

NLWJC - Kagan

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**Race-Civil Rights Leadership
Meeting**

April 24, 1998

LEADERSHIP CONFERENCE ON CIVIL RIGHTS MEETING

DATE: Monday, April 27, 1998
LOCATION: Roosevelt Room
TIME: 1:30 - 3:30 p.m.
FROM: Peter Rundlet
THROUGH: Sylvia Mathews

I. PURPOSE

The purpose of this meeting is to learn about and respond to a number of issues pertaining to civil rights that the members of the Leadership Conference on Civil Rights (LCCR) are concerned about, as well as to inform them of some of the Administration's current priorities in this area.

II. BACKGROUND

LCCR is a coalition of over 185 national organizations committed to the advancement of civil rights laws and policies. LCCR includes organizations representing persons of color, women, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians, and civil liberties and human rights groups. Founded in 1950 by A. Philip Randolph, Roy Wilkinson, and Arnold Aronson, LCCR was created with the mission to implement the historic report of President Truman's Commission on Civil Rights, To Secure These Rights. Dr. Dorothy Height, former President of the National Council of Negro Women, is LCCR's Chairperson and Wade Henderson is the Executive Director.

You have had three previous meetings with LCCR since becoming Chief of Staff -- January 6, 1997, March 7, 1997, and March 13, 1998. At the first two meetings you discussed LCCR's policy agenda. At the last meeting, you, Dr. John Hope Franklin, and other senior members of the Administration discussed the President's Initiative on Race. At that meeting, it was determined that this meeting would be held to discuss policy concerns not directly related to the Race Initiative. Maria Echaveste has worked with Wade Henderson to create a list of issues that we expect them to raise with us. The agenda agreed to is attached, along with issue papers that provide background and talking points.

Note: This past Monday evening, April 27, LCCR held its annual Hubert H. Humphrey Civil Rights Award Dinner. At the dinner, LCCR presented its Civil Rights Award to

three individuals: Steven Spielberg and Debbie Allen for their joint contribution to the civil rights movement through their work as Director and Producer of the film, *Amistad*, and to the Honorable Bob Lanier, former Mayor of Houston, for his outstanding leadership of last year's campaign to defeat Houston's anti-affirmative action ballot initiative. *The President provided LCCR with a video message for the dinner and attended the reception that preceded the dinner.*

Note: April 22, the Wednesday before this meeting, was Wade Henderson's 50th birthday.

III. PARTICIPANTS

Event participants

Wade Henderson, Executive Director, Leadership Conference on Civil Rights
Dr. Dorothy I. Height, Chairperson, LCCR and National Council of Negro Women
Judith Appelbaum, National Women's Law Center
Barbara Arnwine, Lawyers' Committee for Civil Rights
Marisa Demeo, Mexican American Legal Defense and Educational Fund
Joe Ervin, National Council of Senior Citizens
Anita Perez Ferguson, National Women's Political Caucus
Jocelyn Frye, National Partnership for Women & Families
Patricia Ireland, National Organization for Women
Elaine Jones, NAACP Legal Defense and Educational Fund, Inc.
Charles Kamasaki, National Council of La Raza
Joan Brown Campbell, National Council of Churches
Judith Lichtman, National Partnership for Women and Families
Robert McAlpine, National Urban League
Laura Murphy, American Civil Liberties Union
Karen Narasaki, National Asian Pacific American Legal Consortium
Michele Pollak, American Association of Retired Persons
Bob Sakaniwa, Japanese American Citizens League
Hilary Shelton, National Association for the Advancement of Colored People
Carole Shields, People for the American Way
Cynthia "Winnie" Stachelberg, Human Rights Campaign
Karin Stanford, Rainbow/PUSH Coalition
Eula Tate, International Union, United Automobile Workers
William L. Taylor, Vice Chairperson, Leadership Conference on Civil Rights
Richard Womack, AFL-CIO
Nancy Zirkin, American Association of University Women

White House Participants

Erskine B. Bowles
Sylvia Mathews
John Podesta
Maria Echaveste
Chuck Ruff
Judy Winston
Chuck Brain
Tracey Thornton
Minyon Moore
Karen Tramontano
Elena Kagan
Dawn Chirwa
Rob Weiner
Eddie Correia
Mark Childress
Richard Socarides
Peter Jacoby
Bob Shireman
Julie Fernandes
Michael Deich
Broderick Johnson
Barbara Chow
Peter Rundlet

IV. PRESS PLAN

Closed Press.

V. SEQUENCE OF EVENTS

- You welcome participants, formally introduce new White House staff members Eddie Correia and Mark Childress to LCCR, and ask everyone else to introduce themselves.
- You then give your introductory remarks.
- You then recognize Wade Henderson.
- Wade Henderson then makes introductory remarks on the purpose of the meeting and turns to the list of agenda items.

- You make, OR ask Mark Childress or John Podesta to make, remarks about the status of the nomination and confirmation of judicial and other appointees.
- You make, OR ask Karen Tramontano or John Podesta to make, remarks about the Administration's efforts with regard to the decennial Census.
- You make, OR ask Chuck Brain to make, remarks about our strategy to preserve the President's budget priorities (specifically, increased funding for civil right enforcement and food stamps for legal immigrants), in light of the ISTEA bill.
- You may ask Elena Kagan to provide greater detail on the status of our increased funding request for the EEOC, *if necessary*.
- You may ask Barbara Chow to provide greater detail on the status of our request for funding for food stamps for legal immigrants, *if necessary*.
- You make, OR ask Eddie Correia to make, remarks about the Riggs amendment to the Higher Education Reauthorization bill.
- You make, OR ask Bob Shireman to make, remarks about the voluntary early retirement incentive program (VERIP) amendment to the Higher Education Reauthorization bill.
- You make, OR ask Maria Echaveste to make, remarks about our efforts to reach out to higher education leaders to promote diversity and inclusion in higher education.
- You make, OR ask Eddie Correia to make, remarks about Washington state's anti-affirmative action ballot initiative (I-200).
- You make, OR ask Dawn Chirwa to make, remarks about the status of the black farmers' litigation.
- You make, OR ask Peter Jacoby or Richard Socarides to make, remarks about the proposed Employment Non-Discrimination Act (ENDA).
- You make, OR ask Peter Jacoby or Richard Socarides to make, remarks about the status of the proposed Hate Crimes Prevention Act.
- You make, OR ask Broderick Johnson to make, remarks about the proposed Fair Housing Amendments Act of 1998 (H.R. 3206).

- You make, OR ask Rob Weiner to make, remarks about the Japanese/Latin American redress litigation.
- Ask Eddie Correia to make a few remarks about the recent D.C. Circuit court decision regarding FCC's affirmative action regulation.
- Ask Judy Winston to provide a brief update on PIR's April activities.
- You or Sylvia Mathews close the meeting, thanking them again for their support, and encouraging them to stay in close contact with your staff.

VI. REMARKS

Introductory Talking Points (attached at Tab B)

Issue Papers with Background and Talking Points (attached at Tab C)

VII. ATTACHMENTS

Agenda (Tab A)

Introductory Talking Points (Tab B)

Issue Papers with Talking Points (Tab C)

The Leadership Conference on Civil Rights Meeting
The Roosevelt Room
April 27, 1998
1:30 p.m.

Agenda

1. Nomination and Confirmation of Judicial Appointees
and Other Executive Branch Nominees
2. The Decennial Census
3. Budget Implications of the ISTEA Bill, Generally
 - Specifically with Regard to Civil Rights Enforcement
 - Specifically with Regard to Immigration Policy Issues (*i.e.*, Food Stamps)
4. Higher Education Issues:
 - Higher Education Reauthorization -- Riggs Amendment
 - Higher Education Reauthorization -- Early Retirement & Tenured Faculty
 - PIR Outreach Plan to Higher Education Leaders
5. Washington State Anti-Affirmative Action Ballot Initiative (I-200)
6. Black Farmers' Litigation
7. Legislation:
 - Employment Non-Discrimination Act (ENDA)
 - Hate Crimes Prevention Act of 1998
 - Fair Housing Amendments Act of 1998 (H.R. 3206)
8. Japanese/Latin American Redress Litigation
9. Other Issues and Wrap-up

ERSKINE BOWLES TALKING POINTS

I. INTRODUCTIONS

- I want to thank everyone for coming today.
- I enjoyed our previous three meetings and believe that they were productive. I am looking forward to discussing several issues of mutual concern with you. Before we start, I would like to go around the room and introduce ourselves. I am Erskine Bowles, Chief of Staff at the White House, and with me today are a number of the senior White House staff who will introduce themselves. Before they do, however, I would like to make special introductions for two of the newest members of our staff, both of whom I imagine you may have worked with in other contexts.
- Eddie Correia was recently named Special Counsel to the President for Civil Rights. Eddie comes to us most recently from Northeastern Law School in Boston, where he taught Constitutional and anti-trust law. Prior to this, Eddie was Chief Counsel to former Senator Howard Metzenbaum. Eddie is overseeing our current and continuous effort to defend reasonable, appropriate affirmative action.
- Mark Childress joined us less than one month ago as Senior Counsel for Nominations. Prior to joining us, Mark served for many years as Counsel to the Senate Labor Committee, where, among other things, he took the lead on many important nominations. You can rest assured that Mark is working full time to help us nominate and confirm new judges to the federal bench.
- Please welcome both Eddie and Mark; I encourage you to stay in contact with both of them.

[After introductions are concluded, make opening remarks below.]

- I know that there are a number of issues on our agenda that we need to discuss -- and we will turn to them in a moment. Before we do, though, I want to take a moment to thank all of you for your superb efforts in helping us defeat two attempts to eliminate the Disadvantaged Business Enterprise (DBE) program in the ISTEA reauthorization bills in both the House and Senate. Both amendments to eliminate this necessary and fair affirmative action program were defeated handily in bi-partisan votes. Thanks to your efforts, we all have reason to celebrate.
- I also want to thank you, again, for strongly supporting many of the President's nominees. You supported the nomination of Bill Lann Lee, and we responded by appointing him as the Acting Assistant Attorney General for Civil Rights. As you know, we are maintaining our effort to have the Senate remove the "Acting" from his title, by confirming him as the Assistant Attorney General for Civil Rights.

- Since we first started meeting, we have made great progress on many of our shared objectives -- from holding the Hate Crimes Conference last November to defeating Houston's anti-affirmative action initiative to following through with several policy initiatives designed to reduce economic, educational, and health disparities, and much more. The President has placed a high priority on many of the issues that concern you most. Of course, we have further battles to fight together, and we look forward to working with you on all of them.
- Wade, I know that you have been talking with Maria Echaveste about a number of issues you would like to discuss today. Would you like to make any remarks before we turn to the agenda?

[Turn to the Issue Papers]

Index to the Issue Papers

Note: The list of issues below follows the order of the Agenda (and are tabbed accordingly) and the name of the White House staff person responsible for handling the issue is indicated. Each of them is expected to attend the meeting and each will be prepared to make remarks about their issue or respond to any question that you would like them to handle.

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|-----|--|--------------------------------------|
| 1. | Nomination and Confirmation of Judicial Appointees: | Mark Childress |
| 2. | Confirmations of Jim Hormel and Fred Hochberg: | Karen Tramontano |
| 3. | The Decennial Census: | Karen Tramontano |
| 4. | Budget Implications of the ISTEA Bill (Generally): | Chuck Brain |
| 5. | -Specifically with regard to civil rights enforcement: | Elena Kagan |
| 6. | -Specifically with regard to immigration policy/food stamps: | Barbara Chow |
| 7. | Higher Education Reauthorization -- the Riggs Amendment: | Eddie Correia |
| 8. | Higher Education Reauthorization -- ADEA & tenured faculty: | Bob Shireman |
| 9. | PIR Outreach Plan to Higher Education Leaders: | Maria Echaveste |
| 10. | Washington State's Anti-affirmative Action Initiative (I-200): | Eddie Correia |
| 11. | Black Farmers Litigation/Legislation: | Dawn Chirwa |
| 12. | Employment Non-Discrimination Act (ENDA): | Peter Jacoby or
Richard Socarides |
| 13. | Hate Crimes Legislation: | Peter Jacoby or
Richard Socarides |
| 14. | Fair Housing Amendments Act of 1998 (H.R. 3206): | Broderick Johnson |
| 15. | Japanese Latin American Redress: | Rob Weiner |

Other (non-agenda) possible issues:

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|-----|--|---------------|
| 16. | The FCC Affirmative Action Decision in the D.C. Circuit: | Eddie Correia |
| 17. | Update on PIR's April Activities | Judy Winston |

Nomination and Confirmation of Judicial Appointees

Staff Persons: *Mark Childress or John Podesta*

Note: *Because of the importance of this issue to LCCR, you may want to ask John to make a few remarks before asking Mark.*

Background

Wade Henderson and others from the Leadership Conference on Civil Rights (LCCR) are concerned about our overall plan and efforts to confirm candidates to the federal bench. Wade's efforts last year helped to focus attention on the Senate's failure to move nominees. Now that the Senate has taken action on a number of nominees, Wade is likely to emphasize the need for us to speed up the pace of nominations.

From the beginning of the Clinton Administration, a high priority has been placed on appointing qualified candidates from diverse backgrounds to the federal bench. Two statistics demonstrate the extent to which the Administration has succeeded: 1) President Clinton has nominated more minority and women judicial candidates than any previous president; and 2) President Clinton has had more nominees confirmed that were rated "well qualified" by the American Bar Association than any previous president:

	<u>Clinton I & II</u>	<u>Bush</u>	<u>Reagan I & II</u>
Number Of Nominations:	327	195	385
% Women and Minorities:	51%	27%	14.5%

ISSUES: Most importantly, Wade is likely to express disappointment over the slow pace of nominations coming out of the White House. He has recently pointed out that the Senate has confirmed more nominees (20) in 1998 than we have nominated (17). (Although by the time of the meeting, we should have nominated more.) Without underrating our mutual concern about speeding up the pace of nominations, it is difficult to limit comparison of confirmation and nomination numbers to 1998 because, for example, of the 20 nominees confirmed this year, an average of 285 days passed between nomination and confirmation, with several of the nominees waiting years for confirmation.

The answer to Wade's concern is to maintain a steadily increasing pipeline of nominees -- which we are now in a position to do. We have been delayed in producing nominations by a number of factors including delays in receiving names from Senators, but we now should be able to nominate **18-20** candidates prior to the Memorial Day recess, beginning with several nominees the week of the 20th. (We also nominated four candidates immediately prior to the current Congressional recess). We are on track to nominate several candidates virtually every week

between now and the end of May. These estimates are based on candidates already identified, and most of these are out being reviewed by the ABA and FBI right now.

If we meet this ambitious schedule, we will have cut in half the current number of vacancies for which we do not have a nominee. *It is probably worth stressing to Wade that we keenly understand the limited time left for getting judges confirmed, which is why we are making an all-out push to get nominees before Memorial Day.* This effort includes negotiating with the American Bar Association to meet a much more expedited schedule for reviewing nominees, and pressing Senators for names for all remaining vacancies.

Wade Henderson may also express concern about the extraordinarily long time certain nominees have been awaiting confirmation. Specifically, 6 of the 8 judicial nominees who have been delayed the longest, (nominated over 1 year ago), are women or minorities. (Mark Childress has details on these 6 nominees). The good news is that we are seeing some movement on at least a couple of these long delayed nominations, and we will continue to push on all of the nominees.

Talking Points

- You all know about President Clinton's commitment to diversity on the federal bench. This Administration has placed far more minorities and women on the federal bench than any previous Administration.
- Your efforts in focusing attention on delays in the judicial confirmation process were vital to breaking the deadlock in the Senate last year, and we have recently been seeing real progress on Capitol Hill in addressing the backlog.
- I know that you are concerned about the pace of nominations, and I share that concern. We have to act more rapidly to send judicial nominees up to the Senate, and we will.
- We sent up four nominees immediately prior to the most recent Congressional recess, and we sent up more nominees immediately upon Congress's return last week. And we will be adding to a steadily increasing pipeline over the next few months.
- I believe that we will have 18-20 nominees sent up to the Senate between now and the Memorial Day recess. In fact, we should be sending up several names virtually every week between now and the end of May.
- Your efforts in persuading Senators to send us names of potential nominees have been critical to our ability to put a pipeline into place, but I have to ask you to continue to help in that regard; with, of course, a special emphasis on seeking diversity candidates.
- Mark Childress has recently joined us as our new Senior Counsel for Nominations and he can give you more background on where we are.

If you want to say something about Frederica Massiah-Jackson:

(Wade may mention the failed candidacy of Frederica Massiah-Jackson, the Philadelphia judge who withdrew her nomination after significant controversy arose over her alleged leniency in criminal sentencing.)

- We want to thank you for helping us deal with a very delicate situation in the case of Massiah-Jackson's nomination. We were adamant that under no circumstances were we going to ask her to withdraw.
- Fortunately, with your assistance, she was finally able to make her case for confirmation in a public forum, which enabled her to make the personal decision that she withdraw.

Confirmation of Jim Hormel (*if raised*)

Staff person: *Karen Tramontano*

Background

As you know, the President nominated Jim Hormel to be Ambassador of Luxembourg. Secretary Albright worked with Senator Helms to get Hormel voted favorably out of the Committee. He has been on the Executive Calendar since last fall. Senators Inoufe, Hutchinson (Arkansas), and Smith (NH) have holds on the nominee because he is gay. According to these three Senators, they do not oppose Hormel because he is gay, they oppose him because he is a *gay activist*.

We have been working each week to try to get the "holds" released. From the beginning of this battle, LCCR and Wade Henderson have been supportive. LCCR wrote a letter to Senator Lott supporting Hormel and asking that a vote be scheduled. You should thank LCCR for their early support and for their letter.

We currently have 54 votes, we are trying to get 60. If appropriate, you could ask LCCR for any help they could offer to add to our list of Republicans. The two strongest Republican supporters are Senators Hatch and Gordon Smith (Washington). Senator Lott has said he believes there is not sufficient time to deal with this issue, but he has stopped short of saying he will not schedule a vote. Frank Rich wrote a very strong piece recently in the *New York Times*. We have a lobbying strategy that involves the Human Rights Campaign and the State Department talking with Republicans who we believe will vote for cloture and for Hormel.

The only issue that LCCR may raise is that Secretary Albright--of late--has not said anything in public supporting the nominee. We have really tried to hold Albright for the final push, rather than have her in the public debate on this issue. The advocacy groups are concerned about this strategy--we are reevaluating it with the State Department. There is a *Time Magazine* story that is due out Monday and State is putting Albright in that story to quell these concerns.

LCCR may ask what the President has done with regard to Hormel. He has talked with Senator Lott about giving Hormel a vote. And, last month while in California he publicly stated his support for Hormel and said he thought the Senate should schedule a vote.

Talking Points

- We are working very hard to break the logjam on Jim's nomination. We're pleased with the recent favorable press and believe that Senator Lott ultimately will be forced to give us a vote.
- We appreciate the help you have given us so far on this important nomination.

Confirmation of Fred Hochberg (*if raised*)

Staff person: *Karen Tramontano*

Background

Fred Hochberg has been nominated by the President to be the Deputy Director of SBA. I am not sure that this issue will be on LCCR's list. The Republicans have successfully centered the debate about Hochberg on his finances. Additionally, Hochberg has not wanted to make the issue be that he is gay. As a result, we have been very low key about this nominee with the advocacy groups, including LCCR.

If they do raise the issue, the current status is as follows: Senator Bond had been refusing to hold a hearing unless he can review all the documents in the White House relating to this nominee. Buzz Waitzkin in Counsel's office has done a very good job of narrowing the scope of Bond's inquiry. As a result, we have a resolution to the issue. Senator Bond reviewed a narrower set of documents on Friday. We believe that he will now schedule the hearing for Hochberg. At this time we believe we have the votes to confirm Hochberg.

Talking Point

- We had a good meeting with Senator Bond on Friday and he has agreed to hold a hearing, probably on May 12th. This is real progress and we believe we have the votes to confirm Fred.

The Decennial Census

Staff person: *John Podesta or Karen Tramontano*

Note: *Because of the importance of this issue to LCCR, you may want to ask John to make a few remarks before asking Karen.*

Background

The Leadership Conference on Civil Rights is very involved in the Decennial Census. In 1990, as you will recall, there were many problems with the census. The one that most concerns LCCR is the undercount of minorities. They are part of the Census 2000 coalition (put together to support an accurate Decennial Census) and at LCCR's annual conference this week they hosted a panel discussion on achieving accuracy in the next census--which included a discussion of sampling.

As you know, the Republicans in the House with the exception of Chris Shays, oppose our plan to use sampling. Our goal is to have the most accurate census, employing the most up-to-date, scientific methods with the most cost-effective use of taxpayer dollars. Statistical sampling has been endorsed by the National Academy of Sciences--the Justice Departments for the Carter and the Bush Administration's have found sampling to be legal and constitutional.

The Leadership Conference supports sampling but has additional concerns. They are concerned they we have not selected a permanent director to replace Dr. Ritchie, who left the Census Bureau at the end of January. The Secretary of Commerce and the White House will have interviewed the top three finalists for this position on Friday, April 24. We will have a recommendation memo to the President as soon thereafter as possible. The position is confirmed by the Senate so the President's selection will have to be vetted, which will take some time. Carolyn Maloney and other Democrats in the House want us to appoint Barbara Bryant -- President Bush's Census Director. I doubt very strongly that we will make that recommendation to the President, although she has been interviewed for the position. **We have not told any of the advocates that it is unlikely Bryant will be selected. I recommend you do not mention it to this group.** If you are asked, you should say that Bryant is under consideration.

The President has appointed the Census Monitoring Board -- with Tony Coehlo as one of the Co-Chairs. The Monitoring Board has 8 members -- 4 Republicans and 4 Democrats with Republican and Democratic Co-Chairs. The Board will have two Executive Directors. I believe LCCR is happy with the appointments, although they were concerned that the vetting process took too long.

Another concern is whether the Commerce Department and the Census Bureau can accomplish all they have to accomplish as the 2000 census gets more politicized. This is a legitimate concern but one that the Commerce Department and the Census Bureau is aware of

and both are up for the challenge. Finally, LCCR has been very helpful to us in this process, you should thank them.

Talking Points

- The Administration is focused on ensuring we have a fair and accurate census, that we are using the most up-to-date technology including sampling, and that every one is counted. In 1990, the Census Bureau undercounted millions of individuals -- many minorities, children and women. We do not want that to happen again.
- This is a priority for our Administration and we are putting the people in place to see that it receives the appropriate attention. John Podesta is our point person here in the White House.
- The Senate recently confirmed the President's nominee for Undersecretary for Economic Affairs -- Rob Shapiro, who has oversight of this matter in the Commerce Department. The White House has interviewed several finalists for the Director of the Census Bureau and we will be making a recommendation to the President shortly.

**Budget Implications of the House and Senate ISTEA Reauthorization Bills
(H.R. 2400 and S. 1173)**

Staff person: *Chuck Brain*

Background

The highway bill now in conference spends approximately \$33.4 billion in outlays above the surface transportation levels proposed in the President's FY 99 budget submission. The intent of Chairman Shuster and Congressman Oberstar is to fund the additional highway spending with the mandatory spending cuts proposed in the President's budget as offsets for Administration initiatives. If the mandatory offsets are insufficient, as they are likely to be, the Speaker has instructed the conferees to reduce the discretionary spending pot by the amounts needed to offset the rest of the bill. These exorbitant highway funding levels will inevitably exert a crowding out effect on the already constrained pool of domestic discretionary resources.

If we assume the level of domestic discretionary funding in the President's budget, the highway bill would require a 2 percent outlay reduction in the other non-defense accounts and up to a 3.9 percent reduction in budget authority for FY 99.

The ultimate endpoint of the highway bill is by no means clear. It is uncertain whether the conference can get a majority of votes for all the offsets proposed in the President's budget. In addition, the House bill contains approximately 1600 "demonstration" projects portioned out roughly 55% to 45% between Republicans and Democrats. The Senate bill contains none. Finally, due to the vote, 96-4 in the Senate and 337-80 in the House, the President may be faced with a bill that has veto proof margins in both chambers

Talking Points

- We have become increasingly concerned regarding the effects of the spending in the highway bills on the remainder of the budget, in general, and our priorities, in particular. There has been much confusion concerning the total costs of both of these bills and exactly how this spending would be offset.
- According to the current estimates, it now appears that the House bill would cost an additional \$34.5 billion beyond current projections. The Senate bill would cost an additional \$35.5 billion.
- Under current budget rules, all of this spending would have to be offset with other spending reductions. In fact, since some of the spending in the House bill is mandatory spending, the necessary offsets would have to come from mandatory programs. Rather than identify specific spending reductions, one rumor that we've heard is that they might simply reduce the spending caps for discretionary spending by the amount needed.

- We share your concerns regarding the effects of this bill on our priorities and government programs.
- We are now beginning the process of dealing with the transportation committee staffs and the leadership to make them realize how big a job they have to offset the amount of spending they want to do. We hope that we will be able to instill some reality into their thinking and to realize that there will be much more opposition to the Conference Report than there was to the bills when they were considered in the House and Senate. We're going to make it clear that they have a tough job to do.
- As the Conference on this proceeds, we will determine if they are improving the bill and what our final attitude on signing will be.

Specific Issues with Civil Rights Enforcement Budget

Staff person: *Elena Kagan*

Background

The Administration's 1999 budget contains \$279 million for the EEOC -- \$37 million (15%) more than the enacted 1998 budget. Funds will go to reduce the average time it takes to resolve private sector complaints from over 9.4 months to 6 months by the year 2001 through a combination of investments in information technology, increased use of mediation, and increased staffing.

On March 3, 1998, Speaker Gingrich testified before the Education and Workforce Committee's Subcommittee on Employer-Employee Relations and indicated support for the President's EEOC budget request, conditioned on the agency implementing six "reforms" to its operation:

- (1) improvements to the investigative and intake processes (including greater supervision of the process by lawyers);
- (2) a significant reduction of the backlog of cases and the length of time for case processing;
- (3) a more appropriate allocation of resources to charge processing vis-a-vis litigation;
- (4) expanded use of alternative dispute resolution;
- (5) clarification of the criteria for litigation by the EEOC; and
- (6) an agreement by the EEOC not to use its scarce resources for employment testers.

Congressmen Fawell and Goodling subsequently sent a letter to Chairmen Livingston and Rogers supporting Gingrich's position.

On Friday, April 17, 1998, EEOC staff met with Rogers's and Fawell's staff to better determine where they are headed. The EEOC believes that they can come to favorable agreement on the first five "reforms." However, the Speaker has made clear to Fawell and Rogers that the provision related to testers is a "line in the sand."

At this point, we are still unsure of the breadth of the Speaker's suggested reform related to testers. At a minimum, Gingrich wants the EEOC to agree not to spend any money in FY99 on hiring employment testers. Though the EEOC currently has a very small pilot program to explore whether and how the agency could use testers, the program is only funded through the end of this fiscal year, and there are no plans to expand it. The FY99 budget does not include any money for testers. However, depending on the results obtained from the pilot, we may want to include a testing program as part of a future EEOC budget. Thus, we could likely agree not to spend money on testers in FY99 as long as the agreement would not limit the agency's ability to use or hire testers in the future and did not in any way send a signal that we do not think that testing in an appropriate tool for civil rights enforcement.

However, Gingrich's condition may be broader -- perhaps to include a prohibition on the use of evidence obtained from testers generally (commissioned by non-profits, for example). This would be very difficult for us to agree to. It could be interpreted as questioning the validity of the use of employment testers in the enforcement of anti-discrimination laws. The use of testers is an established tool for the enforcement of the Fair Housing Act, and HUD now provides grants (through the Fair Housing Initiative Program) to non-profits for the use of testers to gather evidence in housing discrimination cases. Also, the President's FY99 budget includes an additional \$10 million for HUD to conduct a nationwide testing program.

Talking points

- The Administration is committed to working hard to get a 15% increase (\$37 million) for the EEOC in FY99. Though we have been encouraged by the expressed support of Speaker Gingrich and others in Congress on this issue, we are concerned that some of the conditions for their support may inhibit the agency's ability to effectively determine how to allocate resources, set litigation priorities, or utilize effective tools for the enforcement of federal anti-discrimination laws. Most particularly, we are concerned about the Speaker's suggested "reform" that would prohibit the agency from utilizing discrimination testers.
- The EEOC currently has a small pilot program to determine whether and how to use testers as part of their enforcement arsenal. This program ends at the end of this fiscal year. The EEOC's FY99 proposed budget does not include any money for testers.
- Though the EEOC could likely commit to not employing testers in FY99, we are concerned that Gingrich and others may try to statutorily limit the EEOC's ability to use testers in the future or to limit the ongoing use of evidence obtained by outside testers (e.g., those employed by non-profits). This would be a very bad result. Though we have not yet concluded that the EEOC's use of testers is effective and appropriate (the pilot has been operating for approximately 6 months), we do not want to tie the agency's hands.
- Moreover, we do not want to signal that the use of testers is not an appropriate tool for enforcement of the anti-discrimination laws generally. This is particularly true in light of the President's strong endorsement of the use of testers in the housing context, reflected in his request for a new \$10 million for HUD to conduct a nationwide testing program.
- Our strategy is to continue to meet with Hill staff (both Democratic and Republican) to determine precisely what their bottom line is on the issue of testers. If, in order to get necessary Republican support for our budget request, the agency would need to agree not to employ testers in FY99, we need to assess whether this commitment would somehow institutionalize the limitation, thus making it harder for the agency to use testers in the future. If, however, they want a broader restriction, we need to assess the degree to which such a limitation weakens the agency's ability to effectively enforce the law.

*Too many
things not to
expect too high*

*CAAs
particular
practice*

Budget Implications on Food Stamps for Legal Immigrants

Staff person: *Barbara Chow*

Background

- The 1996 welfare reform bill denied Supplemental Security Income (SSI) and Food Stamps to most legal immigrants currently in the country and who enter in the future. Immigrants who enter after the enactment of welfare reform are also denied means tested benefits, including Medicaid and TANF, for their first 5 years.
- The Balanced Budget Act (BBA) significantly reversed these restrictions and restored benefits to immigrants. The BBA restored SSI benefits to 420,000 immigrants in FY 1998 at a cost of \$11.5 billion over 5 years (CBO estimate).
- The Conference Report on the agriculture research bill reflects a bipartisan agreement to address Congressional and Administration priorities. Using offsets almost entirely from the Food Stamp program, the bill restores Food Stamps to vulnerable groups of immigrants, including children, refugees, the elderly and disabled, and addresses priority agriculture issues.
 - The bill provides more than \$800 million over five years and restores benefits to 250,000 people in 1999, including 75,000 children. These provisions are financed using less than half (43%) of the Food Stamp savings in the bill.
 - The bill helps 5 important groups: children, the elderly, individuals with disabilities, refugees and asylees, and Hmong who helped the U.S. during the Vietnam conflict.
 - The provisions for the elderly and the disabled mirror what was provided for them in SSI and Medicaid in last year's BBA. In general, the bill only provides benefits to individuals who were in the country as of the signing of the welfare bill in 1996. The bill provides assistance to immigrant children -- a group that did not receive any restorations in the BBA.
- Status of the Legislation. Majority Leader Lott is apparently concerned that the agriculture research bill uses a \$1.7 billion offset from Food Stamp administrative costs which is earmarked in the Senate budget resolution to finance highway spending. It is possible that the House will try to use these funds for transportation as well. As noted above, several other Republican Senators have also expressed concerns with the bill.
- We have urged the Senate leadership to allow the Conference Report to be considered by the full Senate in its entirety. Delaying consideration or splitting the report will create a

conflict between spending on highways and spending on farmers and vulnerable immigrants. The Administration believes that restoring food assistance to vulnerable immigrants and improving programs for our nation's farmers is the highest priority.

Talking Points

- The President's FY99 Budget included a comprehensive \$2.4 billion proposal to restore Food Stamps to vulnerable groups of legal immigrants who lost benefits due to the cuts in welfare reform that had nothing to do with moving people from welfare to work.
- Through the Administration's efforts, the Conference Report on the agriculture research bill provides over \$800 million to restore Food Stamp benefits to legal immigrants. The major offset in the bill saves \$1.7 billion from Food Stamp State administrative costs.
- The agriculture research bill, which also contains funding for some other Administration priorities in addition to legal immigrants -- crop insurance, agriculture research, rural development -- is currently being blocked from consideration in the Senate.
- Majority Leader Lott had indicated to Senator Harkin that he would bring the bill up for Senate floor consideration after the Easter recess. We are hopeful that this will occur, but significant hurdles remain. Several Republican Senators reportedly have "holds" on the bill and there is a rumor that at least one (possibly Sen. Gramm) may offer a motion to recommit the bill to strip out the food stamp provisions, a motion we would strongly oppose.

Higher Education Reauthorization Bill: The Riggs Amendment

Staff person: *Eddie Correia*

Background

The higher education reauthorization bill is likely to be on the floor of the House in the next two weeks. Rep. Riggs (R-Calif.) may offer an amendment that would bar any college or university receiving federal funds from considering race or gender in its admissions decisions. The practical effect of the Riggs amendment would be to prohibit hundreds of institutions from using affirmative action in admissions to increase the diversity of their student body. It goes further than Prop. 209 because it applies to private institutions as well as public institutions. It would lead to drastic drops in minority enrollment in major universities and graduate schools throughout the country. Consequently, there is enormous concern in the civil rights and higher education communities about the amendment.

We have a good chance of prevailing in the House, but the importance of the issue warrants significant efforts. (A comparable amendment in the Senate is unlikely.) White House staff have been working with the Department of Education to develop briefing materials for Members. Secretary Riley (perhaps joined by the Attorney General) intends to send a strong letter to Members opposing the amendment and recommending a veto if it is enacted. The President could also send a short letter opposing the amendment. These statements would parallel those made by the administration prior to the DOT/DBE vote. The Riley/Reno letter will be coordinated with the release of the SAP on the overall bill.

Talking Points

- We have all seen stories about the drastic decline in minority enrollments in California as a result of a bar on affirmative action. The full story is actually worse since the final enrollment levels will be even lower.
- Many of the minority applicants who were rejected were extremely well-qualified to do the work; many had outstanding academic records. The fact that they were denied admissions means that the educational experience of all of the students who were admitted will suffer. We cannot tolerate a country where the classrooms at our best universities are full of white faces.
- The President strongly opposes the Riggs amendment and we are working hard to defeat it. He considers it one of his highest priorities.
- With your help, the House and Senate recently rejected efforts to kill the Department of Transportation's Disadvantaged Business Enterprise (DBE) program. The Administration

and the country are grateful for your hard work on those votes. We intend to make the defeat of the Riggs amendment the third straight vote for reasonable affirmative action.

- I know representatives of LCCR have met recently with White House and Department of Education staff. Please let us know what we can do.

Higher Education Reauthorization Bill: Early Retirement and Tenured Faculty

Staff person: *Bob Shireman*

Background

Overview: A House committee has moved legislation that includes an exception to the Age Discrimination in Employment Act (ADEA) to allow colleges to target *early* retirement incentives on tenured professors. College and faculty organizations support the change. The AARP (and, we anticipate, the LCCR) oppose the idea because it would discriminate against older workers; *e.g.*, a 55-year-old targeted for early retirement would be eligible, while a 65-year-old with the same or more years of service would not. The EEOC also opposes the change. Discussions on a possible compromise have begun (at the Administration's suggestion).

As part of the 1986 ADEA amendments that prohibited mandatory retirement ages for most workers, Congress permitted colleges and universities to continue requiring tenured faculty members to retire at age 70 until the end of 1993. Colleges were concerned that without mandatory retirement, aging faculty would be unremovable because of tenure, leaving less room for new faculty who are traditionally the source of new ideas.

Congress directed the EEOC to seek advice from the National Academy of Sciences on whether to continue the exemption from the mandatory retirement prohibition for tenured faculty. In 1991, the NAS concluded that ending mandatory retirement would not be a problem for most colleges and universities. Some research universities, however, "are likely to suffer adverse effects from low faculty turnover: increased costs and limited flexibility to respond to changing needs and to provide support for new fields by hiring new faculty." **The NAS recommended that to address this problem, Congress should permit age-capped retirement incentive programs.** However, no changes have been made in response to that recommendation, and colleges are concerned that EEOC and court decisions have narrowed rather than expanded the options available to them. For the past several years, colleges have been lobbying for legislation permitting a broader array of voluntary early retirement incentive programs (VERIPs).

The AARP, the EEOC, and others have opposed the VERIP proposals in Congress. They argue that offering a retirement incentive that is available only when a worker is younger (such as age 60) rather than older (such as age 70) allows just the type of arbitrary, age-based discrimination that the ADEA was intended to prohibit.

The House Education and the Workforce Committee included a VERIP amendment in its proposal for reauthorization of the Higher Education Act. Similar legislation has been introduced in the Senate. We are preparing a SAP on the House bill, and the EEOC has recommended language opposing the VERIP proposal. Administration officials (NEC) have spoken to the AARP, EEOC, and higher education representatives, and have urged them to attempt to reach a compromise on this issue.

Talking points

- We are aware of the problems with the early retirement incentives proposal that has been included in the House bill reauthorizing the Higher Education Act.
- However, we are also mindful of the National Academy of Sciences' recommendation in 1991 that some additional options be provided to address reduced faculty turnover as a result of the prohibition on mandatory retirement.
- We are encouraging the EEOC to sit down with the higher education community and the AARP to see whether a compromise can be worked out on this issue.
- The SAP has not been finalized, but it will certainly also attempt to push in the direction of compromise on this issue.

PIR Outreach Plan to Higher Education Leaders

Staff person: *Maria Echaveste*

Background

LCCR has expressed concerns about the Administration's response to the attacks on diversity in higher education. While they applaud the President's defense of affirmative action and his impassioned call for continued diversity in institutions of higher education, they hope to see more leadership in this area.

In response to Hopwood and Prop. 209, in connection with the President's Initiative on Race and in anticipation of continued attacks on affirmative action in higher education, the Administration has undertaken the following steps:

- Begun meeting with university leaders informally, together with ACE, to discuss the possibility of the creation of an independent coalition of university leaders, possibly also including foundation and corporate leaders. This coalition would undertake an aggressive and proactive campaign to educate the public about the value of diversity in higher education -- to make the case to the public. The coalition would also share best practices for how to achieve diversity in a changing legal environment.
- Our preliminary conversations have been very positive with leaders of the some of the country's elite institutions. Our goal is to have a core group of 20-30 leaders who will publicly commit to this undertaking and who will, in turn, seek to expand the number of people with credibility to make the case.
- The Administration is also meeting regularly with persons involved in ongoing litigation to stay informed of potential opportunities for action. This area is more problematic since it involves litigation and it is not always clear that Administration action would be helpful in a particular case. We are committed, however, to ensuring that the Administration stays fully informed and fully engaged on this issue.

Talking Points

[Maria Echaveste would like you to ask her to make the remarks with regard to this issue.]

Washington State's Anti-Affirmative Action Ballot Initiative (I-200)

Staff person: *Eddie Correia*

Background

This fall the voters of the State of Washington will decide whether to adopt I-200, a ballot initiative modeled after California's Proposition 209. It will represent the third high profile ballot initiative following the adoption of Prop. 209 and the rejection of a similar initiative in Houston. The outcome will be closely watched as a signal of where the country is heading on affirmative action. The demographics of Washington are less favorable to defeating the initiative than Houston's. On the other hand, the voters tend to be more progressive, and one of the leading opponents of the initiative is Gary Locke, the popular Asian-American Governor.

White House staff have been in contact with elected leaders in Washington as well as advocacy groups working to defeat I-200. At one point, their strategy was to offer an alternative ballot initiative, which would have conveyed a "mend it, don't end it" message. This was rejected because of procedural problems, the costs of mounting a signature drive and mixed signals about the support it would receive. The opponents of the initiative need help in raising funds and in communicating their message in a way that has broad appeal. We cannot help them raise money, but we can encourage Cabinet Secretaries and others to visit the state to speak on the issue. The opponents of the initiative have asked for our help in arranging for visits by the Secretary of State, the Secretary of HHS, and Colin Powell, among others.

Talking Points

- The ballot initiative in Washington will be a critical test of the country's direction on affirmative action. The Administration cares about this vote and we want to help.
- We understand that the demographics in Washington are different than in Houston. Women and moderates will be critical to the outcome.
- Our staff has been in frequent contact with people in Washington. We have offered our assistance and we will continue to work with, and take the lead from, them. We understand that financial support is critical, but raising money for their effort is something we cannot do. However, we may be able to help in others ways, for example, by speaking out about the importance of the issue.

Black Farmers Litigation

Staff person: *Dawn Chirwa*

Background

We have been informed that it is likely LCCR will wish to discuss issues related to black farmers at our meeting. In anticipation of this, Dawn Chirwa spoke with Wade Henderson to discuss the impact of the Justice Department's Office of Legal Counsel (OLC) opinion with him and the steps we are taking to resolve the problems caused for particular black farmers by the statute of limitations bar. He was pleased with our efforts and said that the issue is still likely to come up, but primarily as a request for an update on our efforts.

As you know, the Justice Department's OLC opinion concludes that the statute of limitations in the Equal Credit Opportunity Act bars claims by many black farmers. The opinion was released last week and copies were sent to interested Members of Congress. Since the opinion was released, the team working on this issue (USDA, Justice, and from the White House -- WH Counsel, Legislative Affairs and Public Liaison) has been working closely with Hill staff on legislation that would provide remedies for farmers currently barred from relief by the statute of limitations.

Various Members have expressed considerable interest in passing such legislation, including Reps. Clayton, Thompson, Waters, McKinney, Conyers, the Speaker and Rep. Smith, Chairman of the Agriculture committee. Our team met with staff from the Speaker's office and majority staff of the House Agriculture committee last week to discuss USDA's proposed legislative language. The meeting went well and it appeared that the staff was interested in working cooperatively with the Administration on passing legislation. Legislative Affairs and USDA are also engaged in ongoing discussions with House and Senate Democrats and are working with them on legislative language changes. At the same time, we are working with representatives of the black farmers to ensure that any concerns they have with the legislation are addressed.

On the litigation front, we are awaiting the district court's decision on the statute of limitations issue. Justice filed papers with the district court last week arguing the same position articulated in the OLC opinion. In opposition, the black farmer plaintiffs have argued essentially that the statute of limitations should be equitably tolled with respect to all the farmers' cases. It is highly unlikely that the plaintiffs will prevail on this issue. Of course, there is always the possibility that the court will rule against the government. We do not expect, however, that the court will rule prior to our meeting with LCCR. Until the court rules on this and other legal issues, mediation of the farmers cases is being held in abeyance.

In addition, WH Counsel is discussing with Justice other, non-legislative means of remedying the problems caused by the statute of limitations. The OLC opinion did leave open the possibility that, in certain cases, an argument could be made that the statute was equitably tolled. While we

are exploring this option in the event the legislation does not pass, these arguments are very difficult to make and will not help all farmers harmed by the statute of limitations. This is why we have made the legislative route our first priority. However, you should know that Wade Henderson is particularly concerned that we continue to explore this option and we have assured him that we are doing so.

Finally, WH Counsel has also asked a team of USDA and Justice staff to explore enforcement actions that can be taken against individuals within USDA who are discriminating against farmers. It will be important to point this out to LCCR attendees.

Talking points

- We understand and appreciate the concern you and others have expressed over OLC's conclusions with respect to this statute of limitations issue. We share your desire that all black farmers who have suffered from discrimination be able to obtain a remedy for the harm done to them; we do not like the effect of this statutory provision any more than you. I want to let you know what we and USDA have done in this area and what we are doing to address the OLC opinion.
- As you know, Secretary Glickman has made it a top priority of his to provide a remedy for the farmers who have faced discrimination by USDA. Recently, he reconstituted the team set up to review claims of discrimination to expedite the process and get farmers with valid claims their money sooner, including hiring 14 new full-time investigators. He also brought on a new Associate General Counsel for Civil Rights (David Harris) and a Special Assistant for Civil Rights (John Sparks) who works directly for the Secretary and is overseeing the review process to ensure it is moving along efficiently.
- USDA has closed 295 program discrimination cases of the 1,088 total. There have been 15 settlements -- some in the hundreds of thousands of dollar range. (For example, recently, Mr. Eddie Ross from Mississippi received a settlement in excess of \$300,000.) Of the remaining cases, 180 are claims of discrimination filed by African-American farmers. The Secretary hopes that the new team in place will soon clear up the backlog.
- Justice and USDA are also looking at ways to take enforcement action against discriminators within USDA to attack the problem at the source.
- As for the statute of limitations issue, I am personally committed to doing everything we can to pass legislation which will cure the problems this time bar creates. In recent days, my staff has been working closely with the Hill on a bi-partisan basis on such legislation. I also had a conversation with the Speaker about the legislation; he was receptive and his staff have been very cooperative with our staff. We will continue to keep you informed of our progress.

The Employment Non-Discrimination Act (ENDA)

Staff person: *Peter Jacoby or Richard Socarides*

Background

Overview: The Employment Non-Discrimination Act (ENDA) would provide federal protections against employment discrimination based on sexual orientation. Those protections are currently provided based on race, religion, gender, national origin, age and disability. The measure would prohibit employers (including Congress), employment agencies and labor unions from using an individual's sexual orientation as a basis for employment decisions, such as hiring, firing, promotion, or compensation. Employers could not subject an individual to different standards or treatment based on that individual's sexual orientation --real or perceived --or discriminate against an individual based on the sexual orientation of those with whom he or she associates.

Additionally, the bill prohibits any form of preferential treatment, including quotas, and prohibits discrimination claims based solely on statistics ("disparate impact" claims). It does not require an employer to provide benefits for the same-sex partner of an employee. Although the bill does not apply to religious organizations, including schools and educational institutions that are substantially controlled or supported by religious organizations, it does apply to their "for-profit activities subject to taxation." Finally, the measure does not apply to the armed forces or to small businesses with fifteen (15) or fewer employees.

Legislative Status: In the Senate, Senators Kennedy (D-MA), Jeffords (R-VT) and Liebermann (D-CT) have gathered 35 cosponsors for their bill since its introduction last year. Additionally, Senator Jeffords as Chairman of the Labor and Human Resources Committee held a hearing on the measure last October. Unfortunately, however, the measure remains mired in the Labor Committee because Chairman Jeffords cannot convince any Republican on the Committee to join him and vote to report the measure to the full Senate. Consequently, there is a debate going on within the ranks of the bill's supporters over whether they should continue to work to secure the necessary votes in the Labor Committee (an approach strongly favored by Senator Jeffords) or take the bill directly to the Senate floor and offer it as an amendment to some appropriate legislative vehicle (an approach favored by Senator Kennedy). Given the closeness of the vote on this measure when it was offered as a floor amendment during the last Congress (49-50), the high number of cosponsors, and the likely votes of freshman Senators, any floor vote can be expected to be very close.

In the House, Congressman Frank (D-MA) and Congressman Shays (R-CT), the measure's lead sponsors, have signed up a total of 158 cosponsors (12 Republicans and 146 Democrats) for ENDA. That number will jump to 159 when Lois Capps (D-CA) signs on to the measure after Congress returns from its Easter recess. This represents the highest number of cosponsors the measure has had since its was first introduced several Congresses ago.

While the bill introduced in this Congress is much more moderate than previous versions of ENDA, the measure has not gained much support from Republicans, especially the moderate northeastern and Californian Republicans whose support will be critical for moving this bill through the House. Consequently, the measure is not a priority in any of the committees with jurisdiction (Judiciary, Government Reform and Oversight, Education and the Workforce and House Oversight) - which have not held a single hearing on the measure - or for the Republican House leadership.

Talking Points

- We are strongly committed to getting ENDA passed in the Senate during this Congress. To that end, we will support all efforts to bring the measure to the floor of the Senate for debate and passage.
- With respect to ENDA, moderate Republican support is the key in both the House and the Senate. This bill is about a creating a government that is fair and doesn't interfere in the private lives of its citizens- - this should have great appeal to moderate Republicans.
- In the House, there are many Californian and northeastern Republicans who have not yet cosponsored the bill and we should work to get those Members on board.
- In the Senate, moderate Republicans are the key, especially those swing Republicans on the Labor Committee like Senators Frist, Collins, DeWine and Warner, and we will work to gain their support.

The Hate Crimes Prevention Act of 1998

Staff person: *Peter Jacoby or Richard Socarides*

Background

Overview: The Hate Crimes Prevention Act of 1998 is designed to give federal prosecutors both the statutory authority and the necessary resources to prosecute flagrant acts of racial or religious violence, gay-bashing, gender-motivated violence and violence against the disabled.

Specifically, the measure expands the federal government's current ability to punish racial violence by removing unnecessary jurisdictional requirements in existing law. The measure also gives federal prosecutors new authority to prosecute violence against women, the disabled and gays.

On the resource side, the measure would authorize additional funding to hire the necessary law enforcement personnel to investigate and prosecute hate crimes. The bill would also authorize new spending for programs designed to prevent hate crimes. Finally, the measure directs the U.S. Sentencing Commission to determine whether additional criminal sentencing enhancements would be appropriate for adults who recruit juveniles to commit hate crimes.

Senator Kennedy and Congressman Schumer introduced the measure in the Senate and the House last November in conjunction with the President's White House Conference on Hate Crimes. The Attorney General is strongly supportive of the measure which is modeled after the highly effective Church Arson Prevention Act passed by Congress two years ago.

Legislative Overview: In the Senate, Senator Kennedy has been pressuring Judiciary Committee Chairman Hatch (R-UT) to convene a hearing on the hate crimes legislation. Senator Hatch has reportedly agreed to hold a hearing but he has been slow to deliver. One concern that Senator Hatch has expressed, which has been echoed by other opponents of the measure, is that this may be an issue better left to state jurisdiction. Due to the uncertainty in Committee, sponsors had originally planned to offer the measure to S. 10, the Senate's juvenile crime bill. That measure, passed by the Judiciary Committee last fall, is currently stalled in the Senate due to the Senate Republican leadership's fears that Republicans will be forced to vote on politically volatile amendments offered by Democrats during the measure's floor consideration.

In the House, Congressman Schumer (D-NY) has garnered 64 cosponsors for the measure but no action is expected. It is unlikely that any activity will occur until the Senate acts.

Talking Points

- We are strongly committed to enacting Hate Crimes legislation during this Congress. To that end, we will support all efforts to bring this measure to the floor of the Senate for debate and passage.

- With respect to the Hate Crimes bill, we should be working to get Senator Hatch to hold a hearing on the measure prior to the Memorial Day recess. Following that, we must identify an appropriate legislative vehicle to get it through the Senate.

Fair Housing Amendments Act of 1998 (H.R. 3206)

Staff person: *Broderick Johnson*

Background

On February 12, 1998, Representatives Charles Canady (R-FL), Brian Bilbray (R-CA), and Jane Harman (D-CA) introduced H.R. 3206, the "Fair Housing Amendments Act of 1998." The legislation constitutes a major restructuring of the Fair Housing Act, which celebrates its 30th anniversary this year. The Fair Housing Act is regarded as fundamental civil rights legislation, and thus H.R. 3206 has caused great concern among the civil rights community and fair housing advocates.

As currently drafted, H.R. 3206 addresses complicated matters involving relationships between the Fair Housing Act and the First Amendment; protections against discrimination based upon familial status; the relationship between state and local governments and the federal government on zoning and land use issues; and complaint procedures under the Fair Housing Act. These issues were hotly debated and resolved during debate and passage of the "Fair Housing Amendments Act of 1988".

Two major concerns of LCCR with regard to H.R. 3206 have to do with: (1) whether it should be made more difficult to bring Fair Housing Act cases against those who publicly espouse opposition (in the context of zoning proceedings, for instance) to certain disabled and minority persons living in their neighborhoods; and (2) the ability of state and local governments to cluster group homes in certain neighborhoods and whether they can restrict the categories of persons who can live in certain such homes and neighborhoods (e.g., disabled persons as opposed to recovering substance abuse patients).

The original version of the bill is apparently being modified since the bill was considered by the House Judiciary's Subcommittee on the Constitution. Some of these changes were made to address criticisms raised by Subcommittee Democrats (led by Ranking Democrat Bobby Scott (D-Va)). Nevertheless, the bill was reported out of the subcommittee on a straight party line vote, and the anticipated changes are not likely to affect HUD's recommendation that the Administration strongly oppose the bill. A coalition of advocacy groups, which includes civil rights groups, disability groups, and religious organizations, is likely to continue to strongly oppose the bill. The National League of Cities is a major supporter of the bill.

Full Judiciary Committee consideration has been delayed several times, but could occur as early as next week.

Talking Points

- The President has made clear his unequivocal commitment to strong, fair, and effective enforcement of the Fair Housing Act, and HUD's recent enforcement program under Secretary Cuomo exemplifies the President's commitment.
- The 30th anniversary of enactment of this landmark civil rights statute is certainly no time to weaken that law or to retreat from our nation's commitment to fair housing for all Americans. The various issues raised in H.R. 3206 are best addressed through joint efforts by HUD and the Justice Department, perhaps involving greater flexibility, rather than through the changes advanced by this legislation.
- The Administration stands ready to work with the Congress, civil rights and fair housing advocates, and such entities as the National League of Cities to try to achieve mutual objectives. Nonetheless, we remain strongly opposed to this or any other legislation that threatens the ability of minorities and the disabled to be protected under the Fair Housing Act.

Japanese - Latin American Redress Litigation

Staff person: *Rob Weiner*

Background

During World War II, several Latin American countries sent residents of Japanese descent to the U.S. to be used for prisoner exchange with Japan or interned in U.S. camps. Approximately 2300 Japanese Latin Americans, most from Peru, were brought here. Of these, we sent 800 to Japan during the war. Another 900 left after the war. Most of these went to Japan because Peru and other Latin American countries would not let them return. Others remained here and eventually became citizens.

In 1988, Congress enacted the Civil Liberties Act to apologize for the internment of Japanese Americans and to authorize a \$20,000 payment to eligible internees. "Eligible" internees included only those who were American citizens or permanent resident aliens at the time of internment. "Permanent resident aliens" included only persons "lawfully admitted into the United States for permanent residence." The U.S. government has deemed most Japanese Latin American internees ineligible because they were brought to this country against their will for internment or prisoner exchange, rather than admitted for permanent residence.

Five Japanese Latin Americans brought a class action, Mochizuki v. United States, in the U.S. Court of Claims seeking redress under the Civil Liberties Act. They claim:

- (1) they were "lawfully admitted" because the U.S. government brought them here, and they were "permanent residents" because they came for an indefinite time period;
- (2) they should be treated as "permanent residents under color of law" -- a constructive permanent residency status used under some welfare statutes to provide benefits; and
- (3) to deny redress unconstitutionally discriminates based on national origin.

The U.S. has opposed these claims on the basis that the statute clearly intended to exclude these individuals and that Congress has broad constitutional power to distinguish between citizens, permanent residents, and others.

In January 1998, the President responded to a letter from Representative Tom Campbell, who had urged settlement of the Mochizuki case. The President stated that:

My staff and the Department of Justice explored thoroughly the possibilities of redress for these people under the Civil Liberties Act of 1988. The Act provides redress to persons of Japanese ancestry who were citizens or permanent resident aliens at the time of their internment. Unfortunately, many Japanese individuals from Latin American did not have such status at that time. . . . Nor is it within my power to confer the requisite status retroactively.

Although this is a succinct statement of the position that the Administration has taken in the Mochizuki litigation, it does not resolve whether the Justice Department has power, as part of its overall authority to settle lawsuits, to settle this one by offering some compensation from the redress fund.

After struggling with the issue, the Justice Department offered to settle the case for \$5,000 per claimant. The offer of 25 cents on the dollar reflected an assessment of the low litigation risk of the case, which the Justice Department must consider in settling cases, as well as the amount of money left in the fund. Absent a settlement, approximately \$6-8 million should be left in the redress fund when the program sunsets in August 1998. If all 1300 Japanese Latin American claimants sought redress at \$5000 each, the total claimed would be \$6.5 million.

After initially rejecting the offer, representatives of the Japanese Latin Americans decided to accept it. A few items remain to be negotiated, but they are unlikely to derail the settlement. The representatives of the Japanese Latin Americans are likely to want the Administration to seek legislation to treat their clients the same as others who can make claims on the redress fund.

Talking Points

- We are pleased that settlement negotiations appear to be on track and that a resolution appears to be within reach.
- We believe that the moral claim of Japanese Latin Americans to redress stands on the same footing as the claim of Japanese-Americans who were interned during World War II. Unfortunately, the legal basis of their claim under the Civil Liberties Act was not strong, and the Justice Department had to be able to justify a settlement legally.

If LCCR brings up legislation:

- We are happy to work with you on a legislative solution that treats Japanese Latin Americans the same as other internees. You should recognize that it will not be easy to achieve such a solution, and you will need to put in a great deal of effort with us.

The FCC Affirmative Action Decision

Staff person: *Eddie Correia*

Background

A unanimous panel of the D.C. Circuit just struck down FCC rules that require a radio station licensee to engage in a number of outreach and recruiting efforts in order to achieve a diverse workforce. Lutheran Church-Missouri Synod v. FCC. (The panel was made up of three of the most conservative judges in the circuit.) The licensees were required to provide EEO notices to employees, to submit information on their hiring, and to use minority-specific recruiting sources. Such requirements are common in EEO programs. The court found these requirements, as applied, amounted to race classifications under Adarand and, therefore, triggered strict scrutiny. It held that the FCC's asserted interest, "diversity in programming," was not compelling, and, in any event, the rules were not narrowly tailored to accomplish it.

The most serious problem is that the opinion could make it difficult to justify common recruiting and outreach requirements in many areas, including contracting, and hiring. For example, the opinion says that FCC's policy of reviewing the hiring record of licensees puts pressure on employers to make certain hiring decisions. Obviously, most EEO programs will involve some type of review. The government has an interest in determining whether an outreach program is ever implemented and whether it is working. This review is important even if the government makes it as clear as possible that it is assessing outreach efforts, not actual hiring or contracting decisions. If the opinion means that any race-specific recruiting or outreach program that creates even the slightest incentive to hire minorities triggers strict scrutiny, it could have very wide and devastating affect. DOJ is currently considering its options, one of which is to ask for a rehearing en banc (in front of a panel of the full D.C. Circuit).

Talking Points

- The administration is deeply concerned about the recent FCC decision and the implications that it has for recruiting and outreach requirements in affirmative action programs. I know Rev. Jackson, Wade Henderson, and others met with Bill Lann Lee to express their views on this case, and I know Bill understands your feelings.
- Recruiting and outreach efforts are essential if affirmative action programs are going to work and if we are going to open up opportunities for people who have been shut out of them. Even conservative Republicans support recruiting and outreach, so that is a sign of how extreme this opinion is.
- The Justice Department and the FCC are studying this decision now. One of the options is to ask the full circuit to grant a rehearing on the decision. We will be monitoring this case closely.

Highlights of Recent Activities of the President's Initiative on Race

Staff person: *Judy Winston*

Note: Judy will briefly review for LCCR the following events.

ESPN Conversation on Race and Sports. On April 14, the President participated in the ESPN discussion in Houston, *Sports and Race: Running In Place?*. The conversation was successful in moving the dialogue on race forward and reaching an audience that may not have been aware of the Race Initiative. Participants from the sports world included current and former athletes, coaches, and executives in football, baseball, basketball, and track and field.

They included:

- Jim Brown, former football player; currently president of Amer-I-Can program
- Vince Dooley, former college football coach, currently university Athletic Director
- Dennis Green, professional football coach
- Keyshawn Johnson, professional football player
- Jackie-Joyner Kersee, five-time Olympic medalist in track and field
- Felipe Lopez, college basketball player
- Joe Morgan, former professional baseball player, currently ESPN sports broadcaster
- Carmen Policy, president of professional football team
- John Thompson, college basketball coach
- John Moores, owner of professional baseball team

Three Advisory Board members (Governor Winter, Reverend Cook, Mr. Thomas), consultant Laura Harris, and Executive Director Judy Winston also attended.

HUD Roundtable Discussion on Fair Housing. In commemoration of the 30th anniversary of the Fair Housing Act, the U.S. Department of Housing and Urban Development conducted a public meeting and roundtable discussion on April 23 in Newark, New Jersey, with representatives from fair housing and community organizations. The meeting focused on race and housing issues in New Jersey. Advisory Board members Franklin and Kean participated in the discussion. HUD Assistant Secretary for Fair Housing and Equal Opportunity Eva Plaza also participated in this event.

Statewide Days of Dialogue. Statewide Days of Dialogue is an effort to involve governors, mayors, and others in the Race Initiative by issuing a proclamation, participating in a dialogue, organizing a town hall meeting on race, or other activities. Statewide Days is being launched on April 30 in conjunction with the YWCA's National Day to Erase the Hate and Eliminate Racism. To date, 16 Governors, several Mayors, and more than 100 YWCA's in 37 states and the District of Columbia have agreed to participate. Attorney General Reno will be attending a Capitol Hill luncheon related to these events and Secretary Riley will be participating in a dialogue with school children in Birmingham, Alabama.

Campus Week of Dialogue. Campus Week of Dialogue engaged colleges and universities across the country in the Race Initiative in town hall meetings, smaller discussions, campus-community projects, and other activities. Close to 600 schools participated in Campus Week of Dialogue events from April 6-9, including universities both large and small, historically black colleges and universities, Hispanic serving institutions, tribal colleges, and community colleges. Advisory Board members and Initiative staff participated in a number of events at different campuses. Cabinet participants included Attorney General Reno and Secretary Babbitt. White House staff participating in Campus Week events included Maria Echaveste.

▶ **Julie A. Fernandes**
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Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Cathy R. Mays/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
Subject: LCCR meeting Friday

Bruce,
I have discussed the possible topics for Friday with NEC and OMB. The suggested format is for Frank Raines to do an overview of budgetary items that have furthered the race initiative since its inception, and for you and Gene to focus on particular policies from your respective shops. Here is the suggested division:

- NEC:
High Hopes
School Construction
Hispanic Education Action Plan
Opportunity Areas for Out of School Youth
Second Round Empowerment Zones
Economic Development Initiative
Low-Income Housing Tax Credit
Housing mobility initiatives
"Play-by-the-Rules" Homeownership Initiative

- DPC:
Class Size (including 100,000 teachers)
Education Opportunity Zones
Teachers for Underserved areas
Civil Rights Enforcement Initiative (including EEOC and HUD testing initiative)
Hate Crimes Conference
Childrens Health Outreach
Race & Health Initiative
Welfare-to-work housing vouchers
Child Care Initiative (including After-School programs, Early Learning Fund, Child Care & Development Block Grant; and Expanded Child & Dependent Care tax credit)

Of course, this is only a suggested list of topics. Please let me know if this looks o.k. and whether you would like talking points on these (or anything else) for Friday. Thanks.

Julie