those who served and died in the military."

Perhaps if the Soldiers' and Sailors' Relief Act actually provided a shield to Mr. Clinton, it would have been worth it to the White House to weather the well-earned scorn now being heaped on the president. But the claim is almost little more than a bad joke, suggesting that Mr. Bennett has been driven to extraordinary and desperate measures to block the discovery process. For starters, as Daniel Ludwig, national commander of the American Legion, points out, the commander-in-chief is a civilian: "The president isn't subject to the Uniform Code of Military Justice. He isn't eligible for military retirement. His service

doesn't fit the legal definition of 'active duty.' It's bizarre that anyone would suggest the president of the United States is on active duty."

That was certainly the ruling of the Los Angeles County Superior Court in *Bailey vs. Kennedy* and *Hills vs. Kennedy*. To avoid being sued over damages from a traffic accident, President Kennedy asserted that the Soldiers' and Sailors' Relief Act protected him as commander-in-chief. It wasn't such a moral stretch for Mr. Kennedy, who after all had worn a Navy uniform in combat and had been wounded in action. But it was such a legal stretch that the judge in L.A. denied Mr. Kennedy's motion without even writing an opinion.

The president should also have consulted the Supreme Court's interpretation of the Soldiers' and Sailors' Relief Act in the 1943 case of *Boone vs. Lightner*. The defendant had speculated in the market unwisely, and had done so with money improperly taken from his daughter's trust fund. When sued, the defendant relied on the SSRA and the fact that he was a uniformed Army captain in wartime. The high court ruled that the captain was not protected from litigation because he had a desk job and was himself a lawyer. Thus, unlike the GI in the foxhole, he would be able to make his court appearances. The court's language is piquant, saying that the "charges struck at his honor as well as his judgment." The justices concluded that "discretion is vested in the courts to see that the immunities of the Act are not put to such unworthy use."

Mr. Clinton seems willing to use any ruse, however unworthy of his office it may be, to delay answering what, if anything, he was doing — or trying to do — in an Arkansas hotel room with Paula Jones. "This ignoble pleading is a slap in the face to the millions of men and women who either are serving on active duty, or have served on active duty in the armed forces of the United States," Mr. Stump wrote in a letter to his congressional colleagues. He concludes that the president's most recent legal maneuver "makes a mockery of the laws meant to protect the honorable men and women who serve their country."

True. Just stop the legal goofiness, Mr. President, and raise your right hand and get on with it.

When it's time to downsize schools

Simple common sense suggests — and experience bears it out — that as far as teaching goes, seniority may be the least meaningful criterion of judgment. In fact, however, thanks to the stranglehold of the teachers unions and the educational bureaucracy, when it has come to deciding which teachers will be fired or not, which will be promoted or not, seniority has been the criterion. Which is why school systems all over the country find themselves burdened by an ever-increasing load of educational deadwood that gets harder to shift the longer it's around.

Amazingly enough, it seems that the D.C. public school system may be taking some steps in the right direction, as far as seniority goes. Last week, the school board — led by the newly-in-the-majority reform faction, in accordance with the D.C. budget act passed by Congress and with the demands of the city's financial control board — implemented new rules for the coming Reduction In Force (RIF) mandated by the city's budget crisis. Seniority will still be one consideration in deciding which 400-odd D.C. teachers will lose their jobs; but it will be only one equally-weighted measure among four. The others are "significant relevant contributions, accomplishment or performance"; "relevant professional experience as demonstrated on the job"; and "office or

school needs, including: curriculum, specialized education, degrees, licenses, and/or areas of expertise."

The entire system, moreover, will cease to be regarded as one vast employment pool for the purposes of personnel cuts; it is to be divided into discrete "competitive areas" — with every school counted as one area. Teachers, administrators, bus drivers, etc., will no longer be competing against one another for slots within the school system. This redefinition of "competitive areas" will also eliminate the sorry practice of "bumping" — wherein an administrator or teacher with greater seniority can be sent from one school to another to take the place of someone less senior (no matter how competent or how important to the smooth functioning of the school), who in turn would be sent to yet another school to bump someone with even less seniority, and on and on ad infinitum. Each principal will have a certain number of cuts to make (and each manager within non-school offices as well, which will be cutting 600 or more positions); and each principal will decide based upon the new criteria which of the school's teachers will stay and which will go.

It is a pretty sad commentary on the state of education that such acts of elementary judiciousness should seem revolutionary. But so they do.

Pinning down the Medicare numbers

Appearing on CNBC's "Politics with Chris Matthews" recently, Senate Minority Leader Tom Daschle was asked why Democrats often talk about the "cuts" in Republican Medicare spending proposals, despite the fact that the government's Medicare payment per beneficiary was scheduled to increase annually for the next seven years. To be sure, it may not increase as much as Mr. Daschle or President Clinton would like it to increase, and it may not increase as much as the so-called "current services baseline" projects it to increase or as fast as it increased in the past (either of which, it should be noted, would singlehandedly destroy efforts to achieve a balanced budget), but when Medicare spending per beneficiary, according to the Congressional Budget Office (CBO), rises from less than \$4,800 in 1995 to nearly \$7,100 in 2002, that represents an increase — 48 percent, to be precise.

"Obviously, there are increases in spending over the years," Mr. Daschle conceded. "But if you take the real purchasing power that is necessary to stay at a certain level, it is a cut. We're losing purchasing power even though in nominal terms we're increasing dollars," he argued. Were that demonstrably the case, the senator's argument would have some validity to it.

But it turns out that Mr. Daschle has a highly questionable way of measuring that "real purchasing power." If Medicare spending per beneficiary goes from \$4,795 (1995) to \$7,090 (2002), that's an annual growth rate of 5.75 percent. To support his claim, Mr. Daschle points to a CBO estimate that private health insurance premiums will increase by an average of 7 percent a year during this period. But are health insurance premium increases really a good proxy for inflation in medical costs? Even Mr. Daschle's own office acknowledges it's "a very imperfect measure." That's a conclusion CBO analysts support.

In fact, CBO bemoans the misuse of statistics on both sides of the aisle. Republicans, for example, make CBO-projected changes in the overall consumer price index, 3 percent per year, their yardstick for "real purchasing power." That's also highly ques-

tionable. But it enables them to argue that under their plan, the "real purchasing power" of Medicare benefits would increase each year by about 3 percent — or by somewhat less if they had persuaded Democrats not to reduce the beneficiaries' Part B premium obligation from 31.5 percent of the premium's cost to 25 percent.

Still, getting bogged down in the numbers-crunching over "real purchasing power" ignores a more important point: that Republican-initiated reforms would have contributed greatly to cost containment. Unfortunately, by vetoing the budget reconciliation bill last year, the president also vetoed extensive Medicare reform legislation, which included an experimental program featuring medical savings accounts and incentives to replace costly fee-for-service care with less costly, more efficient health maintenance organizations (HMOs).

In their most fiscally irresponsible action, however, the president and his party insisted on reducing the heavily subsidized monthly premiums paid by beneficiaries for doctors' services (Medicare Part B) from \$46.10 in 1995 to \$42.50 in 1996 — even though everyone agrees that Medicare Part B is in as bad financial shape as the Hospital Insurance Trust Fund (Part A), which is scheduled to go bankrupt in 2001. Moreover, the president also vetoed Republican efforts to means-test Medicare premiums, so minimum-wage workers still have to subsidize retired billionaires. Now that qualifies as extremism.

CBO refrains from making any specific statement about "real purchasing power." As a relative measure of how society decides to allocate its scarce resources, however, CBO's analysis does reveal that the Republican Medicare plan would increase Medicare spending per beneficiary at a rate higher than nominal gross domestic product per person is projected to increase. That essentially means that the incomes of working taxpayers — the people who subsidize Medicare — will grow at a rate less than the growth rate of the subsidies themselves.

Is that really so extreme?

G.O.P. Submits New Bill to Revamp Welfare and Medicaid

By ROBERT PEAR

WASHINGTON, May 22 — Republican leaders of Congress kicked off a new effort to overhaul welfare and Medicaid today by introducing legislation to meet some of President Clinton's objections to their earlier proposals, but members of both parties said the process would probably end in a Presidential veto.

Under the Republican bill, adults would have to go to work within two years of entering the welfare rolls or lose benefits. States would have to put at least half of their adult welfare recipients to work by 2002, and no person could receive cash benefits for more than five years.

Mary Jo Bane, an Assistant Secretary of Health and Human Services, said the new proposals still cut too deeply into Federal aid for destitute children.

The savings in the bill, \$53 billion over six years, "do not appear consistent with the goal of bipartisan welfare reform that will move people from welfare to work and protect children," Ms. Bane told the House Ways and Means Subcommittee on Human Resources.

But Republicans said that the Administration was deliberately blocking action on welfare. Representative Jennifer Dunn, Republican of Washington, told Ms. Bane, "You are setting this bill up to be vetoed again."

Republicans said that their welfare and Medicaid proposals followed the recommendations of the National Governors' Association. The governors offered their bipartisan recommendations in February as the basis for a possible compromise between Congress and the

White House, and Mr. Clinton praised them at the time.

But today Ms. Bane expressed "serious concern" about the governors' proposals. She said that the Administration opposed many of its specific provisions, including one that might allow states to substitute Federal dollars for state money now being spent on social services.

Haley Barbour, the chairman of the Republican National Committee,

The Administration sees a measure as too harsh on indigent children.

said he was frustrated with the President's "repeated oscillations and gyrations" on welfare policy. In the last six months, Mr. Clinton has twice vetoed other bills containing Republican welfare initiatives.

"This is a persistent pattern of purposeful deception," Mr. Barbour said. "When the T.V. cameras are on, Bill Clinton talks about how he's for welfare reform. But later, when the cameras are off, his aides and appointees do something different. This is classic Clinton, page 1 of the Clinton play book: fake right, then run left."

Senator Daniel Patrick Moynihan, Democrat of New York, said the Republicans' new bill "sets up the campaign face-off" between President Clinton and Bob Dole, the likely Re-

publican Presidential nominee, on welfare policy.

In an interview, Mr. Moynihan, who has studied welfare policy for several decades, said he now felt confident that "we will get through this awful year without something potentially calamitous happening" to the nation's welfare programs.

"This is an agreeable impasse," Mr. Moynihan said of the deadlock between Congress and the White House. "I had hoped we would not do anything until the next Congress, so we could let some of these issues be argued out in the election. The current climate is much too politicized to have any good emerge in terms of social policy."

On April 28, the White House sent Congress a detailed legislative proposal to revamp welfare programs, but Ms. Bane said that no member of Congress had introduced the draft legislation as a bill.

The President said his proposal would impose work requirements on welfare recipients and set a five-year limit on cash assistance. But Republicans said the proposal contained so many exceptions and exemptions that the work requirements and time limits were not

meaningful.

Under Mr. Clinton's proposal, the work requirements would not apply to a family headed by a single parent who "has a demonstrated inability to obtain needed child care."

Even if a family reached the five-year limit, it could still receive welfare benefits if one member of the family was working 20 hours a week, if the family resided "in an area with an unemployment rate exceeding 8 percent" or if the family was experiencing "other special hardship circumstances."

A state could define hardship in such a way as to nullify the work requirement for 15 percent to 20 percent of the families on welfare.

Moreover, under Mr. Clinton's proposal, if a family was denied cash assistance because of the five-year limit, the state would have to meet the needs of the children in the family by providing vouchers that could be used for shelter, clothing, diapers and other goods and services.

A family consisting of a mother and two children would receive vouchers equal to the cash welfare grant for a two-person family; the Administration proposal would provide no vouchers for the mother.

2 G.O.P. Lawmakers Attack Clinton Legal Tactic

By NEIL A. LEWIS

WASHINGTON, May 22 — Two Republican House members attacked President Clinton today for a suggestion in a legal brief that his status as Commander in Chief could be grounds for delaying a sex-harassment suit against him until after he leaves office.

The two, Representatives Robert K. Dornan of California and Bob Stump of Arizona, called the suggestion an insult to the armed forces.

They based their complaints on a passage in the brief, recently filed before the Supreme Court, that notes

that a Federal statute allows courts to delay civil suits involving active-duty service personnel. But Mr. Clinton's lawyer said that the Republican lawmakers were wrong and that the President had not asked the Court to give him a special status as Commander in Chief.

A statement circulated to fellow members of Congress by Mr. Dornan and Mr. Stack complained that Mr. Clinton avoided military service during the Vietnam War and therefore, "this ignoble pleading is a slap in the face to the millions of men and women who either are serving on active

duty or have served on active duty in the armed forces."

But Mr. Clinton's chief lawyer said that the two Representatives had misread the President's brief and that their complaint reinforced the reasons the suit should be delayed.

The lawyer, Robert S. Bennett, said in a statement that the brief on behalf of Mr. Clinton clearly noted the President was not relying on the statute, the Soldiers and Sailors Act, to defer the lawsuit even though he might be able to do so as Commander in Chief.

"The attempt by the President's partisan opponents to distort the President's position in order to create a political issue illustrates precisely why litigation involving incumbent Presidents should be deferred," Mr. Bennett said. "It is because it will be abused for partisan purposes."

The issue involves a lawsuit brought by Paula C. Jones, a former state clerical worker in Arkansas, who has said that when Mr. Clinton was Governor of that state, he invited her to a Little Rock hotel room, where he made a crude sexual solicitation. Mr. Clinton has denied that, and his lawyers have tried to have the suit postponed until after he leaves office. They have argued that, if it took place while he was in office, it would impede his ability to perform his Presidential duties and would encourage frivolous lawsuits.

A Federal appeals court in St. Louis rejected that argument and the White House has appealed to the Supreme Court.

In their brief, Mr. Clinton's lawyers said that it was not unusual for courts to defer civil suits for a variety of reasons and that the appeals court erred when it ruled that Mr. Clinton's request for a delay was extraordinary. Suits are sometimes delayed when one of the parties is bankrupt. Another instance, the brief said, is the Soldiers and Sailors Act, which provides for the delay of civil suits for active-duty service members.

"President Clinton here thus seeks relief similar to that which he may be entitled as Commander in Chief of the armed forces and which is routinely available to service members under his command," the brief says.

Mall Is Endorsed for Pennsylvania Avenue

WASHINGTON, May 22 (AP) — A year after a two-block section of Pennsylvania Avenue was closed to protect the White House, the National Park Service recommended today that the street be turned into a pedestrian mall.

"Out of all the advice, grounded in professional experience, here's the best plan we could find," the Park Service's director, Roger Kennedy, said. "It's up there as our best effort."

The plan visualizes replacing concrete barriers with less-obtrusive security barricades around the perimeter of the stretch of boulevard in front of the White House. The concrete there now would be replaced with a narrow, gently arcing pedestrian promenade.

Under the plan, the wrought-iron fence surrounding the White House grounds would also be lowered and rebuilt on an arc — an idea first

conceived by Thomas Jefferson.

Mr. Kennedy said the plan, which still must be approved, is the result of more than 600 suggestions proposed since the Park Service began working on the issue last October.

President Clinton ordered the two blocks closed on May 20, 1995, on the recommendation of the Secret Service, which concluded it was necessary to improve security.

Since then, the four-lane strip of blacktop has been set off by concrete barriers and patrolled by Secret Service agents. In-line skaters, joggers and camera-toting tourists roam freely across the macadam.

Some people, including Senator Rod Grams, Republican of Minnesota, have argued that the street should be reopened.

He has the backing of members of the District of Columbia Council, who routinely hear complaints about traffic tie-ups.

THE NEW YORK TIMES
THURSDAY, MAY 23, 1996

The \$5.15 Question

By Alan S. Blinder

SOME self-evident truths are neither self-evident nor true. Elementary economic theory insists that a higher minimum wage must reduce employment. On this basis, many people dismiss recent scholarly evidence suggesting that higher minimum wages may not cost the country jobs. But perhaps the elementary theory is, well, too elementary.

When evidence contradicts a theory previously deemed indisputable, there are two ways to react. An honestly inquisitive mind will question the validity of both the new and old evidence. Which is stronger? He or she will also ask whether another theory could explain the puzzling new evidence. A polemicist who "knows" the answer, however, will dismiss the new evidence and attack the messenger.

So it has been with the minimum-wage increase. Two of my Princeton colleagues have been attacked regularly and roundly for their research suggesting that an increase in the minimum wage might not decrease the number of jobs.

But Profs. David Card and Alan Krueger are among the most careful empirical researchers in the economics profession. A few important points need to be made about their research:

First, when their study of fast-food restaurants in New Jersey and Pennsylvania was conducted, Professor Krueger was not employed by Labor Secretary Robert Reich; indeed, at that point, he had never met him! (Only later did Mr. Krueger work briefly as the chief economist of the Labor Department.) To suggest that his research was politically biased is not only mean-spirited but ludicrous.

Second, evidence casting doubt on the theory that the minimum wage reduces employment is not limited to the Card-Krueger study. About 20 different studies by two dozen authors have produced similar results. Are we to believe that all these researchers are political hacks?

Third, the evidence in the Card-Krueger study represents a quantum jump in quality over previous research. Virtually all earlier studies on the minimum wage were based on time-series analysis, which tries to control for other pertinent influences by statistical methods and therefore always does so imperfectly. The Card-Krueger research is based on something akin to a natural experiment and is thus vastly more powerful and reliable.

Fourth, it turns out that most of the older studies supporting the conventional view fall apart when data from the 1980's are added. The studies no longer imply that raising the minimum wage kills jobs.

The principal study used to discredit the Card-Krueger findings is by David Neumark of Michigan State University and William Wascher of the Federal Reserve staff. No polemicists they. But those interested in this debate should know that:

- The original data used in their

Does raising wages cause unemployment? Take another look.

study were provided by the Employment Policies Institute, which is financed by manufacturers, restaurants and retailers and whose director has been a lobbyist for several fast-food chains. That may be fine, but....

- The institute never claimed that its sample of 71 restaurants was drawn randomly, and it still refuses to release the data to other researchers.

- When Mr. Neumark and Mr. Wascher drew their own sample of 150 restaurants, they found a loss of jobs small enough to have been a statistical blip. (In technical parlance, the loss was not "statistically significant.") This more reliable sample, therefore, does not refute the Card-Krueger study.

But how could jobs not be lost, when basic economic theory insists on the opposite conclusion? Here are three possibilities:

- The simple theory disregards the costs of training new employees. Paying a higher minimum wage might reduce job turnover enough to pay for itself, leaving companies with no incentive to reduce employment.

- The simple theory also ignores the problem of recruiting new work-

ers. Employers with many minimum-wage workers may be reluctant to fill vacancies by offering higher pay because they will have to increase the wages of their existing workers as well. A higher minimum wage — which equalizes the pay for all workers — makes this issue moot.

- Minimum-wage labor may often be a small and relatively fixed proportion of costs, which include more expensive labor and machinery. In that case, the increase in the minimum wage may only slightly affect businesses' total costs.

I do not know if any of these alternative "theories" are true. But the list demonstrates that one can accept the new empirical findings and still be a card-carrying economist.

Where does this dueling evidence and theory leave us? In my view, it justifies agnosticism. Those who want to raise the minimum wage have not taken leave of their senses, have not forsaken basic economic principles and have not cooked the books.

Frankly, I do not know whether a modest minimum-wage increase would decrease employment or not. If it does, the effect will likely be very small.

But that doesn't answer the relevant question. One can accept the new evidence and still oppose the 90-cent-an-hour increase in the \$4.25 minimum wage. After all, it does abridge business freedom. It does impose higher costs on some businesses and reduce economic efficiency. And it might reduce employment a bit.

But other considerations push me

strongly in its favor. The folks who earn the lowest wages have been suffering for years. They need all the help they can get, and they need it in a hurry. The claim that most minimum-wage workers are teen-agers from prosperous families is untrue.

About 40 percent of all minimum-wage employees are the sole wage earner in their households, and about two-thirds of the teen-agers earning the minimum wage live in households with below-average incomes.

Yes, there are other ways to help the people at the bottom of the economic ladder. But every solution sacrifices some economic efficiency, and Congress is not about to enact any of them. A minimum-wage increase is being debated now. Congress should pass it. □

THE NEW YORK TIMES

THURSDAY, MAY 23, 1996

Alan S. Blinder, a professor of economics at Princeton University, was formerly vice chairman of the Federal Reserve and a member of President Clinton's Council of Economic Advisers.

Liberties

MAUREEN DOWD

No Bridge Too Far

WASHINGTON

As a society, we haven't preserved our sense of shame. But Bill Clinton is doing his best to preserve our sense of shamelessness.

The President and his Rasputin, Dick Morris, have broken creative new ground in brazenness.

First they snatch Republican positions, counting (not unreasonably) on the forgetfulness of voters and the expediency of Democrats who want their Republican in the White House to win. And now they are both embroiled in kerfuffles on Capitol Hill, where it takes a lot to be called shameless.

In a move that marks a new level of chutzpah in American politics, Mr. Clinton's lawyers mentioned in their appeal to the Supreme Court on Paula Corbin Jones's sexual harassment suit that the President may be protected by the Soldiers' and Sailors' Civil Relief Act of 1940, which was designed to give American troops some protection from civil suits while on active duty.

"President Clinton here thus seeks relief similar to that to which he may be entitled as Commander in Chief of the Armed Forces, and which is routinely available to service members under his command."

Robert Bennett, the President's lawyer, said he had only cited the act "as an example" that might extend to the Commander in Chief, not as his main argument.

But Mr. Bennett is getting paid too much to make the hideous mistake of reminding the public of one of Mr. Clinton's improvidences (his maneuvering on the draft) in defense of

He's in the Army now.

another (his wandering eye).

Some veterans' groups and Bob Stump, the Arizona Republican who is chairman of the House Committee on Veterans' Affairs, did not care for Mr. Clinton's opportunistic enlistment. (Hello, sailor).

Mr. Stump is sending the President a letter, signed by 170 Republicans, asking him to withdraw his "ignoble suggestion" from the brief: "The Founding Fathers wanted to enshrine the principle of civilian control of the military in the Constitution and did so by making the President the civilian Commander in Chief of the Armed Forces. You are not a person in military service, nor have you ever been."

Also in the President's mailbag is a letter from Republican Congresswomen demanding that Dick Morris be fired for doing jury-related polling for Alex Kelly of Darien, Conn., the unsavory teen-age burglar who fled after he was accused of raping two girls. He was a fugitive in Europe for eight years, living the posh life of a ski bum, while his parents supported him. (Family values.)

"It is the worst thing an adviser to the President could be doing at a time when crime and crimes against women are such a deep concern to the American people," wrote Representative Jennifer Dunn.

The Republican women are attempting to spruce up Mr. Dole gender-wise, but they have a good feminist point. Ordinarily, in a case like this, the Democratic women would be yelping, but there was only the occasional brave mutter. "This is beyond the pale," said Representative Nita Lowey of New York.

One female Democratic lawmaker explained: "If this were a Republican President and Dick Morris was helping an accused rapist, you know we would be screaming. But it's not worth picking a fight. We just want to win in '96."

So Democrats have suppressed their distress as Mr. Morris has helped the Clintons shape-shift — when Hillary Rodham Clinton told Larry King "There is no left wing of the Clinton White House," and when Mr. Clinton embraced the radical Wisconsin plan to abolish welfare.

Until yesterday, gay groups had fumed as the President slithered away from same-sex marriage. But the overly eager White House announcement yesterday that Mr. Clinton would sign a law denying Federal recognition for same-sex marriages if it ever reached his desk was too much. The Human Rights Campaign, the largest gay-rights group, accused the President of caving in to the right wing, and disinvited George Stephanopoulos as a dinner speaker.

So Bill Clinton is in the Army. He's against gay marriage. His adviser did work for an alleged rapist. He moves from the left wing to the right wing because what he really believes in is the West Wing. □

Essay

WILLIAM SAFIRE

'Ish' vs. Issues

WASHINGTON

What if Bill Clinton's blatant intervention in the Israeli election on the side of the left wing's Shimon Peres backfires? What if the right wing's Bibi Netanyahu — to the consternation of the media and most leaders of the Jewish community in America — brings off an upset?

A keening *geshrei* would go up from doves around the world: Peace process doomed! Disaster looms! Yasir Arafat would go through the roof, gloom would pervade the halls of the U.N. and Syria's Hafez al-Assad would summon Warren Christopher to Damascus for the 21st time, demanding an explanation.

But after the shock wore off, the U.S. President would extend an invitation to the new leader for a state visit, the world's media would find new seriousness in Mr. Netanyahu, and high-level rejoicing would be heard in the capital of Jordan.

That's because the Israeli election next week is not about whether to pursue a peace. That pursuit is a given; neither war nor the status quo is an option. The question is how to give Israelis a sense of personal and national security while giving Palestinian Arabs a sense of political and economic progress. The ultimate compromise would enable each to govern itself side by side.

Terrorists have twice jerked poll standings around. The assassination of Yitzhak Rabin by a crazy rightist caused a spike in Labor's support, which was later flattened by Hamas's suicide bombings. Extremists, either Jewish or Arab, could still deliver a "revulsion vote" against their own mainstreams.

But polls are deceiving because this is the first Israeli election to be decided by Arabs and Russians. Peres is counting on Israeli Arabs, who support him overwhelmingly, but they might not turn out in the light of his need to punish Lebanon for harboring Hezbollah rocketeers. Netanyahu is counting on Russian immigrants who seem to be splitting, but come from a tradition of misleading pollsters. My hunch is that the current 5 percent Peres lead is really a dead heat.

Reached by cellular phone as he was about to address 100 rabbis, Bibi tells me "Labor is talking the *ish* and we're talking the issues." This means that his opposition is running a negative personal campaign against him — *ish* means "the man" in Hebrew — while he is stressing the Golan Heights and Jerusalem.

Hawks like me think Likud is right about wanting to make the strategic Golan a permanent part of Israel. Syria lost that threatening position in a war of aggression; Peres has been pleading with Assad to take it back in return for a promise of peace. That would be foolhardy, and the hoped-for American troop tripwire in that dangerous spot will not be forthcoming. The way to deal with Assad's terrorist regime is to be ready to wait for his successor.

Is Likud right about keeping Jerusalem's unity under Israel's sovereignty? Both parties say that's what they're for, but I think only Likud means it. That's because a Palestinian state, which Labor would instantly permit on almost all the West

Will Jerusalem be divided?

Bank, would demand East Jerusalem as its capital, and Arabists from Turtle Bay to Foggy Bottom would lean hard on Israel to give way.

But Netanyahu's Likud, without breaking agreements already made, would divvy up the West Bank into large Palestinian enclaves with a more limited sovereignty. With an Israeli government resolute about maintaining control of all Jerusalem, Arabs might thus be inclined to accept Gaza as their capital.

That explains Jordan's cordial relationship with Likud. In a final settlement, a "religious solution" would be possible, with King Hussein the key in determining access to, and providing protection of, Islamic holy places in Jerusalem. He competes with Arafat for that considerable power in the Arab world.

The little King has been, in Netanyahu's word, "impeccable" in his impartiality during Israel's current campaign. However, Al Asswak, a leading Jordanian newspaper that reflects his views, just ran an editorial headlined "Likud victory can save the peace process."

I think it can, too. Is Netanyahu worried about President Clinton's preference for his opponent? "American-Israeli relations are impervious to changing governments," says Bibi, adding with mischievous confidence, "I'll work with whoever is elected President of the United States." □

THE NEW YORK TIMES

THURSDAY, MAY 23, 1996

Hacker pair illustrate Pentagon's vulnerability

By M.J. Zuckerman
USA TODAY

A pair of computer hackers' 1994 attack on the Air Force's leading command and control research facility had greater potential for endangering U.S. national security than was earlier revealed, according to a study presented Wednesday.

The attack, carried out by a British 16-year-old using the on-line nickname "Datastream Cowboy" and a second still unidentified person known only as "Kuji," was used at Senate hearings on computer security to illustrate the dangers hackers pose.

The Rome Labs case "demonstrates the difficult challenges of investigating one of these incidents," says Sen. Sam Nunn, D-Ga.

While the attack was first revealed last year, new details show that Kuji was training Datastream and that investigators suspect Kuji was a foreign agent.

Tracking bad guys through cyberspace is a little more sophisticated than tracing a phone call. The problem is that hackers never go from their own computer directly to a target, but instead use a series of facilities, worldwide, to cover their tracks.

During the investigation, officials watched Datastream try, and fail, to crack several systems. They said Datastream then would carry on an on-line conversation with Kuji, which officials were not able to monitor. Twenty to 40 minutes later, Datastream would hack into a system that had previously kept him out.

"We have to assume that (Kuji) was tutoring him," says Jim Christy, the U.S. Air Force's top computer investigator.

On March 23, 1994, the two broke into the computers at Rome Air Development Center, Griffiss Air Base, N.Y.

By the time authorities became aware of their presence five days later, the pair had penetrated seven computer systems, gained access to all information in the systems, copied files — including sensitive battlefield simulations — and installed devices to read the passwords of everyone entering the systems.

From March 28 on, as investigators chased the pair through cyberspace, watching their communications, Rome Labs' computer systems were secured. In an attempt to catch them, the pair were allowed to enter the system, but could not do much damage.

Still, the two were able to use Rome as a launching pad for more than 150 intrusions into other military, government and commercial systems.

In one case, Datastream used Rome to access a Korean facility. For several anxious hours, Christy said, he and his colleagues didn't know whether the intrusion was North or South Korea.

The concern was that the North Koreans would trace an intrusion coming from the U.S. and "perceive it as an aggressive act of war." It turned out to be the South Korean Atomic Research Institute.

Ultimately, it was an informant in an on-line chat room who told Christy that he had been in touch with a teen-ager in England who used the handle Datastream Cowboy. Datastream was arrested May 12, 1994. His case is pending and his identity concealed by British authorities.



Nunn: Computer cases difficult.

► Government hacker study, 1A

ALSO IN WASHINGTON

Veterans question Clinton's legal claim



Jones: Clinton trying to delay suit

Resurrecting President Clinton's avoidance of the draft, Republicans and the nation's largest veterans group questioned Wednesday whether the president, a defendant in a sex harassment case, is hiding behind a law meant to shield soldiers from lawsuits.

Clinton's lawyers told the Supreme Court the president's role as commander in chief of the armed forces could entitle him to a postponement of a civil suit filed by former Arkansas state employee Paula Jones. She says Clinton propositioned her in 1991 at a Little Rock hotel.

The legal argument by Clinton's lawyers "smells bad," said Thomas Burch, chairman of the National Vietnam Veterans Coalition. And leaders of the 3 million-member American Legion said in a news release, "It's bizarre that anyone would suggest the president of the United States is on active duty."

House Republicans called such a legal position "a slap in the face to the millions of men and women" in the military.

Clinton lawyer Robert Bennett said the Republicans were taking his legal argument out of context "in order to create a political issue." Bennett said that he had referred to the relief act only as an example and that "we have not relied on it in this case."

In a 21-page brief to the Supreme Court last week, Bennett said that "absent exceptional circumstances," a president should not have to face trial in a private civil lawsuit. In one paragraph of the brief, Bennett referred to the Soldiers' and Sailors' Civil Relief Act, which provides that civil claims are to be delayed while military personnel are on active duty.

In a letter they circulated on Capitol Hill and addressed "Dear Mr. President," House Republicans wrote, "On the eve of Memorial Day ... it is imperative that you rectify this ignoble suggestion that you are now somehow a person in the military service."

Said Rep. Sue Myrick, R-N.C.: "The military should serve as the nation's defense, not somebody's defense."

During the Vietnam War, which he opposed, Clinton received a draft deferment for a reserve officers training program, which he never joined. He eventually subjected himself to possible induction but drew a draft lottery number that was high enough so that he was never called into the military.

"We've had plenty of great Americans take off a military uniform to assume the presidency" but "none has ever put on a uniform after Inauguration Day," said the news release by the American Legion, the nation's largest veterans group.

ESPY PROBE: A Mississippi farmer and his son who allegedly received help from a one-time aide to former Agriculture secretary Mike Espy were indicted on charges they fraudulently collected \$777,000 in crop subsidies. The four-count indictment against Brook Keith Mitchell Sr., his son, Brook Keith Mitchell Jr., and their farming company is the first from an independent counsel's 20-month investigation of Espy.

Espy resigned in December 1994 because of questions about his conduct, including accusations of receiving favors from Tyson Foods and other agribusi-

ness firms. The charges returned by a grand jury, however, involve the conduct of Ron Blackley, a Mississippi farm consultant who had been a congressional aide to Espy and Espy's chief of staff at the Agriculture Department.

Both Mitchells declined to comment when reached by telephone. The indictment says the Mitchells made false statements about the son's eligibility for subsidies for three of the five farming companies that operated under the umbrella of Five M in 1992.

SPYING BAN: The CIA would be prohibited from using U.S. journalists as spies under a House proposal passed overwhelmingly. But the CIA still could use its own agents in the guise of journalists. The House also decided against making the U.S. intelligence budget public even as it approved, by voice vote, an overall spy budget for 1997 estimated — unofficially — at \$29.4 billion. Under the proposal by Rep. Bill Richardson, D-N.M., a member of the House Intelligence Committee, the president could override the spy restriction after explaining his reasons to Congress. "The intent is for this to never happen," Richardson said after the vote. "The CIA fought this." CIA Director John Deutch assured news executives last month that the agency has no intention of using American journalists as agents nor news organizations for cover. But Deutch said he reserved the right to make exceptions under "genuinely extraordinary" circumstances.

DOLE TAX MEETING: Republican presidential candidate Bob Dole, meeting with former rival Steve Forbes, said he would propose a "pro-growth" economic policy but was not committed to a specific tax cut plan. The retiring Senate majority leader said details of his economic plan would be announced later. Later, Forbes said on CNN that "what I think he plans or hopes to come up with after he finishes his consultations is a package that will combine tax cuts with dramatic and radical simplification."

Meanwhile, official campaign finance reports showed that Dole is within \$176,914 of the \$37 million federal limit on spending during the primary season. Dole's campaign says he'll have plenty of cash to keep his campaign going until August's convention.



Jefferson: First to live in mansion

WHITE HOUSE PLAN: After six months reviewing modern suggestions, the Park Service turned to an old expert on the capital — Thomas Jefferson — for guidance on turning Pennsylvania Avenue in front of the White House into a park. A two-block section of the street was closed a year ago amid security concerns.

The plan emphasizes security efforts but tries to keep them as unobtrusive as possible. The

principal change would involve tearing out the asphalt in front of the White House and replacing it with a gently arcing promenade bordered by grass and trees, a concept advanced by Jefferson 200 years ago.

Also, the tall wrought-iron fence that borders the White House grounds would come down. It would be replaced by a lower wall and fence to make the area look much as it did when Jefferson was the first occupant of the mansion.

"There was no avenue in the original plan," National Park Service Director Roger Kennedy said. "It was thought of as a town square, where people could come on their feet and gather very close to those who ruled them."

But Sen. Rod Grams, R-Minn., said the government is overreacting to perceived terrorist threats. He has introduced a resolution to reopen the roadway.

significantly increase that spending. Republicans complained Thursday, however, that the CBO estimates were pegged to the most expensive of several possible options for devising a missile defense system. Weldon said in an interview that estimates provided by individual armed services showed that by adapting and upgrading existing technology, the Pentagon could have a system ready to deploy for between \$2.5 billion and \$5 billion more than currently is being spent.

"We're going to be trying to get harder numbers from CBO," he said.

The CBO's estimates were an embarrassment to the Republicans. Weldon, who made it clear he had not been in on the drafting of the GOP plan, groused that "we should not have had this bump in the road."

(Optional add end)

In his Coast Guard Academy address, Clinton also commented indirectly on next week's election in Israel. The administration has made little secret of its preference for the re-election of Labor Prime Minister Shimon Peres over Likud challenger Benjamin Netanyahu.

Speaking to the Israeli public, Clinton said the United States has supported them in their search for peace with the Palestinians and their Arab neighbors.

"As Israel takes further risks for peace in the future, it can count on further manifestations of American support," Clinton said. "Now is not the time to turn back, and the United States must do its part."

Clinton May Sign GOP-Backed Bill Limiting Same-Sex Marriages (Washn) By Melissa Healy= (c) 1996, Los Angeles Times=

WASHINGTON The White House, acting to defuse a politically potent weapon against President Clinton, said Wednesday the president would sign a GOP-backed bill limiting same-sex marriages if the measure passes in its current form.

A week after charging the bill is "designed to provoke hostility toward gays and lesbians," White House spokesman Mike McCurry said Clinton supports the thrust of the "Defense of Marriage Act," and "would sign that bill if it was presented to him as it's currently written."

McCurry's comments culminated several days of unofficial suggestions that Clinton would support the bill, and laid to rest any remaining doubt about his position. The measure is co-sponsored by Republican presidential candidate Sen. Robert Dole of Kansas, and Republicans had promised to make it a central election-year issue if Clinton had acted to block it.

Now moving through both House and Senate, the bill would define marriage, for purposes of federal benefits, as a union between a man and a woman. It also would allow states the right not to recognize same-sex marriages performed in another state.

Clinton's support for the bill drew infuriated responses from gay and lesbian groups Wednesday, while Democratic strategists maintained his decision is consistent with his past positions and is a practical step in an election year.

Gay-rights activist David Mixner, a former Clinton adviser and fund-raiser, said Wednesday he was "livid and nauseated" by Clinton's decision, which he described as a "political opportunism at its most crass."

Mixner likened the president's decision to his gesture in the 1992 campaign in which the then-candidate publicly reproached rap singer Sister Souljah for making remarks that could incite violence by African-Americans against whites.

"They're using it to prove he can stand up to the gay and lesbian community," said Mixner. "The difference is, he didn't sign a piece of legislation" in 1992. "This could take decades to overcome. It is a dramatic step backwards."

But some Democratic strategists warned that a

presidential veto would be politically disastrous this election year. "Clinton is trying to neutralize any issue that might give Sen. Dole an advantage," said Brian Lunde, former executive director of the Democratic National Committee.

"It's a no-brainer in a presidential election year..." he said. "This is an uncontrollable issue and very frankly, most voters are opposed to the idea of gay marriage. This is not an issue that politicians are going to lead on. They're going to follow the people or the courts."

(Optional add end)

Others indicated that with Wednesday's statement, Clinton is staking out a middle ground on gay and lesbian rights that will likely sit well with voter.

"President Clinton has drawn the line with this decision on how far this society will go in accepting gays as part of the community," said Ed Sarpolus, vice president of EPIC/MRA, a Michigan-based polling organization. "He's not going to deny gays and lesbians a job or equal rights or protection. But he's saying there's a line between guaranteeing rights and extending them to include an institution that most Americans don't see as applying to gays."

The decision, added Sarpolus, "stabilizes him on the moral ground."

Sarpolus and others also speculated that Clinton's early announcement that he would sign the bill may indeed slow its political momentum. If the measure's Republican backers see no political advantage to pressing forward, they may lose interest in pressing the bill through the Senate, where it is certain to hold up other business.

The bill's conservative backers, however, could insist that the measure come to vote in each chamber, in hopes of making same-sex marriage an issue in congressional re-election campaigns.

Clinton's Bid for Immunity Under Military Status Draws Ire (Washn) By David G. Savage and Gebe Martinez= (c) 1996, Los Angeles Times=

WASHINGTON House Republicans and a coalition of Vietnam veterans lambasted President Clinton Wednesday for seeming to claim active-duty military status as a reason for putting off a pending sexual harassment lawsuit, a suggestion they called "a slap in the face to the millions of men and women" in the armed forces.

Clinton's lawyer, Robert S. Bennett, asked the Supreme Court last week to rule the president immune while in office from responding to lawsuits, including the harassment claim filed by Paula Corbin Jones.

By law, criminal defendants, bankrupted people and active members of the armed forces can be freed temporarily from responding to civil suits, he argued. He said the 1940 Soldiers' and Sailors' Civil Relief Act freed service personnel from responding immediately to damage suits against them.

"President Clinton here thus seeks relief similar to that which he may be entitled as commander in chief of the armed forces, and which is routinely available to service members under his command," Bennett told the justices.

Veterans' groups demanded that Clinton retract the "ignoble suggestion" that he is a member of the armed forces.

"Under the Constitution, you are the civilian commander in chief ... You are not a person in the military service, nor have you ever been," said Reps. Bob Stump, R-Ariz., chairman of the House Veterans Affairs Committee, and Robert K. Dornan, R-Calif., who chairs the House subcommittee on military personnel.

In an interview, Stump called the legal argument a gaffe that revives two allegations that have plagued Clinton: "draft dodging" and sexual harassment.

"It's incredibly stupid that they have brought this argument up," Stump said. More than 160 Republicans signed a letter asking Clinton to retract the claim he is

part of the armed forces.

A White House official, referring reporters to Bennett for comment, said the legal statement had been "blown out of proportion."

Bennett's office issued a statement calling it nothing more than "a partisan effort to distort an argument" in hopes of embarrassing the president.

(Begin optional trim)

However, Bennett's statement repeated the argument that the Soldiers' and Sailors' Relief Act "might also extend to presidents as commander in chief, although we have not relied on it in this case."

Legal experts agreed that the 1940 law was quite precise in saying it applied only to "persons in the military service of the United States" who are "on active duty."

"There is no question the presidency is a civilian office. He is certainly not considered a member of the armed forces," said Washington attorney Eugene Fidell, an expert on military law.

However, he said, Bennett's controversial reference "is really a minor point made in passing. It was perhaps an inartful choice of words, but they were trying to make the point there is nothing extraordinary about a stay of litigation."

(End optional trim)

The veterans' leaders called the legal reference an outrage.

"We were just blown away with that," said J. Thomas Burch Jr., chairman of the National Vietnam Veterans Coalition, who first called attention to the court appeal. "And frankly, we would like to blow (Clinton) away politically for doing it."

In one letter, Burch said the legal appeal "profoundly insulted" Vietnam era veterans, since Clinton avoided service in that war.

Lawyers on Bennett's staff said they had no plans to revise or retract the Supreme Court appeal.

The justices are expected to act on the appeal in Clinton vs. Jones by late June.

Presidential Politics Undermining Welfare Reform Plan (Wash) By Janet Hook and Ronald Brownstein= (c) 1996, Los Angeles Times=

WASHINGTON Despite a broad agreement around the country and apparently between the two contenders for the presidency that the welfare system should be overhauled, a new GOP welfare reform plan unveiled Wednesday seems more likely than ever to run aground on the shoals of presidential politics.

There are surprisingly few areas of disagreement between President Clinton and the GOP welfare proposal, which like past plans would impose work requirements, end the 60-year-old guarantee of cash benefits to the poor and give states more power to run their own programs.

But the new proposal puts the GOP on a collision course with the White House because it includes provisions to give states a freer hand in running Medicaid, which Clinton vehemently opposes.

Democrats accused the GOP of deliberately courting a presidential veto. Republicans said Clinton was just looking for an excuse to avoid signing welfare reform. The bottom line, many members of both parties said, is a poor outlook for enacting welfare reform this year.

"I am concerned now that with presidential politics we will not get it through," said Wisconsin's GOP Gov. Tommy Thompson.

Clinton has seemed to move far closer to the Republican position on welfare than anyone could have imagined for a Democrat a few years ago.

He has embraced the once-controversial five-year limit on welfare benefits. He has praised Wisconsin's sweeping

welfare reform plan. He has instituted new measures that require teen-age mothers on welfare to stay in school.

Republicans, seeing it all as a mad scramble by Clinton to protect himself on an issue that traditionally played to GOP strength, have mounted a concerted campaign to show that Clinton's record on welfare does not match his rhetoric.

Central to the GOP indictment of Clinton's record is that he has twice vetoed welfare reform bills. A third Clinton veto may be in the offing, if Republicans do not back down from their plan to link their new welfare bill to a plan to water down the entitlement status of Medicaid.

"It's not a perfect bill," said White House adviser Bruce Reed of the new GOP welfare proposal, "but the major flaw in the Republican plan is that it's attached to a bad Medicaid bill."

The new bill draws on recommendations of the National Governors' Association, which early this year produced bipartisan plans for reforming welfare and Medicaid. But Democratic governors disavow the new GOP plan.

(Begin optional trim)

Vermont Gov. Howard Dean said Democrats never agreed to link welfare and Medicaid reform and had called for \$10 billion more in welfare funding than the GOP bill would provide. He also criticized the GOP bill for imposing a different formula for distributing Medicaid funds to the states.

"This is election year hogwash," Dean said. "They want to get the president to veto the bill and I would encourage him to do so."

Republicans accuse the Democrats of finding fault just to give Clinton political cover to oppose the bill. "We held as closely to the governors' bill as we possibly could," said Rep. E. Clay Shaw, R-Fla.

In one big concession, the new GOP bill adds \$4 billion to the \$18 billion last year's bill provided for child care. The bill also accepts the governors' recommendation that states be allowed not required to cut off cash benefits to women who have more children while on welfare.

(End optional trim)

The new Medicaid proposal would guarantee coverage for pregnant women, small children and other specified groups of the poor. But Democratic critics say those guarantees are inadequate because states would also get broad new authority to define the scope of benefits and otherwise impose new limits on coverage.

As if to underscore the difficulty of reaching agreement in an election year, the Dole campaign and the White House Wednesday spent a second day arguing over Clinton's portrayal of his welfare record.

Arguing that Clinton was misrepresenting his record to blur their differences, GOP officials Wednesday pointed to a statement earlier this week from a White House aide saying the administration had not denied any state requests for waivers from federal law to perform welfare experiments. In fact, the administration has rejected three state requests, while approving 61, said Michael Kharfen, spokesman for the Department of Health and Human Services.

Another dispute opened over Clinton's record on allowing states to test welfare recipients for drug abuse. After Dole proposed Tuesday that all states be allowed to require random drug testing, Clinton fired back that he had already granted a waiver from federal law allowing South Carolina to perform such tests.

Late Tuesday, South Carolina Gov. David M. Beasley, a strong Dole supporter, issued a statement disputing Clinton's claim. Beasley charged that the administration had, in fact, undermined their request to test randomly welfare recipients by refusing to allow the state to punish those found to be using drugs.

Administration officials said Beasley was vastly exaggerating the extent to which Clinton had limited the state's plan.

Clinton's military claim derided

Chorus in House joined by veterans

By Brian Blomquist
THE WASHINGTON TIMES

A1

President Clinton's claim that he is an active military man, and thus immune from a sexual-harassment lawsuit as long as he is commander in chief, drew stinging barbs yesterday from members of Congress, including 181 representatives who signed a letter of protest.

House Republicans called such a legal position "a slap in the face to the millions of men and women" in the military.

"We are outraged today as we read that the president is using the shield of the military to protect himself from some serious sexual-harassment charges," Rep. Jennifer Dunn, Washington Republican, said at a news conference.

A few Democrats questioned the move as well.

"I was rather stunned," said Rep. Charles Wilson, Texas Democrat, who served four years in the Navy in the late 1950s.

Meanwhile, veterans groups stepped up their criticism of Mr. Clinton, who evaded the draft during the Vietnam War.

"We've had plenty of great Americans take off a military uniform to assume the presidency. None has ever put on a uniform after Inauguration Day," said Daniel A. Ludwig, national commander of the American Legion.

The Veterans of Foreign Wars' commander in chief, Paul Spera, also objected "in the strongest possible terms," the group said in a statement.

And Thomas Burch, chairman of the National Vietnam Veterans Coalition, said the legal argument by Mr. Clinton's attorneys "smells

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CLAIM

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bad."

In a Supreme Court petition to postpone the sexual-harassment lawsuit brought by former Arkansas state employee Paula Corbin Jones, Mr. Clinton maintains that as commander in chief, he is covered by a 1940 law that delays litigation against active-duty soldiers and sailors.

Mr. Clinton successfully avoided military service during the Vietnam War when an influential uncle in his hometown of Hot Springs, Ark., helped him secure a spot in a Naval Reserve unit while the future Arkansas governor was draft-eligible. Breaking a promise, he never served in the reserve unit and also never reported for duty in an Army ROTC program at the University of Arkansas, although his acceptance in the ROTC program changed his draft status from 1-A (draft-eligible) to 1-D (deferred).

After receiving two draft-induction notices, Mr. Clinton in 1969 used the help of a powerful Democratic senator, the late J. William Fulbright of Arkansas, to avoid being called. He later entered the draft and drew a lottery number high enough to guarantee he'd stay a civilian. He applied to Yale Law School the next day.

In a legal brief filed last week, Robert Bennett, Mr. Clinton's lead attorney in the Jones case, refers to the Sailors' Civil Relief Act of 1940, which delays civil claims against military personnel while they are on active duty.

"President Clinton here thus seeks relief similar to that to which he may be entitled as Commander-In-Chief of the Armed Forces, and which is routinely available to service members under his command," the brief said.

The White House yesterday issued a four-paragraph statement from Mr. Bennett in which he called the congressional letter an "attempt by the President's partisan opponents to distort the President's position in order to create a political issue."

This, he said, "illustrates precisely why litigation involving incumbent Presidents should be deferred because it will be abused for partisan purposes."

Mr. Bennett said the wartime law was raised as an analogy to argue why civil lawsuits sometimes must be deferred. Mr. Clinton's legal team used the same analogy when the case was before a trial court and the U.S. Court of Appeals, he said.

But Republicans and Democrats in Congress — especially those who served in the military — were not appeased.

"I'm just astounded that they would use a law passed to protect servicemen in World War II as a legal defense for a president facing charges of sexual harassment," said Sen. John McCain, Arizona Republican, a former Navy fighter pilot who spent six years as a prisoner of war in Vietnam.

Rep. Paul McHale, a former Marine who resigned from the Pennsylvania legislature in 1991 to join the war against Iraq, said he hopes Mr. Clinton will abandon the legal strategy but doubts the president read the petition before it was filed by Mr. Bennett.

"Given the immediate adverse response here on Capitol Hill, this is something the president clearly would have averted had he known about it," said Mr. McHale, Pennsylvania Democrat. "This just provides additional ammunition for his critics."

"If the White House can spin its way out of this one, it can spin its way out of anything," said Sen. Frank H. Murkowski, Alaska Republican, who served in the Coast Guard in 1955 and 1956. "As one who served in the military, I find it offensive that he claims this immunity."

House Veterans Affairs Committee Chairman Bob Stump, Arizona Republican, said he intends to send the letter signed by representatives to the president today.

● E. Michael Myers and Jerry Seper in Washington and Warren P. Strobel in New York contributed to this article, which is based in part on wire service reports.

No cars in White House proposal

Pennsylvania Ave. would be a park

By Karyn Spellman
and Lisa Nevans
THE WASHINGTON TIMES

A1

Pennsylvania Avenue will always run in front of the White House, providing the president with an address that is the most famous in the land.

But under plans unveiled by the National Park Service yesterday, the road will never again carry vehicular traffic.

Gone is the possibility of reopening the street for the thousands of vehicles that once drove by the White House every day.

Under the Park Service's \$40 million proposal, the White House fence bows out toward the street, and fountains, gatehouses and flower boxes replace the jersey barriers that now block the road.

Planners envision street signs, lighting, emblems embedded in the road, and other features to help the area blend with Lafayette Park and President's Park.

Lighted bollards — black, decorative posts — would lead to nearby Metro stations, helping tourists find their way home. Street signs in a different color from the green of surrounding streets would "show you are within the president's neighborhood," said Susan Spain, lead designer on the project.

A public comment period will end June 28. The Park Service will present the final plan in July.

President Clinton and the Secret Service closed the two blocks between 15th and 17th streets to traffic May 20, 1995, a month after the bombing of the federal building in Oklahoma City.

The bustling street has been open to pedestrians since then.

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CARS

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The District, which normally has jurisdiction over city streets, didn't object to the closing at the time — as long as it was temporary.

But now city officials, including Mayor Marion Barry, say the closed blocks have disrupted traffic and hurt businesses for too long.

D.C. Council Chairman David Clarke said the federal government should have to apply for a street-closing permit like anyone else. But it's not clear whether the city has a right to block plans to keep the road closed.

"They know it would be a cold day in August before they got permits from the city," said D.C. Delegate Eleanor Holmes Norton, a Democrat. "It's a very large insult to an insolvent city for a federal agency to proceed to make it worse by trying to close forever the main east-west artery."

Mr. Clarke sent a letter yesterday to the city attorney inquiring about the District's rights.

"I sent a letter to the corporation counsel. I'm not sure what else we can do," Mr. Clarke said.

He and council member Frank Smith earlier sent a letter of support to Congress for the resolution by Sen. Rod Grams, Minnesota Republican, to reopen the street.

Mrs. Norton said she has made plans with other members of Congress to keep the Park Service proposal from going ahead.

"I can say that, surely, this plan is dead on arrival," she said.

Mr. Clarke criticized the government's plan to spend so much on the renovation.

"We don't want to mess with the president's security. If they want to spend \$40 million, they can get a whopper of a plastic shield that bullets can't get through," Mr. Clarke said, referring to an idea to erect a transparent acrylic shield on the White House grounds that would be strong enough to absorb a bomb blast.

It was in the interest of the president's safety that the street was closed, a move the Secret Service had talked about for years.

Critics have said that closing the street is caving in to terrorists.

"If you want a personal Minnesota historian's judgment, this is a recognition of two things," Park Service Director Roger Kennedy said. "First, there is evil in the world, and that evil carries with it a capacity for destruction which changes the way we live. Second, any persons in a democracy who want to take their circumstances must make those circumstances the best possible."

The Park Service was put in charge of coming up with a plan to make the best use of the roadway.

"The existing space was way out of scale with the surrounding area," Miss Spain said. "Because it's a street, with the closure we found people didn't use the street. They remembered what they'd been taught as children — stay out of the street."

To remedy that, the Park Service proposes narrowing the road from 84 to 60 feet and removing the curbs. A road must remain for inaugural parades and emergency vehicles, Miss Spain said.

Mr. Kennedy couldn't give a time frame for the project, saying only it would take a "long, long time."

The work will start next Thursday. The barriers at 15th and 17th streets will be replaced with 150 planters and a mechanical barrier system over about six weeks.

The Park Service has five plans the public can comment on. Changes range from moderate —

as in the Park Service's preferred plan — to extreme. The most radical plan, and the most costly at more than \$80 million, would eliminate the look of Pennsylvania Avenue as a straight street and replace it with a looping thoroughfare through Lafayette Park and

past the front door of the White House.

The preferred plan envisions replacing the asphalt on the avenue and possibly the White House driveway with brick, cobblestone or some other material.

Planters, bollards and gatehouses would be installed on Pennsylvania Avenue at 15th and 17th streets, where there would be small turnaround areas.

The fence on the north side of the White House and the street would be realigned so both curved slightly, softening the straight lines of Pierre L'Enfant's boulevard, Miss Spain said.

The change would mirror the look during Thomas Jefferson's time, when an 8-foot-high stone wall bowed out in front of the White House.

The fence at the north end of East Executive Avenue would be removed, giving pedestrians access from Lafayette Park to the White House Visitors Center on the Ellipse any time of the day or night, Miss Spain said.

Several views open to public

THE WASHINGTON TIMES

A model of the proposed changes to Pennsylvania Avenue will be on display at the White House Visitors Center throughout June, with public comment accepted through June 28.

People also may request a copy of the National Park Service's "Pennsylvania Avenue at the White House," which includes sketches of the five alternatives and a response sheet.

Write to "Pennsylvania Avenue at the White House," National Park Service, 1100 Ohio Drive SW, Washington, D.C. 20242. Or submit comments through the Park Service's World Wide Web site for the project (<http://www.nps.gov/dsc/dsgncnstr/pennave/ea.htm>).

The Washington Times

★ THURSDAY, MAY 23, 1996

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Paula Jones Certiorari Petition [2]

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- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

I want to make two separate points here.

First, among the duties of office I regard as most serious is that which I owe to every man and woman in the military services of our country. I do everything in my power to live up to my responsibilities to them as their commander-in-chief.

Second, the point, as I understand it, which my lawyer made in his brief is that this Act is one of many examples of lawsuits being delayed for good reason. I'll leave to Mr. Bennett the fine points of that argument, [but I do not understand him to have requested relief under that statute].

Possible approaches to "brief" issue -- from George and Jack

1. George and Jack

Dornan and Stump don't like President Clinton. But since they can't rewrite the Constitution and they can't have a recount of the last presidential election, they ought to get over it. President Clinton is commander-in chief whether they like it or not.

2. Jack

No one asked for relief for the President under the Act. It was mentioned in the Brief as an example of one of many instances in which lawsuits are delayed for a period of time. In that context, the quite correct observation was made that President Clinton is the commander-in-chief and could therefore be subject to the Act.

DISCUSSION DRAFT

- I am c-i-e resp.
- ultimately pt my lawyer make
- leave to Bennett to make for pt.
- not necessarily claim under this law.

No. 95-1853

IN THE
Supreme Court of the United States
October Term, 1995

WILLIAM JEFFERSON CLINTON, Petitioner,
vs.
PAULA CORBIN JONES, Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

REPLY BRIEF FOR THE PETITIONER

Robert S. Bennett
Counsel of Record
Carl S. Rauh
Alan Kriegel
Amy R. Sabrin
Stephen P. Vaughn
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

Of Counsel:

David A. Strauss
Geoffrey R. Stone
111 East 60th Street
Chicago, Illinois 60637
(312) 702-9601

Attorneys for the Petitioner
President William Jefferson Clinton

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REPLY BRIEF FOR THE PETITIONER

The President's submission is straightforward: No President has ever before been compelled to submit to a civil damages action, directed personally against him, during his term in office. A decision with such serious ramifications for the Presidency and the nation should not be allowed to stand without this Court first considering the President's contention, founded on language in the Court's decisions, as well as statements by the Framers, that such lawsuits must in all but the most exceptional cases be deferred until the President leaves office.

Respondent does not -- indeed, cannot -- identify a single instance in which a court has compelled an incumbent President to defend a damages action directed at him personally.

Nor does respondent explain why a fragmented panel of the court of appeals, rather than this Court, should decide the extraordinarily important constitutional question of whether a President may be compelled to do so. Instead, respondent's principal contentions are (i) that this is a "one-of-a-kind case" that can be litigated without interfering with the President's conduct of his office (Br. in Op. 8); (ii) that separation of powers principles permit a trial judge to require, review, and sometimes reject specific showings by the President that a matter of state is sufficiently significant to justify altering the litigation schedule (Br. in Op. 12-14); (iii) that Nixon v. Fitzgerald, by providing Presidents with absolute immunity from liability for conduct within the "outer perimeter" of official duties, somehow precludes deferral of this litigation (Br. in Op. 16-18); and (iv) that this nation's historic traditions pose no bar to subjecting an incumbent President to civil damages litigation. Br. in Op. 19-20. Respondent is wrong at each turn.

1. This case is evidence, if any is needed, of the wisdom of the Court's observation in Nixon v. Fitzgerald that "the sheer prominence of the President's office" makes him "an easily identifiable target for suits for civil damages." 457 U.S. 731, 752-53 (1982). Respondent's brief in opposition characterizes this lawsuit as a "very simple dispute about what happened in a very short encounter between two people in a room," and one in which "[d]iscovery and trial . . . will not be burdensome." Br. in Op. at 10. The record, however, reveals that

respondent's attorneys in fact intend to use this case as a vehicle for a far-reaching inquiry:

We'll be able to ask the President certain pertinent questions . . . Was this a pattern of conduct that involved the use of police for private functions that would not be . . . part of their duty? Are there other women involved? Who are they? . . . [A]ll is on the table in the discovery deposition, including evidence that can lead to admissible evidence. So it's a pretty wide-ranging effort . . .

C.A. App. 122-23 (Tr. of ABC's Nightline (Dec. 28, 1994)).

Respondent's counsel also stated that they will "exhaustively pursue" this line of inquiry with other witnesses, and may seek to compel an unprecedented physical examination of the President.

C.A. App. 117-18 (Tr. of CNN's Daybreak (Dec. 29, 1994)).

Respondent, in other words, envisions litigation that not only threatens the President with \$700,000 in damages and seeks to impugn his reputation, but that is specifically calculated to entangle him in the "discovery deposition" process. In addition, the district court found that discovery could not be conducted on even the claims against the President's co-defendant "without the heavy involvement of the President through his attorneys." Pet. App. 76. The inevitable consequence of such purportedly "uncomplicated" litigation (Br. in Op. 1) will be to divert the President from his Article II responsibilities.

It takes but a single lawsuit of this kind to, in Fitzgerald's words, "distract a President from his public duties, to the detriment of not only the President . . . but also to the Nation that the Presidency was designed to serve." 457 U.S. at 753. That danger is especially great in the modern setting, *enhanced by the practices of modern litigation,*

where wide-ranging discovery is permitted and instantaneous, nationwide publicity is routinely used as a tool by litigants. But the dangers of abuse of litigation against an incumbent President are, of course, not limited to a single case.

Respondent reiterates the panel majority's conception that "the universe of potential plaintiffs" who might sue an incumbent President "for reasons of partisanship, extortion, or publicity-seeking" is "small[]." Br. in Op. at 11 (quoting Pet. App. 15). But no person becomes President without having been highly prominent for an extended period in the public or private sector. If the Court allows this case to proceed, it is difficult to believe that other potential litigants, encouraged by the spectacle, will not come forward in this or future Administrations, to use a lawsuit to distract, harass or obtain personal information about a President by "alleging unwitnessed one-on-one encounters that are extremely difficult to dispose of by way of pretrial motion." Pet. App. 27 (Ross, J. dissenting).

Respondent asserts that there is no extensive history of litigation against a sitting President being used for this purpose. Br. in Op. at 11. But there was no history of Presidents being sued for official acts before Nixon v. Fitzgerald. See 457 U.S. at 753 n.13.¹ The Court nonetheless granted certio-

¹ The Court in Fitzgerald attributed this to the fact that Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), which permitted damages actions against federal officials for violations of the Constitution, was of relatively recent vintage. But of course common law tort actions have long been available (continued...)

rari in Fitzgerald, and afforded President Nixon an absolute immunity -- a much broader protection than we seek here -- because it recognized the danger that opportunistic litigation presents to the office of the Presidency. 457 U.S. at 753. The risk of opportunistic litigation is no less in a case of this kind than it was in Fitzgerald, and this Court's review is no less warranted here.

2.a. Respondent embraces the panel majority's view that the risk such litigation poses to the Presidency can be managed by allowing trial judges to exercise discretion over the scheduling of litigation. We explained in the petition why this supposed cure is worse than the disease: it will precipitate repeated confrontations between the President and federal or state trial courts, as those courts pass judgment on a President's requests that the litigation schedule be modified because of the demands of his office. As Judge Ross asked below (Pet. App. 29):

Is it appropriate for a court to decide, upon the President's motion, whether the nation's interest in the unfettered performance of a presidential duty is sufficiently weighty to delay trial proceedings? Once a conflict arises between the court and the President as to the gravity of an intrusion on presidential duties, does a court have the authority to ignore the President's request to delay proceedings? . . . [C]an a court dictate a President's activities as they relate

¹ (...continued)

against federal officials, as Justice Harlan noted in Bivens. See 403 U.S. at 400 n.3, 409 (Harlan, J. concurring). The more likely explanation for the absence of suits against the President is that -- as we showed in the petition -- it has simply been universally understood that the President cannot be sued for damages while he is in office. See Fitzgerald, 457 U.S. at 758.

to national and international interests of the United States without creating a separation of powers conflict?

The brief in opposition seeks to create the impression that trial judges will be highly deferential to the demands of the Presidency. It repeatedly quotes Judge Beam's formulation, according to which a trial judge may "reschedul[e] any proposed action by any party at any time should she find that the duties of the presidency are even slightly imperiled." Pet. App. 25, quoted in Br. in Op. 8, 8, 12. But that is not the standard established by the prevailing opinion below, which stated that the President could seek relief from a trial judge only if he could show that a specific aspect of the proceedings "interfer[ed] with specific, particularized, clearly articulated presidential duties." Pet. App. 16.

Moreover, under either standard, once trial judges are vested with discretion, they inevitably will exercise it in different ways. While some may be deferential to the President, others surely will not be. And the affront to the separation of powers inheres in the very fact that a trial judge is empowered to review the President's official responsibilities to determine whether he can afford to devote more attention to a private civil action.

One need look no further than this case to see the pitfalls in authorizing courts to review such matters. Here, the district court made a specific case-management determination, based on the particular facts of this case, that the trial should

be stayed until the President leaves office. Pet. App. 70-71. The panel majority, notwithstanding its purported reliance on the discretion of trial judges, promptly reversed the stay as an abuse of discretion, without even explaining why the district court's evaluation of the facts was mistaken. Pet. App. 13 n.9.

This clash between the district court and the court of appeals -- and the disagreement within the court of appeals even as to the appropriate legal standard -- is symptomatic. It shows that the separation of powers cannot reliably be protected by requiring the President to make ad hoc showings about how specific aspects of the litigation will affect his ability to carry out his official duties. It also underscores the need for this Court to review this important issue.

b. In arguing that courts can oversee Presidential involvement in civil damages litigation, respondent, like the panel majority, relies heavily on the handful of cases in which Presidents have testified as third-party witnesses in criminal proceedings. Br. in Op. 12-13. The lesson of those cases, however, is the opposite of what respondent suggests: they show how difficult it is for courts to reconcile the demands of the judicial process with the responsibilities of the executive branch.

A President who testifies as a witness is involved in a one-time encounter with the judiciary. By contrast, a defendant faced with personal liability will be involved in every phase of the litigation. The opportunities for tension and conflict

between the President and the courts thus increase exponentially. Moreover, a President who is a third-party witness ordinarily faces little risk to his reputation or financial well-being. When a President is a defendant in a damages action, the stakes are incalculably greater. The burdens and distractions that ensue inevitably will be far more intrusive than when the President is a witness.

Nonetheless, even in the far less burdensome context of third-party testimony by Presidents, the experience has been that the process of accommodation is painstaking and should be undertaken only in cases of compelling need.² Even when the President is just a witness, the principle of separation of powers is strained to the limit. The course respondent suggests -- giving a trial court the power to manage the President's priorities to

² See, e.g., United States v. Poindexter, 732 F. Supp. 142, 148-50; 155-59 (D.D.C. 1990) (court limited defendant to written interrogatories and videotaped deposition, and reviewed questions to be asked in advance); United States v. McDougal, No. LR-CR-95-173 (E.D. Ark. Mar. 20, 1996) (permitting presidential testimony only by way of videotaped deposition conducted at the White House, supervised by the trial court via videoconferencing to avoid abuses, after which only directly relevant portions would be shown at trial).

³ See, e.g., Poindexter, 732 F. Supp. at 147 (President would be compelled to provide testimony for criminal trial only if court is "satisfied that his testimony would be material as tested by a meticulous standard, as well as being necessary in the sense of being a more logical and more persuasive source of evidence than alternatives that might be suggested") (footnote omitted); United States v. North, 713 F. Supp. 1448, 1449 (D.D.C. 1989) (compelled testimony of former President in a criminal proceeding must be justified by a "sufficient showing . . . that the . . . President's testimony is essential to assure the defendant a fair trial"), aff'd, 910 F.2d 843 (D.C. Cir. 1990), cert. denied, 500 U.S. 941 (1991).

accommodate personal damages litigation -- pushes the separation of powers past the breaking point.

Finally, even in cases where only testimony or evidence has been sought from a President, this Court repeatedly has drawn a clear line between criminal proceedings where a compelling public interest is involved -- and civil damages proceedings. See Nixon v. Fitzgerald, 457 U.S. at 754 & n.37; United States v. Nixon, 418 U.S. 683, 712 n.19 (1974). The fact that Presidents on occasion appear as witnesses in criminal proceedings, therefore, does not support the conclusion that a President is required to participate in a private civil damages action in any capacity -- and certainly not as a defendant.

3.a. The brief in opposition attempts to create the impression that the President seeks to be held absolutely immune from liability for actions he took while he was not President. The President seeks no such thing, and respondent's elaborate arguments against that proposition (Br. in Op. 1, 9, 15-18, 20-22) are simply a determined effort to confuse the issue. Rather, throughout this case, the President has asserted that the responsibilities of the Presidency warrant a stay of litigation until he leaves office. He does not seek to extinguish the respondent's rights to pursue her claims; does not seek to evade accountability, and remains subject to the risk of damages.

And while respondent, like the panel majority, engages in overblown rhetoric to the effect that the President is seeking to place himself "above the law" and that the relief he seeks is

"unprecedented," even respondent is forced to concede the validity of the underlying principle for which we contend. She acknowledges that the President is not like any other litigant, and that the courts must show "deference" and must accommodate the President's unique responsibilities. Br. in Op. 12-14. The fundamental disagreement is whether the President must submit to litigation and then seek accommodations repeatedly throughout the lawsuit.

b. Respondent and the panel majority suggest that Fitzgerald affirmatively rejected the President's position here. Pet. App. 8-9, 10-11; Br. in Op. at 16, 23. This suggestion is, to say the least, odd: in Fitzgerald, even the plaintiff, although seeking to hold then-former President Nixon liable in damages, conceded in his brief that litigation against a sitting President could be stayed⁴ -- reflecting the universal understanding, until this case, that a President cannot be subjected to personal damages litigation during his term of office. The issue in Fitzgerald was whether a President enjoys absolute immunity from liability, and whether he does so for all his official acts, and not just core executive functions. The Court decided that the President, alone among all public officials, is entitled to this exceptional protection. That conclusion is fully consistent with our view that a President who is sued for

⁴ Brief for Respondent A. Ernest Fitzgerald, Nos. 78-1783 and 80-945 (Sup. Ct. filed Oct. 29, 1981) at 28 (available in LEXIS, GenFed Library, Brief File).

acts outside the scope of his office is entitled to the much more limited relief of temporary insulation from litigation. Indeed, as we showed in the petition, a crucial aspect of the Court's reasoning in Fitzgerald was that personal damages litigation can divert a President from his official duties.

Respondent (Br. in Op. 9, 16) makes much of Chief Justice Burger's statement in Fitzgerald that "[t]he doctrine of absolute immunity does not extend beyond [official] actions," -- a statement with which we of course agree. 457 U.S. at 761 n.4. (Burger, C.J., concurring); see also id. at 759. Respondent does not mention that Chief Justice Burger also said "[t]he need to defend damages suits would have the serious effect of diverting the attention of a President from his executive duties," and cautioned that "litigation processes . . . can be and are used as mechanisms of extortion." Id. at 763.

4. Respondent asserts (Br. in Op. 19-20) that President Jefferson "lost" his argument that subjecting Presidents to a Court's jurisdiction undermines the separation of powers. In fact, our history -- beginning at least with President Jefferson and extending through the Burr cases, the Fitzgerald case, and United States v. Nixon and its progeny -- teaches that subjecting a sitting President personally to the process of the courts is something that should be done only in cases of imperative need, and then only to the most limited extent possible. See Fitzger-

ald, 457 U.S. at 751-52.

No court has ever, until now, required a sitting President to defend a civil damages action directed at him personally. In fact, no court has ever required a President to testify in a civil case as a witness. What respondent seeks -- allowing a sitting President to be sued for damages in his personal capacity -- would be an intrusion far beyond anything that has ever before been allowed, or even contemplated. To permit such an intrusion, without even so much as this Court's review, is utterly unwarranted.

For these reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

⁵ In the face of this Court's demonstration in Fitzgerald that the Framers contemplated that Presidents would not be subject to suit while in office (457 U.S. at 751 n.31), respondent cites four cases. Br. in Op. 20. Three involve the entirely different question of whether a President can be required to be a witness in a criminal proceeding. See supra, p. _____. The fourth, National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1973) (en banc), is inapposite and of questionable vitality, and in any event supports our position. In NTEU, the President was sued for injunctive relief in his official capacity, and was not required to defend the litigation personally. The court of appeals stated that it had the authority to mandamus President Nixon to perform a ministerial duty, but refrained from exercising that authority "in order to show the utmost respect to the office. . . and to avoid, if at all possible. . . any clash between the judicial and executive branches." The court proceeded by way of declaratory judgment instead. 492 F.2d at 616. Contrary to respondent's suggestion, NTEU demonstrates that courts go to great lengths to avoid entangling the President in their jurisdiction. Moreover, even the viability of the opinion expressed in NTEU -- that a President could be enjoined -- is in doubt, in view of the more recent discussion of that issue in Franklin v. Massachusetts, 505 U.S. 788 (1992). See id., 505 U.S. at 802-03 (plurality opinion of O'Connor, J.) (citing Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 498-99 (1867)); id. at 826 (Scalia, J., concurring).

Respectfully submitted,

Robert S. Bennett
Counsel of Record
Carl S. Rauh
Alan Kriegel
Amy R. Sabrin
Stephen P. Vaughn
SKADDEN, ARDS, SLATE,
MEAGHER & FLOM
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

Of Counsel:

David A. Strauss
Geoffrey R. Stone
111 East 60th Street
Chicago, Illinois 60637
(312) 702-9601

Attorneys for the Petitioner
President William Jefferson Clinton

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Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. notes	re: Handwritten Notes - Draft Under Review (1 page)	n.d.	P5

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Counsel's office
Elena Kagan
OA/Box Number: 8285

FOLDER TITLE:

Paula Jones Certiorari Petition [2]

2009-1006-F
jp2025

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Pruden on Politics

By Wesley Pruden



The Generalissimo comes clean at last

*It's Tommy this, an' Tommy that,
an' "Tommy go away,"
But it's "Thank you, Mr. Atkins,"
when the band begins to play.*

Military heroes are a bit old-fashioned, even out of fashion, in modern America, and if you don't believe it, you could ask Bill Clinton.

Rudyard Kipling would feel Mr. Clinton's pain. Maybe we should, too.

Lots of unkind folks are making sport of the president for the remarkable assertion in his brief — that's legal brief, singular, not briefs — that the Supreme Court should protect him against Paula Jones under the auspices of the Soldiers and Sailors Relief Act of 1940. That's the law Congress passed to prevent hard-hearted bankers from foreclosing on the family farm while America's sons were at Guadalcanal, Monte Cassino, Saipan and Omaha Beach.

Mr. Clinton argues that since he's the commander-in-chief, he's on active military duty and entitled to a soldier's relief. Unkind folk are already comparing him to Gen. Jubilation T. Cornpone, CSA, the hero of "Cornpone's Rout," "Cornpone's Disaster" and "Cornpone's Catastrophe," celebrated on Broadway and in Hollywood by Stubby Kaye.

It's true, Mr. Clinton is known to all his friends back home in Arkansas, where military heroes are highly regarded because the state has produced so many of them, as "the Generalissimo." Like all authentic war heroes, the Generalissimo (or "the G-mo") is extremely reluctant to talk about his sacrificial heroics.

He has dropped hints from time to time, but often the hints are so subtle, modesty being another prized Arkansas virtue, that only the most alert among us recognized them. For example, during the '92 campaign, when some people were



The Generalissimo

thoughtless enough to accuse him of dodging the draft during the Vietnam war, Mr. Clinton, though embarrassed to talk about it, conceded that, well, yes, he had followed the state's hallowed military tradition. When he was the commander-in-chief of the Arkansas National Guard, he had more than once swallowed his fear, beat back what

Stonewall Jackson might have called "the terrors of command that lie like ravening wolves across your cot in the still hours of the night," and bravely ordered his men to the rising Ouachita River to fill and stack sandbags.

After he became president, many people, with no gratitude in their hearts for the ordeal of a soldier, mocked him for his attempts to follow the example of Ronald Reagan, to snap off salutes to officers unfortunate enough to draw a White House assignment. The president never cried out, not once, not even when he stuck his thumb in his eye or missed his brow entirely (once knocking poor Mrs. Clinton's hat off). He persevered until he could salute as sharply as any Eagle Scout in town. (He wears his merit badge among the campaign ribbons on his chest.)

His critics should give him credit for his reticence to talk about his exploits in combat. He's not the first president to have been a military hero, but he is the first president to have kept a military career a secret until he was well established in office. In the early years of our history, several presidents were soldiers first, and in this century some of our presidents have heard shot and shell aimed at them — Teddy Roosevelt on San Juan Hill, Harry S. Truman in France, John F. Kennedy and George Bush in the lonely reaches of the South Pacific. (JFK lost an expensive PT boat and George Bush ditched a costly torpedo-patrol plane, and Bill Clinton never risked so much as a belt buckle, but look who's called the hero. Life is not fair.)

The Generalissimo, modest as ever, is afraid now that his identity as a military man has come to light, we'll want to know about all those battlefield medals and campaign ribbons, so wouldn't you know that he instructed his lawyer, Robert Bennett, to take the blame for the "mistake" of invoking the Soldiers and Sailors Relief Act, as if an expensive lawyer like Mr. Bennett would make a paralegal's mistake like that.

Now Gennifer Flowers will be tempted to write another book, detailing the exploits that earned the president not only the Order of Gennifer's Garter, but also the Order of the Golden Brassiere (With Two Bronze Snaps). Every Arkansas man understands the president's Purple Hearts: Arkansas women are deadly in the clinches.

Some people inside the Beltway, where everybody looks for the political explanation to everything, think the Generalissimo was provoked into going public with his military exploits when Bob Dole finally relented and began to talk about how he lost the use of an arm in the Italian campaign. The president's men figured that if Bob Dole could wave the bloody shirt, maybe it was time for the Generalissimo to wave an item of someone's lingerie. Life's most enduring scars, after all, are earned in the boudoir.

The Washington Times

★ FRIDAY, MAY 24, 1996

Letters

Vets, living and dead, suffer the unkindest cuts of all

I read that the Immigration and Naturalization Service (INS) has received hundreds of workers from other federal agencies to assist in processing a backlog of citizenship requests ("INS borrows federal workers for citizenship backlog," Nation, May 20). That's good — citizenship is an important rite of passage toward assimilating into the melting pot we call America.

I am left to wonder, however, why these excess federal workers were not also made available to the Department of Veterans Affairs to help process the notorious multi-year backlog of delinquent disability claims and appeals from veterans or their surviving family members. Shouldn't we give the processing of our veterans' claims the same consideration we give to processing the applications of our newest citizens?

Whether working for the INS full time or just temporarily, I am sure that none of these government workers will be processing any citizenship applications while they enjoy a paid federal holiday on

Monday, May 27. What holiday is that, again?

M.C. AGRESTI
Arlington

From time immemorial, mankind has exhibited the greatest respect for the deceased warrior. Now comes President Clinton's fiscal 1997 budget calling for funding of the National Cemetery System to be cut by approximately 25 percent. This drastic reduction comes at a time when deaths among the aging veteran population are rising each year.

In the Memorial Day Orders issued in May 1868, John A. Logan, commander in chief of the Grand Army of the Republic, wrote: Let no wanton foot tread rudely on such hallowed grounds. . . . Let no vandalism of avarice or neglect, no ravages of time, testify to the present or to the coming generations that we have forgotten, as a people the cost of a free and undivided republic."

By law, these veterans cemeteries

are national shrines. Does Mr. Clinton wish to deprive the National Cemetery System of money to mow the grass and water the shrubbery on these hallowed grounds? Will he follow with an executive order demanding that the number of veterans expected to die in fiscal 1997 be reduced by 25 percent? Or maybe he wants to bury us in unmarked graves, thereby saving the cost of markers that denote branch of service, dates served, military decorations earned, etc.

I suggest a quick fix to Mr. Clinton's mean-spirited proposal — let's put a veteran in the White House: Bob Dole. Mr. Dole is a man of common sense and uncommon sensitivity and would never forbid paying this final tribute to those who willingly served their country and earned that most honorable of titles: veteran.

WIL EBEL
Washington

■ Mr. Ebel served as director of the National Cemetery System from 1987 to 1989.

— The Editor

Democrats overestimate the gullibility of the American electorate

Concerning the article "Democrats preparing agenda for elections" in the "Campaign '96" section of your May 18 paper, I can only say, here we go again.

House Minority Leader Dick Gephardt and Senate Minority Leader Tom Daschle are once again insulting the intelligence of the American people. For them to say that the GOP's "Contract With America" was produced mainly by GOP leaders and their pollsters is to insinuate that the landslide GOP victory in November 1994 was the result of a mindless citizenry who couldn't tell the difference between Republi-

can and Democratic levers in the polling booth.

The goals of the "Contract with America" were boldly specific and highly publicized. Most Americans knew the goals of the Contract, and a large majority voted in favor of them.

Mr. Daschle said that the Democrats "will use what people tell us to make our plan better." My question for Mr. Daschle is: Are these the same people who have all but hijacked the Democratic Party over the past decade? Such as the National Organization for Women, which speaks for a fraction of the popula-

tion compared to its much larger and more credible competitor — Concerned Women for America? Or the gay lobby, or Planned Parenthood, or the National Education Association? Most Americans living west of the Beltway take a very dim view of all of them.

The smoke and mirrors have only begun to appear. But my bet is that the American people are smarter than some congressmen would seem to believe. And thank God for that.

JEFF L. OVALL
Lorton

As long as Syria rules in Lebanon, American money should keep out

In a May 12 Commentary article, "Rebuilding role for the U.S.," Charles Percy and Mark Percy argue in favor of U.S. support for the so-called reconstruction efforts being undertaken by the Syrian-controlled government of Lebanon. They fail to mention that the recent fighting between Israel and Hezbollah has proven that any serious plans for reconstruction in Lebanon are not only premature, but just pure folly. This will remain so until all foreign occupation forces are withdrawn from Lebanon and all militias, including Hezbollah, the PKK and Palestinian rejectionist fronts, are disarmed.

It is estimated that the worldwide

Lebanese emigre community controls some \$60 billion in capital resources. To date, there has been no significant trend of repatriation of this investment capital by the Lebanese themselves. This is true because Lebanon is viewed as a Syrian-controlled country lacking the basic security, freedoms and political climate conducive to a prosperous economy. American businesses would be well-advised to take their cue from these Lebanese investors and refrain from investing until the repressive political climate improves and an open and secure political system is re-established outside of Syrian control.

We agree with the Percys' article

that Lebanon has a constructive role to play in the Middle East peace process. However, this can only occur when Lebanon is free, sovereign and governed by a truly representative government. Lebanon must be allowed to reclaim its right to negotiate peace with its neighbors, free from the destructive influence of Syria.

DAVID EPPERLY
Public Affairs Director

DANIEL NASSIF
Washington Representative
Council of Lebanese American
Organizations
Washington

U.S. Navy has seen quite a lot of very real combat in the past 50 years

As a former naval intelligence officer, I take exception to Richard Grenier's statement in his May 21 column about the Navy: "Except for fliers and SEALs, they haven't seen real combat for 50 years" — unless he means that all combat since 1946 is "unreal" ("This is not the Navy I knew . . ." Op-Ed).

As a naval intelligence liaison officer in Vietnam, I found myself not only in a combat zone, but also with a price on my head — unfairly declared by the enemy, not because of my personal conduct, but rather to take advantage of some associations being made in the press at the time.

And what about Naval Reserve Seabees whose barracks took a direct Scud missile hit in Desert Storm?

As for the record of the U.S. sea services since World War II, can any other U.S. armed service say it has a 100 percent record of action in every U.S. intervention, to have gone down every rat hole while dodging the occasional bucket of mud dropped by grandstanders?

The Navy did all this during a Cold War in which the United States was carrying the rest of the Free World, i.e., mostly third-rate welfare states, for a free ride until the Soviet empire ground to dust.

Turning to Mr. Grenier's statement about present Navy leadership, let me remind readers of how Congress once debated funding the military academies by means of a tax on liquor. Back then, lawmakers would say, "What'll it be, gentlemen, whiskey or West Point?" If

the percentage of arrogant brats coming out of Mr. Grenier's alma mater, the U.S. Naval Academy, has reached an unacceptable level, maybe we should opt for the whiskey. After all, there is no requirement in our Constitution that we keep these expensive service academies open.

J.D. "FRITZ" FRITSVOLD
Centreville, Va.

■ Mr. Fritsvold, who retired as a lieutenant commander in the U.S. Naval Reserve, served in operations in the coastal and riverine areas of Vietnam. For his service there, he was awarded the Navy Commendation Medal with Combat "V" Device.

— The Editor

U.S. mulls cutting off electricity in attempt to bring Freemen out

By Jerry Seper
THE WASHINGTON TIMES

Deputy Attorney General Jamie Gorelick said yesterday the FBI has moved portable generators near the Freemen ranch in Montana as a first step to a possible shutdown of electrical power at the site, but the government still hopes the 2-month-old standoff will end peaceably.

"They are there to provide us the ability to discontinue electrical power to the ranch without disrupting service to the neighboring farms," Mrs. Gorelick said during

CORRECTION

The Washington Times in yesterday's editions mischaracterized results in an April Gallup Poll. Seventy-seven percent of those surveyed support a continued U.S. presence in the United Nations, 17 percent oppose it, and 6 percent have no opinion.

a press briefing. "We are still interested in a peaceful resolution and to resolve this matter through negotiations.

"We are keeping all lawful options open," she said.

Mrs. Gorelick declined to say if FBI agents were preparing to cut off power to the ranch, near Jordan, Mont., but confirmed that the bureau and the Justice Department were considering the option.

"We are making these decisions one at a time," she said. "We've prepositioned generators to allow us to make that decision. We have not reached that decision."

Mrs. Gorelick, the Justice Department's No. 2 official, also declined to comment on a recent breakdown of negotiations between the Freemen and federal authorities. She said a discussion of "our dialogue with the folks there or any aspect of the negotiations" would not be helpful.

"We have bent over backwards to achieve a peaceful, negotiated resolution here," she said. "It is

still our hope that that will be the result. But we are preserving all of our options."

Negotiations between the Freemen and the FBI broke down Wednesday. The Freemen, who have been holed up since March 25 after the arrest of two of their leaders, immediately posted armed patrols around their ranch. The FBI then moved three tractor-trailer trucks around the site, their cargo covered with tarpaulins. The trucks were unloaded after nightfall.

The Freemen marked the departure of mediator Charles Duke, a Colorado state senator, by flying a U.S. flag upside down at a sentry post — traditionally a sign of distress.

Mr. Duke and a fellow negotiator, former Green Beret Col. James "Bo" Gritz, have suggested that further talks would be worthless and FBI agents should be more aggressive in trying to end the standoff. "The time for negotiations is over. They need to feel

The Washington Times

★ FRIDAY, MAY 24, 1996

some pain," Mr. Duke said.

Mr. Duke, a leader in the patriot movement, had arranged the first face-to-face meetings between the Freemen and the FBI. He left Montana after talks came to an abrupt end the day before.

The FBI believes 18 persons are in the compound, including three children. Some of the adults are wanted on state and federal charges that range from writing millions of dollars in bad checks to

threatening to kidnap and kill a federal judge.

Mr. Duke said the talks appeared to hold promise after the Freemen agreed to let each person at the ranch speak to the negotiators. But Freemen leader Rodney Skurdal reneged.

Mrs. Gorelick also said no timetable had been set for any decisions in the standoff.

• This article is based in part on wire service reports.

Oxygen generators banned as airliner cargo

By David Field
THE WASHINGTON TIMES

Passenger airlines will be barred as of today from carrying oxygen generators like those in the cargo hold of the ValuJet DC-9 that crashed near Miami.

Investigators are looking at explosion or fire — caused or fed by oxygen from the canisters — as the cause of the May 11 crash that killed 110 persons.

The Transportation Department announced the ban yesterday; it takes effect at 6 a.m. today. The ban will last

until the end of the year while the government reviews the safety of the generators. The ban could be extended later.

ValuJet Flight 592 plunged into the Everglades after the crew reported smoke in the cockpit and cabin. The plane was listed as carrying 119 oxygen generators, which, if ruptured, release highly flammable oxygen and can generate intense heat.

"The Federal Aviation Administration will immediately notify all passenger carriers that they may not accept for shipping of transport oxygen gen-

erators as cargo," said D.K. Sharma, head of the Research and Special Programs Administration at the Transportation Department.

Violating the new prohibition would be considered "an extremely serious offense," he said. Violations can carry a fine of up to \$25,000 and five years in prison.

The ban applies to all oxygen generators, whether empty or full, according to a DOT aide. The ban also applies to both foreign and U.S.-registered passenger aircraft entering, leaving or operating in the United States.

The ban covers shipments of chemical oxygen generators as cargo but does not apply to cylinders containing compressed oxygen or chemical generators installed in planes for emergency use.

The generators on the ValuJet plane, like most oxygen generators, contained hazardous chemicals that would themselves be barred if carried separately.

They're used on most airliners to generate oxygen for emergency use. When shipped as cargo, however, the generators are listed as hazardous.

Cmdr. Clinton

OK, so President Clinton claims that he's an active military man, that as commander in chief he is immune from sexual-harassment lawsuits under a 1940 law that delays litigation against active-duty soldiers and sailors.

That's all fine and dandy, except that while Mr. Clinton has run off and joined the military, he also continues to engage in political activity, which means he now could be prosecuted under the Hatch Act.

"He is conducting himself as a politician, which of course is completely inappropriate for a member of the armed forces," a senior Army officer, whom we won't identify, told this column yesterday.

"As a commissioned officer myself, I recognize the very serious infraction of military regulations: that Mr. Clinton is engaged in conducting in political campaign activity while serving in the armed forces as commander in chief."

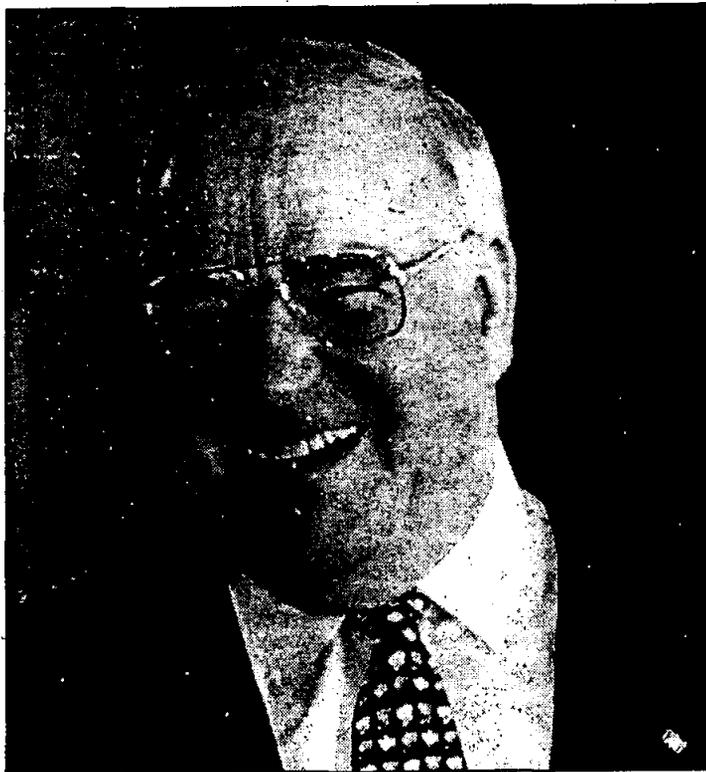
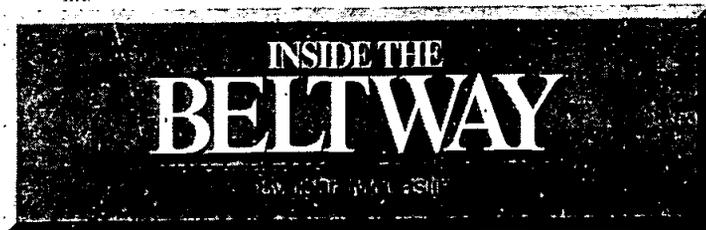
Passed by Congress in 1939, the Hatch Act, named for its sponsor, Sen. Carl Hatch of New Mexico, limits the political activities of federal employees, particularly participation in political campaigns and related caucuses and conventions.

Col. Stephanopoulos

Lt. Tony Blankley, staff aide to Gen. Newt Gingrich, issued a statement arguing that Cmdr. Clinton's legal claim that he's on active military duty would appear to bring his conduct under jurisdiction of the Uniform Code of Military Justice.

"As any G.I. could have told him, he has to be careful to avoid violating Article 134, which authorizes general and summary court-martial for conduct unbecoming a soldier or sailor," he says.

Cmdr. Clinton "may well be subject to general court-martial on at least five specific counts: 1) making false statements, 2) lewd and lascivious acts, 3) scandalous conduct, 4) obstruction of justice, and, of course, 5) impersonating an officer (Sec. 934, Article 134, notes 72, 76, 81, 84, and 126;



German Chancellor Helmut Kohl, visiting Milwaukee — home to many German-Americans — with President Clinton, prays against rain.

UCMJ chapter 47).
"Colonel Stephanopoulos, report to battle stations in the war room immediately," declares Mr. Blankley.

Circus act

Rep. Charles Bass, New Hampshire Republican, brought to the House floor's attention an editorial that appeared in the New Hampshire Union Leader about our commander in chief, headlined "Rubber President: Here's Bill Clinton, Contortionist Extraordinaire."

Keep your money

A Catholic priest, the Rev. George H. Parker, has returned a donation of \$5,000 because it came from a U.S. senator who supports legal abortion.

Sen. Christopher J. Dodd, Connecticut Democrat and a Catholic, had donated the sum to the St. Joseph Parish School in North Grosvenordale, Conn.

"Our school is in dire financial need and is operating at a deficit," Father Parker said in a letter to Mr. Dodd. "Nevertheless, the

decision to return this donation was made by me and the dedicated Sisters of Charity of Our Lady, Mother of the Church, who staff our school."

The priest noted that apart from supporting legal abortion, Mr. Dodd recently voted against a bill that would have banned partial-birth abortions.

Buying power

Campaign receipts of congressional candidates seeking office in November increased \$43 million during the first 15 months of this election cycle compared with the same period in 1994.

The Federal Election Commission finds that in the 15-month period from Jan. 1, 1995, through March 31, 1996, 225 Senate candidates raised \$108.6 million and spent \$62.9 million, while 1,614 House candidates raised \$188.4 million and spent \$114.9 million.

Receipts for 1996 Senate races increased for GOP candidates and declined for Democrats, who had fewer incumbent members seeking re-election than in previous election cycles. In the House, fund raising increased for both parties.

Another view

As some in Congress are arguing that Cuba has made noticeable strides toward democracy, an art exhibit depicting human rights abuses by the Castro regime opened yesterday in the rotunda of the Cannon House Office Building.

More than 80 paintings, by more than 70 artists, are on display until May 31.

Rep. Ileana Ros-Lehtinen, Florida Republican and the first Cuban-American to serve in Congress, says the exhibit will vividly remind viewers "of the repression that occurs just 90 miles from our shores."

Put down your pens

"If you want to do something good, please pray now for the rain to go away," visiting German Chancellor Helmut Kohl told White House reporters during a photo opportunity with President Clinton in Milwaukee yesterday.

Clinton Scolded for Sexual Harassment Defense

Commander in Chief's Citation of Soldiers' Act for Delay Draws Fire

By Ann Devroy
Washington Post Staff Writer

Seeking to embarrass President Clinton on the eve of the Memorial Day holiday, Republican senators yesterday called on the president to refrain from using his status as commander in chief to gain a delay in a sexual harassment suit against him.

It was the third day Republicans tried to highlight an argument used by Clinton's lawyer in the sexual harassment suit brought by Paula Corbin Jones. A brief filed with the Supreme Court this month argues that Clinton's status as commander in chief could be grounds for delaying the suit until after he leaves office under the Soldiers and Sailors Act that protects active-duty service members from having to defend themselves in civil suits.

Republicans used the reference in the brief to attack Clinton on womanizing grounds and to accuse him of avoiding military service during the Vietnam War and now seeking to take advantage of laws for those who served.

Taking the issue to the Senate floor, Sen. Frank H. Murkowski (R-Alaska) introduced a resolution into an overall debate over the budget calling on Clinton to agree not to rely on the act to seek a delay in the case. Clinton's lawyer, Robert Bennett, has already said the president was not relying on that act but had simply cited it as an example of one of the many ways civil suits can be delayed.

Republicans finally dropped the issue after Democrats vowed to continue to delay budget action as lawmakers looked to leave town for the Memorial Day recess.

"It's obvious that we are not going to be able to work out an agreement on how a vote on this issue can be obtained," said Sen. Trent Lott (Miss.), the Republican whip.

During a brief floor debate, Minority Leader Thomas A. Daschle (D-S.D.) said the matter was a partisan attempt to smear the president.

Jones alleges in the suit pending in U.S. District Court in Little Rock that Clinton propositioned her in a Little Rock hotel suite in 1991, when he was Arkansas's governor. Clinton has denied the allegation.

Bennett suggested in a brief filed with the Supreme Court that the president as commander in chief of the armed forces is covered by the Soldiers and Sailors Relief Act of 1940. That law provides that some suits against men and women in uniform must be delayed until they leave military service.

The Murkowski sense-of-the-Senate resolution noted no other president

had ever sought protection under the soldiers and sailors law. It also mentioned the harassment suit specifically.

"The president of the United States should state unequivocally that he is not entitled to and will not seek relief from legal action" under the soldiers and sailors law, the resolution stated.

Daschle read from a statement from Bennett in which Clinton's lawyer said the reference to the soldiers and sailors law was one of several "illustrative examples" of legal delays of lawsuits.

House Republicans, who launched the effort to highlight the issue, said yesterday they had more than 220 signatures on a letter to Clinton calling his legal argument in the Jones case "a slap in the face to the millions of men and women who . . . are serving on active duty."

The American Legion, the Veterans of Foreign Wars and the National Vietnam Veterans Coalition all criticized Clinton over the issue.

THE WASHINGTON POST
FRIDAY, MAY 24, 1996

FINAL

Hale Won't Talk to Senate Whitewater Panel

Refusal to Testify Should Bring End to Hearings, White House Says

Associated Press

Dealing a major setback to Republicans on the Senate Whitewater committee, key witness David Hale notified the panel yesterday he refuses to testify in the year-old investigation.

Hale, whose nine days of testimony as a prosecution witness were central to the recent Whitewater trial in Little Rock, said he has been threatened with prosecution by state authorities in Arkansas.

Any Senate testimony he gives could be used against him, Hale said.

While committee lawyers will continue to question various Whitewater witnesses in private next week, the refusal of Hale to cooperate is a blow to Republicans and could signal the end to Senate Whitewater hearings.

Committee Chairman Alfonse M. D'Amato (R-N.Y.) said earlier this week that more public hearings were possible.

"Senator D'Amato said he needed another \$450,000 in taxpayer money to prolong his hearings so that he could hear from David Hale," said White House spokesman Mark Fabiani. "Mr. Hale's final refusal to testify ought to

spell the end to the yearlong, \$1.5 million hearings orchestrated by Senator D'Amato, Bob Dole's campaign chair," he added.

The committee is still looking into whether federal regulators tried to manipulate a report they commissioned on Whitewater. The panel also is examining whether then-Gov. Clinton's office tried to pressure Arkansas insurance regulators on behalf of an investment banker with political ties to Clinton.

In addition, the committee is demanding from Whitewater prosecutors an FBI fingerprint analysis of billing records outlining Hillary Rodham Clinton's work for Madison Guaranty. The failed Little Rock savings and loan was owned by James B. and Susan McDougal, the Clintons' partners in the Whitewater real estate investment.

Newsweek magazine reported that Hillary Clinton's fingerprints were on the long-sought records and people familiar with the matter subsequently confirmed that.

Committee Republicans concluded that the president and Hillary Clinton were the only two people who were in a position to handle the documents, which a White House aide found in the White

House family residence. They were turned over to the committee in January, nearly two years after they had been subpoenaed.

Hale's potential state prosecution—for an allegedly fraudulent insurance business he operated—"would constitute retribution" for Hale's testimony against Arkansas Gov. Jim Guy Tucker (D) and the Clintons' Whitewater partners, Hale's lawyer, Theodore Olson, said in a letter to the Senate.

Hale is invoking his Fifth Amendment right against self-incrimination in refusing to appear before the committee's lawyers for what would have been a private deposition today.

Under the circumstances, Mr. Hale feels that he has no choice but to avail himself to the protection afforded to him by the Constitution," Olson said in the letter to the Senate committee's Republican and Democratic lawyers.

Hale testified in the trial of Tucker and the McDougals that then-Gov. Clinton attended a meeting where Hale and James McDougal discussed a loan, which ultimately was deposited in the McDougals' joint checking account and never repaid. Clinton denied attending any such meeting.

CORRECTIONS

A review in yesterday's Style section listed an incorrect phone number for information on "Always . . . Patsy Cline" at the Omni Shoreham's Marquee Lounge. Call the lounge at 202-234-0700 or Pro-tix at 703-218-6500.

An event in the "This Week" calendar of events that appeared in all editions of yesterday's Maryland weeklies listed an incorrect date for an evening with author Sam Fullwood III at Oxon Hill Library. The event is scheduled next Wednesday.

A chart on bus service changes in Fairfax County was incorrect in yesterday's Fairfax Weekly. The correct information will appear in Thursday's Fairfax Weekly.

A photo caption in the early edition on May 10 misidentified the woman being

greeted by President Clinton at the state dinner for the president of Greece. She is Maria Pappas, a Cook County, Ill., commissioner.

CLARIFICATION

A story on May 16 about the trial of President Clinton's Whitewater business partners said the prosecutor, W. Ray Jahn, described his chief witness as "a notorious thief, a notorious crook, a notorious liar." That was a partial quote from Jahn. Jahn's full statement indicates he was paraphrasing what defense attorneys had said about his witness, David Hale. Jahn said: "David Hale. By their own words from the defendants, a notorious thief, a notorious crook, a notorious liar."

Jahn, on his own, described Hale as "David Hale, the crook." He also said Hale had lied to the FBI seven years ago.

Scorn, disbelief greet Clinton's legal ploy

Lawyer says he won't drop the tactic

By Paul Bedard
THE WASHINGTON TIMES

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President Clinton's strategy of using his title as commander in chief as a shield against a sexual-misconduct lawsuit was panned as unprecedented and frivolous yesterday by military and legal scholars, but his attorney says he's sticking with it.

"It's a novel idea, but goofy," said retired Brig. Gen. Gerald Miller, who served as the Marine Corps'

top lawyer from 1990 to 1993. "Nice try, though."

"The president clearly is not on active duty," said Robert B. Burdette, legislative lawyer for the nonpartisan Congressional Research Service.

As legal scholars scoffed at the president's claim that the military title granted by the Constitution gives him temporary immunity

from the sexual-misconduct suit filed by former Arkansas employee Paula Corbin Jones, Mr. Clinton's attorney condemned critics for "politicizing" the case.

Robert S. Bennett asked the Supreme Court to consider the Soldiers and Sailors Civil Relief Act of 1940, enacted to protect men at war from divorce and other domestic litigation until they re-

turned from military service.

In an interview, Mr. Bennett said he won't amend his argument, based primarily on a claim that the Jones suit interferes with the constitutional separation-of-powers provision.

"I'm not going to revise it," He said the president approved of his citation of the Civil Relief Act in a list of five examples he wants the court to consider when it decides

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whether the lawsuit should go forward.

Mr. Bennett criticized the president's critics, particularly Rep. Robert K. Dornan of California, who is leading the Republican demand that Mr. Clinton withdraw the citation and argument.

"When Congressman Dornan starts writing my briefs for the Supreme Court, that's when I'm going to hang it up," said Mr. Bennett. He said the president "does not want to rely" on the 1940 act to fight the suit but wants the court to simply consider it.

"I would have [been] derelict in my duties not to mention it," he said.

More than 230 House lawmakers — mostly Republican, but including several Democrats — yesterday sent a letter to Mr. Clinton asking him to withdraw the military defense.

"He has no right to lay claim to the respect that military service deserves," said Rep. Sam Johnson, Texas Republican.

On the Senate side, several Republicans yesterday threatened to push a resolution chastising Mr. Clinton for suggesting that his commander-in-chief status warrants a delay in a sexual-misconduct lawsuit.

"The president of the United States should state unequivocally that he is not entitled to and will not seek relief from legal action"

under the soldiers and sailors law, the resolution says.

"For the president to make the claim that he is a member of the armed forces is simply beyond comprehension," said Sen. Frank H. Murkowski, Alaska Republican, who introduced the sense-of-the-Senate resolution yesterday.

Legal scholars say Mr. Bennett should not have included the act as part of the president's defense against Mrs. Jones, whose suit claims that Mr. Clinton, while Arkansas governor, invited her to his hotel room in Little Rock, exposed himself and asked her to perform oral sex. Mr. Clinton says the incident never happened.

"It would surprise me that any civilian would claim it would apply to them," Mr. Miller said. The law was developed, he said, to aid men overseas. "They couldn't address those suits while overseas," he explained.

Said Rep. Steve Buyer, Indiana Republican and a former Army lawyer: "The law doesn't cover civilians."

A Congressional Research Service analysis of the Constitution done in 1987 supports that conclusion, asking: "Is the commander-in-chiefship a military or civilian officer in the contemplation of the Constitution? Unquestionably the latter."

Mr. Burdette's analysis of the commander-in-chief clause adds that "no part of his compensation is paid from sums appropriated for the military or naval forces." He also quotes President Franklin D. Roosevelt, who said in 1944: "It

was due to no accident and no oversight that the framers of our Constitution put the command of our armed forces under civilian authority."

The president's latest legal stratagem to derail Mrs. Jones' lawsuit also was derided throughout the country yesterday on talk

radio, in Congress and within the military.

One Pentagon lawyer, for example, asked: "Is the president now willing to swear into service?"

Tony Blankley, House Speaker Newt Gingrich's spokesman, suggested the president could face a court-martial in the Jones case.

"Bill Clinton's legal claim that he is on active military duty would appear to bring his conduct under the jurisdiction of the Uniform Code of Military Justice. As any GI could have told him, he has to be careful to avoid violating ... conduct unbecoming a soldier or sailor."

The Washington Times

★ FRIDAY, MAY 24, 1996

Cisneros to head Habitat delegation

Summit to focus on housing woes

By Refet Kaplan
THE WASHINGTON TIMES

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U.N. and Clinton administration officials yesterday unveiled their respective plans for an upcoming "city-summit" in Istanbul, stressing the need for substantive "practical" discussions and less politicking.

"The most important aspect of Habitat II is the opportunity it will provide for nations from around the world to share practical solutions ... to the challenges facing our cities," Housing and Urban Development Secretary Henry Cisneros told a press briefing. Mr. Cisneros will head the U.S. delegation at Habitat.

"This conference is unusual ... in that it will not only talk about the problems," added Wally N'Dow, secretary-general of the U.N. Conference on Human Settlements, or Habitat II, who appeared with Mr. Cisneros.

The June 3-14 official conference, along with a parallel meeting of nongovernmental organizations (NGOs), will bring together an estimated 25,000 participants,

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4,000 delegates and 3,000 journalists to discuss problems of rapid global urbanization.

Habitat officials hope to avoid the bitter political haggling of last year's U.N. conference on women in China and the 1994 Cairo Conference on Population. But some wonder how such a huge and disparate gathering in Istanbul can stick to the subjects at hand. Others worry about what they see as an aggressive effort by the United Nations to force its political will over member nations, at the expense of national sovereignty.

Critics note that much of Habitat's "Plan of Action," the document that will be adopted by delegates at the conference, remains in "brackets" — U.N.-speak for still-unresolved language. One member of the U.S. delegation, in fact, said she would spend "about 90 percent" of her time in nego-

tiations to clear away the contentious language.

Along with issues such as the environment, sex discrimination and human rights, delegates will focus their discussions on two major themes in Istanbul: "adequate shelter for all" and "sustainable human development."

To many people, adequate shelter translates to making housing a human right. Mr. N'Dow is among those who have spoken out in favor of that principle.

But that argument doesn't work for the United States, some Western European nations and a disparate collection of developing nations.

"We do not want to declare housing as a new right in the legal sense," Mr. Cisneros said yesterday. "There is a bundle of human rights, and we do not favor separating housing out of those rights."

A number of African nations and other poorer countries may offer the United States some unex-

pected support on the "housing-as-right" issue. These nations have said in the past that they simply do not have the economic or political power to make such guarantees.

But even more contentious, some say, will be the debate over exactly what constitutes sustainable development.

To the United States and many Western countries, sustainability is the idea of providing opportunities to develop and grow, while at the same time protecting the environment for future generations.

"The real issue in these U.N. conferences is about development," said Melinda Kimble, deputy assistant secretary of state for international organizations and a key member of the U.S. delegation at Habitat. "Improving people's lives must be the focus of our concerns."

But critics say that's not all it means.

"We feel that the United Nations and the United States is pushing a very specific social agenda," said

Laurel Heiskell of Concerned Women for America, a conservative women's group. "It boils down to no individual nation being allowed to consume more than they can use."

Critics point to numerous provisions in the draft document that they say proves their point. One measure, for instance, talks of the need for member states to encourage greater use of public transportation "through appropriate pricing and regulatory measures."

That wording has alarmed some who see it as a call for nations like the United States to institute sharply increased gasoline taxes, much like those in place elsewhere in the world.

Miss Kimble said those fears are unfounded.

"Let's make it very clear this document is non-binding" she said, noting the Habitat agreement does not require the United States or any other nation to implement its recommendations.

"True, the agreement is techni-

cally non-binding," conceded Miss Heiskell. "But it is a back-door way to get what they want. There is no congressional oversight at all in this. You have the president controlling it all."

Mr. N'Dow said the Habitat con-

ference also faces clashes between rich and poor nations over the so-called "North-South" views of economic development. The Third World is expected to call for more aid and concessions from the North.

The Washington Times

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