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Domestic Policy Council
Stephen Warnath (Civil Rights)
OA/Box Number: 9884

FOLDER TITLE:

[Affirmative Action] [2]

ds46

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 advise 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]

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

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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]

AFFIRMATIVE ACTION

"Affirmative action has been good for America. That does not mean it has always been perfect. It does not mean it should go on forever. It should be retired when its job is done, and I am resolved that that day will come.

But....the job is not done...."

President Bill Clinton
July 19, 1995

We must not become the first generation of Americans since the end of Reconstruction to narrow the reach of equal opportunity. We must continue the struggle toward equal opportunity for all and special treatment for none. America cannot afford to waste a single person as we confront new challenges. Affirmative Action has closed many gaps in economic opportunity, but we still have a long way to go.

The unemployment rate for African-Americans remains about twice that of whites. Women still make only 72% as much as men. Women and minorities hold less than 5% of the senior management positions in the nation's largest companies. The federal government received more than 90,000 complaints of employment discrimination based on race, ethnicity and gender in 1994. Hate crimes and violence are still ugly realities in the lives of many Americans.

President Clinton believes there is still a need for affirmative action that is done right -- we need to mend it, not end it. There still exists a compelling need for race-conscious affirmative action measures in federal procurement that target assistance to small businesses owned by socially and economically disadvantaged individuals. As we approach the 21st century, President Clinton believes we must restore the American Dream to all Americans, find common ground amid our great diversity, and strengthen the American commitment to equal opportunity for all.

A RECORD OF ACCOMPLISHMENT:

- **Done Right, Affirmative Action Works:** In 1995, President Clinton ordered a review of the federal government's affirmative action programs. That review concluded that affirmative action is still an effective tool to expand economic and educational opportunity:
 - The military's approach, ensuring it has a wide pool of qualified candidates for every promotion, has given us the world's most diverse and best qualified military leadership.
 - Education Department programs targeted at minorities do a lot of good with a minimal investment -- about 40 cents of every \$1,000 in student aid.
 - The affirmative action program administered by the Department of Labor, that was enhanced by President Nixon, has prevented discrimination and fostered equal employment for all Americans including women,

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minorities, the disabled and veterans -- without quotas or mandated outcomes.

- Affirmative action has helped build up firms owned by minorities and women, who were historically excluded, and has helped a new generation of entrepreneurs to flourish, fostering self-reliance and economic growth.

- **Presidential Directive to Ensure Affirmative Action:** On July 19, 1995, President Clinton directed all federal agencies to comply with the Supreme Court's decision in Adarand and to apply four standards to make sure that all affirmative action programs are fair:

- No quotas.
- No reverse discrimination.
- No preferences for unqualified individuals.
- No continuation of programs that have met their goals.
- Any program that does not meet any of these principles must be eliminated or changed.

The Administration has already suspended programs that did not meet the Supreme Court's guidelines in Adarand and has proposed procurement reforms that:

- Safeguard against fraud and abuse to ensure that the benefits of affirmative action go only to individuals and businesses that are deserving;
- Require the use of race-neutral means such as outreach and technical assistance to increase minority opportunity and participation in federal procurement;
- Ensure that race will not be relied upon as the sole factor in procurement decisions -- only qualified businesses will receive federal procurement awards;
- Provide a set of market driven benchmarks for each industry-- not quotas -- to ensure that race-conscious procurement is not used unnecessarily;
- Continue the use of several race-conscious contracting mechanisms to promote minority procurement, including the Small Business Administration's 8(a) program;
- Avoid any undue burden on nonbeneficiaries of the program.

- **Employment Guidance:** The Clinton Administration issued detailed guidance on the proper use of race in federal employment under Adarand.

- **Litigation:** The Clinton Administration is continuing to defend the use of affirmative action contracting under the 8(a) program in several court cases brought since Adarand. President Clinton also instructed the Justice Department to file a brief in support of the state of Texas' petition to the Supreme Court in the Hopwood case to uphold the University of Texas Law School's interest in promoting racial diversity of its student body. The Administration strongly opposes federal and state initiatives such as the Dole-Canady bill and the California Civil Rights Initiative that would turn back the clock on the federal government's historic, bipartisan commitment to equal opportunity and eliminate affirmative action in California for minorities

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and women.

- **Helping Distressed Communities:** President Clinton has issued an Executive Order launching the Empowerment Contracting program that provides a supplement, not a replacement, to existing federal procurement programs. Under the Empowerment Contracting Order, the program will offer incentives for government contracting awards to businesses in distressed communities that hire a significant number of residents and that generate significant economic activity in low-income areas.

THE CHALLENGES AHEAD:

President Clinton will continue to work to ensure equal opportunity for all Americans and to prevent this issue from dividing us. There are those who would use this issue to divide us. They must not succeed. America will survive and prosper as a society only if we are confident and united. Today in America, many racial and ethnic groups live and work together in harmony -- an achievement unmatched in human history. President Clinton believes we have a responsibility to renew and strengthen the ideals that foster that unity.

May 1996

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"So I have tried to keep America open as an immigration-friendly society. . . And we need to try to get as many of our immigrants who want to do so to become citizens as quickly as possible so that the American people will all see that this is a part of the process of American history which is a good one for our country."

President Clinton
July 19, 1995

Overview

The Administration wants to reform and improve the legal immigration system. We support legal immigration policy that is pro-family, pro-work, and pro-naturalization. These core values must be protected as legal immigration reform is considered by Congress. In addition, the Administration will continue to protect those who fear persecution in their homeland. The President has indicated his support for a moderate reduction in the overall level of legal immigration consistent with these principles.

For those eligible for citizenship, the Administration is implementing an unprecedented naturalization initiative. The President believes that rewarding those who have "played by the rules" with United States citizenship strengthens our communities and our nation.

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ACA 47

Date of hearing: August 10, 1994

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

ACA 47 (Richter) - As Introduced: June 28, 1994

SUBJECT: Civil rights.

KEY ISSUE: SHOULD CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS BE PROHIBITED, FROM THE EFFECTIVE DATE OF THIS ACT, FROM CONSIDERING RACE, SEX, COLOR, ETHNICITY OR NATIONAL ORIGIN IN THE OPERATION OF THE STATE'S SYSTEM OF PUBLIC EMPLOYMENT, PUBLIC EDUCATION OR PUBLIC CONTRACTING EXCEPT UNDER COURT ORDER, AN EXISTING CONSENT DECREE OR WHEN FEDERAL FUNDS ARE INVOLVED?

BACKGROUNDFacts.

State agencies and universities were asked to determine the impact of ACA 47 on existing affirmative action programs, the potential cost to the state and the programmatic impact. Limited information was available at the time the analysis was written and most entities surveyed were unaware of the act's potential impact. ACA 47 may appear on the 1996 ballot as a proposed initiative.

DIGEST

Existing law provides that public entities are allowed to consider race, ethnic and gender characteristics as a factor in remedying the effects of the entity's own past discriminatory practices where: (1) the evidence of past discrimination is convincing based upon a "strict scrutiny" standard of review which shows (a) a compelling governmental interest based on a record of prior discrimination; and (b) the consideration of racial and gender characteristics is "narrowly tailored" to its remedial purposes in relation to the degree, nature and extent of the prior discrimination and the extent to which racial or gender criteria are used to redress its effects; (2) the evidence shows a statistical disparity based upon a comparison between the composition of the entity's student body, labor force, public contracts alleged to be discriminatory and the qualified population in the relevant market (a finding of general societal discrimination is not sufficient alone to justify a racial preference).

There are numerous statutory provisions that provide for the state or its agents to take "affirmative action" in public education, public employment and public contracting. Existing law, for example:

- 1) Requires each state agency and department to establish an effective affirmative action program monitored, enforced and coordinated by the

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State Personnel Board. Each agency and department is required to have goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations.

- 2) States legislative intent to monitor the performance of the University of California, the California State University and the community colleges in the diversification of student bodies, faculty, nonfaculty academic staff and administrative positions.
- 3) Requires contracts awarded by any state agency, department, officer or other state governmental agency for construction, materials, supplies, equipment, alteration, repair or improvement and some professional services shall have statewide participation goals of not less than 15% for minority business enterprises, not less than 5% for women business enterprises and not less than 3% for disabled veteran business enterprises.
- 4) States legislative intent that the Regents of the University of California adopt policies and procedures to ensure that University contracts are placed with small business enterprises, particularly small disadvantaged women and disabled veteran business enterprises in areas of commodity purchases, services, and construction contracts, and that the University develop annual targets, annual statistical reports, outreach and monitoring on the utilization of disadvantaged women and disabled veteran business enterprises.
- 5) Requires electrical, gas and telephone corporations with gross annual revenues exceeding \$25,000,0000 and their commission-regulated subsidiaries and affiliates to submit a detailed and verifiable plan annually for increasing women, minority and disabled veteran business enterprise procurement in all categories.

This bill prohibits the state or any of its political subdivisions or agents from using race, sex, color, ethnicity or national origin as a criterion for discriminating against, or granting preferential treatment to, any individual or group in the operation of the state's system of public employment, public education or public contracting. Additionally, this bill:

- 1) Applies only to state action taken after the effective date of the act's passage.
- 2) Permits normal and customary attorney's fees as part of an allowable remedy for violations of the act's provisions.
- 3) Permits classifications based on sex that are reasonably necessary to the normal operation of the state's system of public employment or public education.
- 4) Permits court orders or consent decrees that are in effect as of the effective date of this act to remain in effect.

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- 5) Permits state action that is necessary to establish or maintain eligibility for any federal program that would result in a loss of federal funds to the state.
- 6) Allows a public agency to obey a court order requiring the consideration of racial, ethnic, national origin, gender or religious characteristics to remedy the effects of its own past discriminatory practices.
- 7) States that, if any part or parts of this act are in conflict with federal law or the United States Constitution, this act shall be implemented to the maximum extent permissible by federal law and the U.S. Constitution, and any provision of this act that is invalid shall be severable from the remaining portions of the act.

FISCAL EFFECT

Unknown. According to a joint Legislative Analyst's Office and Department of Finance letter of November 24, 1993, analyzing a proposed initiative entitled "Prohibition Against State Discrimination or Preferential Treatment, Initiative Constitutional Amendment," which is nearly identical to ACA 47, the initiative would result in the following: savings to the state and local governments, possibly totaling tens of millions of dollars in public employment and contracting each year resulting from eliminating existing affirmative action programs; savings to higher education in the range of \$50 million annually resulting from the elimination of student assistance programs based on race, ethnicity or gender; savings to the state of around \$120 million each year from the elimination of voluntary school desegregation programs and other student assistance programs based on race, ethnicity and gender. According to the same letter, these estimates exclude agencies and programs required by federal law to maintain affirmative action activities but estimated savings could be less depending upon whether additional federal requirements mandate continuation of affirmative action in other agencies and programs.

In addition, there may be potential costs in litigation resulting from legal challenges to existing voluntary affirmative action policies.

COMMENTS

- 1) Author's Statement. According to the author's office, federal and state case law have not been clear or consistent in the interpretation of the 14th Amendment of the U.S. Constitution and federal and state civil rights statutes. The author contends that the state, its public subdivisions and its agents have adopted programs and policies that discriminate under the rubric of "voluntary affirmative action." The author's intent is to prevent "reverse discrimination" by amending the state Constitution to prohibit discrimination on the basis of race, sex, color, ethnicity or national origin.

Bill proponents charge that goals and timetables are in fact quotas that grant preferential treatment to protected groups on the basis of criteria

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ACA 47

that disadvantages others for a history they did not create. Proponents charge that the intent of the 1964 Civil Rights Act was a color-blind society.

- 2) As currently drafted, the bill raises a number of significant policy questions:
- a) ACA 47 does not address discrimination against or granting preferences for physical disability, mental disability, medical condition, marital status, age, sexual orientation or disabled veteran status. Article VII, Section 6(a) of the California Constitution states that the Legislature may provide preferences for veterans and their surviving spouses. Is it sound public policy to permit voluntary state action or legislation to remedy the effects of discrimination based on physical disability, mental disability, medical condition, marital status, age, sexual orientation and disabled veteran status but not race, sex, color, ethnicity or national origin?
 - b) Subdivision (g) of ACA 47 permits public agencies to obey a court order requiring the consideration of religious characteristics; however, religious characteristics are not listed in subdivision (a). Similarly, subdivision (a) lists color, but color is not listed in subdivision (g); subdivisions (a) and (d) list sex while subdivision (g) lists gender. Is this the author's intent?
 - c) Legislative remedies and voluntary settlements of race and gender discrimination claims against a public agency, subdivision or agent to remedy the effect of the entity's discrimination are prohibited from the effective date of ACA 47. By limiting the remedy for future discriminatory practices to court orders, the act's practical effect could be increased litigation for agencies, departments, subdivisions or agents of the state. Should women and minorities be prohibited from seeking gender and race-conscious administrative remedies or legislation to remedy future discrimination cases?
 - d) Subdivision (f) limits state action to comply with federal programs only to the extent that ineligibility results in a loss of federal funds to the state. Would ACA 47 prohibit the state from complying with unfunded federal programs that contain race and gender-conscious criteria?
 - e) "Preferential treatment" in subdivision (a) and "classifications based on sex that are reasonably necessary" in subdivision (d) are not specifically defined. Should these terms be defined?
- 3) OPPOSITION:
- a) Opponents contend that ACA 47 would eliminate the use of voluntary affirmative action programs intended to redress past discriminatory practices in public employment, education and contracting.

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ACA 47

- b) Opponents contend that ACA 47 would limit the ability of local governments to meet their obligation under the U.S. Constitution and federal law to remedy their own past discrimination, forcing those agencies to choose between maintaining federal funds or giving up federal funds to avoid litigation of claims for violating ACA 47.
- c) Finally, opponents contend that ACA 47 violates the Equal Protection Clause of the U.S. Constitution because the proposed amendment: (1) embodies an explicit use of race and is therefore subject to "strict scrutiny" by the courts, which would find that the act needs to relate to a compelling state interest and be "narrowly tailored" to meet legitimate legislative ends (opponents contend that no showing has been made that state and local affirmative action programs have to any extent adversely affected the state's non-minority population and the proposed amendment is overly broad in scope); (2) is racially motivated and seeks to reduce the level of protection provided to women and minorities under the U.S. Constitution; (3) infringes upon the rights of women and minorities to participate on an equal basis in the political process by removing the authority of local officials to address discrimination against women and minorities while not similarly restricting local officials from addressing discrimination on the basis of age, mental or physical disability and sexual orientation.

SUPPORT

Edwin S. Darden Associates, Inc.
Architecture & Planning
Fontana Steel
Kelly Prose
M.C. Group, Inc.

Nichols Melburg & Rossetto AIA Assoc.
Prior Tire Co.
Thomson & Hendricks Architects and
Planners
Numerous individuals (34 by letter)

OPPOSITION

Alianza, Los Angeles
American Civil Liberties Union of
Northern California
American Jewish Congress
Asian American Architects and
Engineers, San Francisco
Asian American Certified Public
Accountants and Attorneys San
Francisco
Asian Business Association, Los
Angeles
Asian Law Caucus
Bay Area Black Chambers of Commerce,
San Francisco
Bay Area Lawyers for Individual
Freedom

California Black Chamber of Commerce,
San Francisco
California Filipino Business
Associates, San Jose
California Hispanic Chambers of
Commerce, San Francisco
California Minority and Women Business
Coalition, Oakland
California Trial Lawyers Association
Charles Houston Bar Association
Child Care Law Center
Children's Advocacy Institute
Chinese for Affirmative Action
Coalition for Civil Rights
Coalition for Economic Equity

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ACA 47

OPPOSITION (continued)

Coalition for Immigrant and Refugee Rights & Services
 Coalition of Black Trade Unionists Northern California Chapter
 Coalition of Economic Equality of San Francisco
 Communications Workers of America, Local 9410
 Community Labor Education and Research Project (CLERP)
 Community United Against Violence
 Disability Rights Education & Defense Fund
 Employment Law Center/The Legal Aid Society of San Francisco
 Equal Rights Advocates
 Filipinos for Affirmative Action
 Greenlining Coalition, San Francisco
 Income Rights Project
 Instituto Laboral De La Raza
 Intergroup Clearinghouse
 International Indian Treaty Council
 International Ladies Garment Workers' Union (ILGWU)
 Japanese American Citizens League
 Lawyers Committee for Civil Rights of San Francisco Bay Area
 La Raza Centro Local
 League of California Cities
 Local 2. Hotel and Restaurant Employees Union
 Malkejohn Civil Liberties Institute
 Mexican-American Legal Defense and Educational Fund
 Minority Contractors Association of Northern California, San Francisco
 NAACP
 National Association of Women in Construction, Pleasant Hill
 National Center for Lesbian Rights
 National Lawyers Guild, San Francisco Bay Area Chapter
 National Network for Immigrant and Refugee Rights
 National Tradeswoman Network
 Mayor of San Francisco
 Pacific Northwest District Council
 Public Advocates
 San Francisco Board of Supervisors
 San Francisco Lawyers' Committee for Urban Affairs
 San Francisco Women in Trades
 San Francisco Women Lawyers' Alliance
 Service Employees International Union, AFL-CIO, CLC
 Small Business Exchange, San Francisco
 United Minority Business Entrepreneurs, San Francisco
 United Stanford Workers-S.E.I.U. Local 680
 Women Construction Owners and Executives, San Diego
 Womens' International League for Peace and Freedom
 Y.W.C.A. of San Francisco/Marin/San Mateo

Scott Bain
 445-4560
 ajud

ACA 47
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CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

Assembly Constitutional Amendment

No. 2

Introduced by Assembly Member Richter

December 5, 1994

Assembly Constitutional Amendment No. 2—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 31 to Article I thereof, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

ACA 2, as introduced, Richter. Civil rights.

The California Constitution provides that a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.

This measure would prohibit the state or any of its political subdivisions from using race, sex, color, ethnicity, or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the state's system of public employment, public education, or public contracting.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

- 1 Resolved by the Assembly, the Senate concurring, That
- 2 the Legislature of the State of California at its 1995-96
- 3 Regular Session commencing on the fifth day of
- 4 December 1994, two-thirds of the membership of each
- 5 house concurring, hereby proposes to the people of the

THE WHITE HOUSE
WASHINGTON

DATE: 3/8/96

DRAFT/CLOSE HOLD

TO: Attendees
Affirmative Action-Meeting 3/11/96
4:00 p.m.

FROM: White House Counsel
Room 130, OEOB, x6-7903
Krislov, Gibson, Hayes

- FYI Attached are draft materials prepared by
- Appropriate Action DOJ. Please review prior to meeting on Monday 3/11.
- Let's Discuss
- Per Our Conversation Thanks
- Per Your Request
- Please Return
- Other

* FOR WED. 3/8 DPC
MEETING

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

March 3, 1995

PRESS CONFERENCE BY THE PRESIDENT

Room 450
Old Executive Office Building

1:00 P.M. EST

EXCERPTS ON AFFIRMATIVE ACTION

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(1)

Q: Thank you, sir. I'd like to ask you a question, if I might, about affirmative action. I know your administration is now

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reviewing all of those affirmative action regulations, but there's some concern that this might be the prelude to a backing off of those policies. In fact, Jesse Jackson earlier this week expressed the opinion that maybe if you did, he might even run against you. But my question, really, on that issue is, what about the many Americans who really feel that they have been punished by affirmative action? And I'd like to get your comments on that.

THE PRESIDENT: Let me tell you about the review I've ordered and comment on the affirmative action thing. First of all, our administration is against quotas and guaranteed results, and I have been throughout my public career. I have always been for trying to help people develop their capacities so they could fully participate. And I have supported things -- when I was a governor. I supported, for example, minority scholarship programs -- in my public life, I have done that.

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(PAGE 14 cont.)

I want to make a couple of comments here. First, I have asked for a review of all the federal government's so-called affirmative action programs because I think it's important that we analyze, number one, what they do and what -- a lot of times people mean different things when they use affirmative action. For example, I take it there is virtually no opposition to the affirmative action programs that are the most successful in our country, which are the ones adopted by the United States military, which have not resulted in people of inferior quality or ability getting preferential treatment, but have resulted in the intense effort to develop the capacities of everybody who joins the military so they can fully participate and contribute as much as possible, and has resulted in the most integrated institution in our society.

So I want to know what these programs are, exactly. I want to know whether they are working. I want to know whether there is some other way we can reach any objective without giving a preference by race or gender in some of these program. Those are the three questions we need to ask.

And let me make a general observation. I asked myself when this debate started, what have we done since I've been President that has most helped minorities. And I think that -- I would say that the things we have done that have most helped are things that have benefitted all people who needed them -- expanding the Head Start program; expanding the college loan program; expanding the earned income tax credit, the working families tax credit which has given an average tax cut of \$1,000 to families with incomes under \$25,000; the empowerment zones. And one of them -- one of the empowerment zones went to an all-white area in Kentucky. But the disproportionate impact was on people who'd been left behind in our cities.

So -- and one thing that the rescission package would take away, the community development banks -- which I think would be a terrible mistake, which is designed to empower people through the free enterprise system to make the most of their own lives.

So I would say to you, where we can move ahead based on need we ought to move forward, and we shouldn't move backward. There's still a lot of people who aren't living up to their capacity in this country, and it's hurting the rest of us. And so, I want this analysis to finish. I will then make a decision in a prompt way, and I'll tell the American people what I think, and I will proceed to act in the context of the government.

Meanwhile, I urge all of you to read the history, in light of the other -- the political comments you made -- to read the history of how these affirmative action programs got started and who was on what side when they began. It's very interesting to go back through the last 25 years and see all the twists and turns.

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(PAGE 5)

The American people want an end to discrimination. They want discrimination, where it exists, to be punished. They don't want people to have an unfair break that is unwarranted. We can work this out, and I'm determined to do it.

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(2)

Q Just another question on affirmative action, Mr. President. When you announced your review you said, we have to stop defending things that are not defensible. Do you think that rules that mandate a certain percentage of federal contracts be set aside for minority firms -- are those still necessary and isn't that guaranteeing results, the kind of thing you say you now opposed to?

THE PRESIDENT: Well, I want to look at how they're implemented. For one thing, if you look at the rules and what they mean, it's difficult to draw a conclusion about whether they even do what they were supposed to do in the first place. But I want -- I will make comments. I am almost done with this review and I will make comments when I finish about what I think we should do, and then I will do whatever it is that I can do within my executive authority to go forward.

I do not -- I want to continue to fight discrimination where it exists. I want to continue to give people a chance to develop their capacities where they need help. I want us to emphasize need-based programs where we can because they work better and have a bigger impact and generate broader support. But let me finish what we're doing here, and then I will try to answer all the details.

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(3.)

Q Mr. President, forgive me for pressing you on this, but if I'm not mistaken, you've always been in favor of affirmative action, and in fact, you have practiced it. Why now the hesitation?

THE PRESIDENT: I have always -- that's right. I'm glad you asked. I have always practiced it. But let's look at how I practiced it. Look at my appointments to the federal bench, ones for which, I might add, I've been regularly and roundly attacked for trying to achieve diversity here in this community. I read something in the paper about once a month, people jumping on me because I've appointed more women and more minorities to the federal bench than my predecessors combined at this point in our terms -- my last three predecessors combined. And, oh, by the way, they sometimes say, his appointees also have the highest rating from the American Bar Association of the last three Presidents.

I have practiced affirmative action here the way that I perceive the United State military has practiced it. I have made an extra effort to look for qualified candidates who could serve with distinction and make a contribution to this country and make the federal bench reflective of the American population. I have not done it with any quota system in mind, and I have not guaranteed anybody a job. I have made an extra effort to do that.

The military starts before that. They have made an extra effort to develop the capacities of people who come to them with great raw ability, but maybe a disadvantaged background. Is that wrong? I don't think it is. And I'm not backing off of that.

The question is -- here is the narrow question -- the question is: If we're not for quotas in results, and we are for developing everybody's capacities, what do we do with all those rules and regulations and laws that really are in a gray area, that are really in a gray area where there is, let's say, a minority scholarship or a contracting set-aside that Maura asked about, that really is often got around because of the way they are written?

I want to review those. I do not want to see us stop trying to develop the abilities of all Americans. I do not want to see us move away from trying to concentrate our resources in the areas of greatest need.

But I would say again, I think most minorities have been helped most by the programs in this country that have been targeted toward broad-based needs. And, ironically, if you go back to the beginning of this whole affirmative action debate, it started in the late '60s and many civil rights leaders at the time argued against

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affirmative action program because they thought we'd wind up in the debate we are now having 25 years later.

I think we need to look at the programs, look at the facts, and ask the questions I just asked: How does this work? Is it fair? Is it necessary? Is there an alternative way to achieve the objective? But in terms of taking aggressive initiatives to develop the capacities of people, should we keep doing that? You bet we should. How should we do it in the law? That's the question.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 19, 1996

REMARKS BY THE PRESIDENT
IN MEETING WITH GOVERNORS

The Cabinet Room

1:52 P.M. EDT

THE PRESIDENT: I would like to welcome the governors, the other state elected officials who are here, the commissioners of public safety that are here, the members of Congress who have come together to discuss the problem of church burnings, which has troubled so much of our country. I expect that for our part we will cover three areas today. We want to talk about the efforts to prosecute those who are responsible for these crimes, and we want to give a report on that. We want to talk a little about the rebuilding efforts. And I compliment the National Council of Churches and other religious organizations and citizens that are involved there. And I think we all know we need to try to do more to prevent these burnings from occurring in the first place.

So, we're going to talk about some initiatives that we might be able to take together to work with communities to do more prevention work. And we may have more to say about that in the days ahead.

The most important thing to me is that as Americans we consistently and passionately come together to say this crosses racial lines, this crosses party lines and this crosses religious lines. The first freedom in the Constitution, the First Amendment, it enshrines the freedom of religion in America. And whether they're black churches or white churches or synagogues or the mosque that was burned in South Carolina, we cannot tolerate any of it.

I thank all these people for coming together, particularly, the governors who work with us to see what we can do together to stem this tide and turn it around. The American people do not support this, they are passionately opposed to it, and we need to do what we can to end it.

Q Do you think it's a conspiracy, Mr. President, in the country against black churches per se?

THE PRESIDENT: No, I do not believe that based on the evidence I have seen it is a conspiracy. On the other hand, I do believe a lot of these instances are racially motivated, and they tend to play off of one another. I think that, you know, just because they're not connected doesn't mean there's not a feeling there that we need to all reject together. And I must say I've been very moved by the range of religious and political organizations that have come out to speak out against this, offered to contribute to rebuild these churches. I think that this is a place where nearly 100 percent of Americans are in accord. And I think we just need to make our voices heard and we need to do the right things. And if we can do that, I think we'll get the results that we want.

Q Given the number of church burnings that have taken place since you spoke out about it, are you concerned that the publicity being given to the issue has perhaps had the opposite effect of what you've intended?

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THE PRESIDENT: Well, I don't think it will over the long run because the people will see that we're being effective in prosecuting these cases. And more and more people will rally in their own communities and even across community lines. We see some people -- we see people even across state lines volunteering to send church groups into other states to help rebuild churches and things of that kind. And I think if we develop a prevention strategy it might.

It was quite a sizable problem before there was a lot of national attention to it. In the last 18 months -- I've monitored the numbers over the last several years -- the last 18 months it's gotten quite a lot worse. So, I think we just -- we have to focus on it, and we have to speak out as a country about it. And I think as we speak out together and as people see there is no politics in this -- we have Republicans and Democrats here, we have people -- we have African Americans, Hispanics and WASPs and Jews in this room together and in this country. We're all going to work together on it. We can do that.

Q Mr. President, Bruce Lindsey has been named an unindicted co-conspirator by Whitewater investigators. Do you still have complete faith in him?

THE PRESIDENT: Absolutely.

Q Will this change his status at the White House in any way?

Q Does this hit close to home to you, sir, with Mr. Lindsey being named in this way?

THE PRESIDENT: No. He was thoroughly investigated and not charged with ample opportunities. I've got lots of confidence in him. I've confident he didn't do anything wrong.

THE PRESS: Thank you.

1:58 P.M. EDT



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NBC News

MEET THE PRESS

Sunday, February 12, 1995

GUESTS: DAN QUAYLE
Former Vice President

LEON PANETTA
White House Chief of Staff

MODERATOR: Tim Russert - NBC NEWS

PANEL: Brian Williams - NBC News
Gwen Ifill - NBC News

ROUNDTABLE GUESTS: Tim Russert - NBC News
Brian Williams - NBC News
Gwen Ifill - NBC News

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MEET THE PRESS - NBC NEWS
(202)885-4598
(Sundays: (202)885-4200)

Meet the Press (NBC News) - Sunday, February 12, 1995

MR. RUSSERT: Welcome again to MEET THE PRESS. Our issues this Sunday morning: the Clinton White House under harsh criticism from fellow Democrats about the handling of the Dr. Henry Foster/surgeon general appointment, the baseball strike, and a budget which signified to many a surrender on serious deficit reduction.

We'll talk with the president's top adviser, White House Chief of Staff Leon Panetta. And in our MEET THE PRESS Minute, Senator J.W. Fulbright died this week. We'll show you his first appearance on MEET THE PRESS 44 years ago, February 25, 1951.

But, first, we'll focus on the Republican race for the White House, minus Dan Quayle. Why didn't he run and where will his supporters go? With us now, the man in the news, the former vice president of the United States, Dan Quayle.

Mr. Quayle, welcome back to MEET THE PRESS.

MR. QUAYLE: Thank you.

MR. RUSSERT: And joining me in the questioning this morning, Gwen Ifill, who covers politics for NBC News.

Have you changed your mind?

MR. QUAYLE: Should I reconsider right on this program?

MR. RUSSERT: Be my guest.

MR. QUAYLE: No, I haven't changed my mind, and it was the right decision.

MR. RUSSERT: Three weeks ago, you went to the Amway convention and said, "I'm scanned, tested and ready, I'm back in the arena and that's where I'm going to stay." And then you suddenly said, "I'm not going to run for president." You said you're putting your family first. You have three kids, 20 and 18 and 16, and a strong and loyal wife, Marilyn. Give us a sense of the conversation that went on with your family, the concerns they raised about your candidacy.

MR. QUAYLE: Well, it's a conversation that we've had for months and it started intensely this summer when they were all home. Corrine is still at home, the two boys are at college, but during Christmas vacation when I was in the hospital, the conversations continued. And I knew exactly where their feelings were. I knew the disruption it would be to them.

But to their credit--and I'm not going to tell you what they told me privately, but to their credit, they said, "It's your decision and we'll support you in whatever your decision will be." And I love my children, and I thought that was a great testament to their character. And it was my decision, it was a tough decision.

Tim, these things are not just black and white. They're difficult to report, quite frankly. There is a lot of thought and reflection. It's a personal introspective decision. You add it up, one side, the campaign and all it entails, and the other side is the family and you have to make a choice.

MR. RUSSERT: Is it fair to say that your family urged you not to run?

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MR. QUAYLE: Well, let me just say it's fair to say that the statements from my family when I told them I was not going to run was from ecstasy to relief. There was a lot of reluctance, there's no doubt about that.

MR. RUSSERT: Questions about your health. Last week you were at the Pebble Beach Tournament playing golf and I saw the video- you sank a putt actually.

MR. QUAYLE: Sank a putt, yes.

MR. RUSSERT: The CBS announcer said, quote, "I talked to Dan Quayle last night. He said he was at least six months away from being physically fit." True?

MR. QUAYLE: No. I probably said six months that I'd be on Coumadin and then the doctors would determine what my medication would be after that. No, I'm traveling. I've been on a fairly rigorous schedule for the last two weeks. My doctor said, "You can do whatever you want, go wherever you want." I'm back to running again. I'm not at 100 percent on what I'd like do in running, but I'm getting there. It will take a little bit of time. But, no, I'm out and physically fit right now.

MR. RUSSERT: When you had surgery--at first it was described as a routine appendectomy and then later it was revealed that a tumor was removed. Was there any malignancy...

MR. QUAYLE: No. There was no...

MR. RUSSERT: ...found in any way.

MR. QUAYLE: ...no malignancy at all. It was something that was detected during the CAT scan. Looking back on it, I'm glad I had that CAT scan right now, although that--they don't know whether it would have grown, stayed the same or maybe just shrunk over the course of time. But the doctors all said it should be removed, and it was removed and there was no malignancy whatsoever.

MR. RUSSERT: If you ran for president in the future, you'd release all your health records to make sure that people are aware of your condition?

MR. QUAYLE: Oh, I would imagine if I run for the president in the future that health just won't be a consideration. You guys won't be asking for health records, tax records or anything like that. You'll respect one's privacy then.

MR. RUSSERT: What country are you from?

MR. QUAYLE: Things are going to change. We've gone so far to the extreme in one direction, we're going to flip back and it'll be like--I just finished reading "No Ordinary Time" about Franklin Roosevelt. We're going to go back to the days when the press allowed a little privacy, they weren't so probing, to the good old days, Gwen.

MR. RUSSERT: Let me raise the issue of money. Your political adviser, Mark Goodin, said money was the issue in terms of your withdrawal. Phil Gramm had \$6 million in the bank. Bob Dole, \$2 million. How much do you have any bank now?

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MR. QUAYLE: Well, we had not started raising money, but, Tim, I had about 20 fund-raisers that I was in the process of scheduling. I don't know if Mark Goodin knew that or not. We could have raised a couple million dollars in Indiana. Could I have raised the \$15 million to \$25 million? I think I could have. When you get out and you start raising money, there's a certain dynamic to it; you catch on. Now if I'd have gone out and not done so well, then obviously the money might not have been there. But in the polls, we were clearly in second place. We were going to be the challenger to Bob Dole. As it stands right now, someone else will take my position. But I feel very comfortable we could have raised the money. So, no. Do I like going out and raising all that money? No. I don't think anybody does. Well, there may be a few that really enjoy it, but I don't, and most of us don't. But that was not the factor.

MR. RUSSERT: Who will take your position, as you would say, the runner-up to Bob Dole?

MR. QUAYLE: I think we'll have to wait and see who I think they're all probably somewhat in a group. The two obvious ones will be Phil Gramm and Lamar Alexander. I believe that Phil's a little bit ahead of Lamar in the polls but, you know, these polls today really aren't going to make that much difference, except Bob Dole is clearly well ahead. The one poll I did see that he apparently gained more from my supporters than anyone else. I assume that was more name recognition than anything else. I don't know. But he is way out there.

MR. RUSSERT: Might you endorse Senator Dole in the near future?

MR. QUAYLE: I haven't decided whether I'll endorse a candidate or not. I might. And it won't be until probably this summer, this fall, determining the appropriate time and where can I have the greatest impact. Obviously, I want all the candidates to address the issues that we have raised: the cultural issues, national defense issues, domestic issues like legal reform, the flat tax. And I think that they will. So I want to continue to be, as I said several weeks ago, which you quoted, "continue to be in the arena."

MR. RUSSERT: Let's take a look at the monitor. This is the calendar that a candidate's going to confront. A year from today, Iowa, February 12; then February 20, New Hampshire; March 5 and 7, New York and six other states; March 12, Texas, Florida, seven other states; March 19, Michigan, Illinois, Ohio; March 26, California and Connecticut. And what that leads us to, in 44 days from February 12 to the 26, two-thirds of the delegates are going to be selected. How much money will it take to compete in that front-loaded system?

MR. QUAYLE: Depends on who it is. Obviously, if you're Lamar Alexander or Phil Gramm, it will take more than Bob Dole or, if I had been in the race, just because of the name recognition factor. I don't think that that is the sophisticated way to sort of report this race and what's going to happen. It's the easy way and it shows support, who's got the most money is declared the front-runner. But that's not necessarily the case. President Muskie, President Connally, a few names come to mind that had the most money.

But looking at that calendar there, Tim, I will say this, that if Bob Dole wins Iowa and New Hampshire, it's over--When is it? February 20. If he wins those two states, everyone might as well pack their bags and go on and do something else. So it won't even be till March 30 or the 45-day time frame that's up there.

MR. RUSSERT: Will Dan Quayle or Marilyn Quayle run for governor of Indiana in '96?

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MR. QUAYLE: Well, I can speak for myself and I've obviously had that question a lot in these last few days. And I just begged for a little bit of time. I just got out of one race. I need time to reflect on what I want to do. If Marilyn runs for governor--I'll say it right here on MEET THE PRESS--you're the first to hear it. I will support her.

MR. RUSSERT: Will she run? Is she thinking about it?

MR. QUAYLE: You'll have to talk to her. I have learned over the years, I don't speak for my wife.

MR. RUSSERT: In the USA Today poll, about the Republican candidates, one thing that struck me was that 45 percent of Republicans had an unfavorable view of you, which I thought was rather high amongst the Republican base. Fairly or unfairly, do you think you have an image problem?

MR. QUAYLE: Well, it depends on who you're talking to. If people have listened to me speak, people have been in a meeting with me, people that know the real Dan Quayle, no. Obviously, if people have the image of the stereotype that was formed in the first three weeks in the 1988 campaign, first impressions, yes. So it depends on who you're talking about.

MS. IFILL: Can we go back to the race and also go back to whether you speak for your wife or not? A few weeks ago in Hammond, Indiana, she gave a speech in which she assessed the 1996 race and the people who would have then been your contenders. Of Phil Gramm she said, "He's not very well thought of in the Senate, even among Republicans themselves." Do you agree with her assessment? Was it an accurate reflection?

MR. QUAYLE: No, it's not accurate at all. I don't...

MS. IFILL: What was her actual statement?

MR. QUAYLE: I don't know. I wasn't there, but I can't imagine Marilyn saying something like that.

MS. IFILL: You can't imagine--you've never heard her say anything like that?

MR. QUAYLE: I just can't imagine her saying something like that.

MS. IFILL: About Lamar Alexander, she said he was basically trying to throw money at the campaign in order to buy the presidency or the nomination.

MR. QUAYLE: I don't know what...

MS. IFILL: She didn't say these things?

MR. QUAYLE: Well, you're going to have to ask her. Don't ask me, but I just can't imagine her saying things like that.

MS. IFILL: And you never talk to her about it, I guess?

MR. QUAYLE: Well, I'm not going to go that far.

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MS. IFILL: OK. Don't want to talk about it today. Let's talk about abortion. Last time you and I met, it was over a luncheon in which you were asked about this question and one of the things you said in response to a question about abortion was, "It should be her choice. It should be the individual's choice." Now Ralph Reed, the head of the Christian Coalition, has said that that should be a litmus test for presidential and vice presidential candidates. Do you agree with him?

MR. QUAYLE: I read what he said and I don't think that we sort of--begin to exclude people from the political process of who's going to be our president and vice president nominees. Look, this whole issue is one that reasonable men and women disagree on. It's an emotional issue, at times it can be rather divisive. But let's remember, in 1980 we had a pro-life president, Ronald Reagan, and a pro-choice vice president, George Bush. So I don't buy into this idea that you're going to apply a litmus test on one issue for president or vice president.

MS. IFILL: So you're splitting with the Christian Coalition on this issue?

MR. QUAYLE: Well, I'm not exactly sure, you know, where their--Ralph Reed has a wonderful organization, he's a very good friend. I will be talking to him about how our issues can get before the candidates and before the American public for serious discussion. But if we're going to start applying litmus tests, no, I can't be part of that.

MS. IFILL: So you would support a presidential candidate who was pro-life and a vice presidential candidate that was pro choice?

MR. QUAYLE: I'm just not going to exclude. I think they--I want them to go through the nominating process. Who the Republicans nominate for their presidential candidate, who the Republicans nominate for their vice presidential candidate. I am convinced that--not only myself, but I'm convinced that Ralph Reed will support the ticket.

MS. IFILL: Also on the abortion subject, the administration finds itself out on a limb in its support of Dr. Henry Foster, the president's nominee for surgeon general. If you were in the Senate today, would you support his nomination?

MR. QUAYLE: I'm sure that I wouldn't. But, you know, I feel sorry for Dr. Foster. The incompetence in the way that this nomination was handled is amazing. You have to realize that this is the third year of the Clinton administration. From what I know that there was not the FBI check, there was not even an internal investigation in the White House. You know, this confirmation process is not easy. There's a lot of scrutiny. And they've just basically hung Dr. Foster out to dry. And I don't know him; I haven't met him. I know his record only from what I've read in the papers. I'm sure that there's others that could have been considered. But the way they handled this is unbelievable.

MS. IFILL: But you said that the issue with Dr. Foster is his credibility. From what you know, do you think that he purposely misled the White House about his record?

MR. QUAYLE: I don't know. The only thing I know is that the White House did not do their homework. This was handled poorly and it shows incompetence. And that's going to be very much of an issue in 1996: competence--being able to deal with matters like this. I mean, if it's not Foster, it's something else. We have chaos. You have--even Democrats are just appalled by the way that this has been handled. And the poor guy, Dr. Foster is--he didn't know what he was getting into. I mean, he

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had seen the other nominations go up. But he had no idea that this was going to blow up in his face like this and the White House should have warned him.

MS. IFILL: One more thing on Dr. Foster. Do you think someone who practices in women's health issues, an obstetrician or gynecologist, should ever be nominated for surgeon general?

MR. QUAYLE: Well, I think when you nominate somebody for surgeon general, you ought to try to have a person that can unify the country as much as possible. And where you have someone that has performed a number of abortions, there's going to be a large segment of the population, at least 25, maybe 30 percent, that will be very much opposed to that. I think that is a factor that they ought to consider. And I would think that they would want to have somebody that would bring us together rather than tear us apart.

MS. IFILL: Let's turn to affirmative action briefly. Lamar Alexander is someone you would have run against for president had you done it--has said that he considers awarding scholarships and jobs based on racial preference to be the closest thing to the definition of un-American he can think of. Do you agree with that?

MR. QUAYLE: I think what he is saying is that it's time to look at affirmative action and to go--and to create a color-blind society. We've had affirmative action; it's going to be seriously reviewed. There's no doubt about it that quotas and affirmative action are discriminatory. And we want to be judged on the content of our character and not the color of our skin.

MS. IFILL: How does this fit into the family values campaign that you've been saying that the Republicans should run? Is it a distraction or is it part of it?

MR. QUAYLE: No. Equal opportunity; hard work; getting ahead; self-respect. It fits very well with family values.

MS. IFILL: And all quota laws should be repealed?

MR. QUAYLE: Yes.

MR. RUSSERT: Mr. Vice President, on Social Security, you said something interesting last week. "You've got to level with the American people and tell them there's a crisis in Social Security right around the corner." What's the crisis?

MR. QUAYLE: Well, it's going to run out of money. It's going to be bankrupt by the year 2010 for sure. And what we have to do, Tim, is to be honest with the American people and quit kidding ourselves that Social Security is going to be secure forever. It's not. And it's not the current beneficiaries; it's not even the people who are going to be retiring in the next five or six years. It's our generation--the baby boom generation. And I think that we need to start thinking creatively right now. And--can't use the word "voluntary" because the word "voluntary" is wrong and you've got to take that word off the table.

But I'd like to use the word "flexibility" in Social Security and try to figure out how we can encourage people to think of other ways to have retirement income besides Social Security: annuities, IRAs--things of that sort. And if we can have that conversation dialogue with the baby boom generation and the X generation and the younger people, perhaps we'll have a different retirement system 20 to 30 years from

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now. The difficult thing is that politicians don't want to look at the long term; they only want to look at the short term. But you cannot just totally dismiss Social Security, because it is a crisis right around the corner.

MR. RUSSERT: Would you look at raising retirement age or means testing so that people who made more money would get less in benefits?

MR. QUAYLE: I suppose you can always--the retirement age is easy to deal with, the benefit side and the cash flow side. But I think we have to be a little bit more imaginative than that. I really want to look at trying to get people to think beyond just Social Security. And maybe if people would start to say, "Well, OK, Social Security is only going to be part of my retirement income and I need to save here and invest here," and we might be able to work the tax structure a little bit differently in Social Security. These are the types of things that we ought to look at. But when you have amendments in the Senate right now that we're going to put in the Constitution...

MR. RUSSERT: Right.

MR. QUAYLE: ...that you can't touch Social Security--I mean, this is ridiculous. And this has become such a political issue that some of us, when I was, you know, thinking about running, and certainly, you know, now that I'm out, I'm going to talk about this issue because we really have to focus on it.

MR. RUSSERT: Would you say to the American people, "Listen, I'm for a balanced budget, but if you're serious about truly balancing the budget, you're going to have to deal with entitlements like Medicare and like Social Security"?

MR. QUAYLE: Absolutely. You're kidding the American people and look, the American people know this. And the Congress is going to find this out. And I wish we could change the debate a little bit, and you can help us. And the debate is, you know, when we reform Medicare or whatever it is going to be, the debate is always how much you cut. But it's cut from current services and the cuts may be from a 12 percent increase down to a 9 percent increase.

MR. RUSSERT: Limiting the growth?

MR. QUAYLE: Yeah. If we could change the dialogue that this year it's going to be 9 percent instead of 12 percent, rather than a \$300 billion cut in veterans and agriculture and Medicare and Medicaid and all these things. But we don't do that. And maybe there's a way in the budget process and CBO might be able to help us, and then get this public discussion in a different way, because otherwise, I don't know how it's going to happen. Get these 30-second commercials, you get up there and nobody wants to, you know, make those tough decisions and that's the reason you have to have a balanced budget amendment is to give them some protection to do what they say that they want to do.

MR. RUSSERT: Final question: You're only 48. Would you like to be president someday?

MR. QUAYLE: I would like to be president someday. I decided that I'm not going to run in 1996. I made a family decision. I've said that decision will make me a better husband, better father, and perhaps some day a better president.

MR. RUSSERT: We'll see you in the year 2000, if not sooner. Mr. Vice President, thank you for joining us. Good luck to you and your family.

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MR. QUAYLE: Thank you very much.

MR. RUSSERT: Coming next, the man in charge of managing the White House, Leon Panetta.

(Announcements)

MR. RUSSERT: Leon Panetta, welcome.

MR. PANETTA: Nice to be here, Tim.

MR. RUSSERT: And joining me in the questioning is Brian Williams, who covers the White House for NBC News. Had a good week?

MR. PANETTA: It's one of those weeks you go up and down in this business and this has been one of those somewhere in between.

MR. RUSSERT: Dr. Henry Foster, revelations that he now performed sterilization on mentally retarded women. Does that change the president's view?

MR. PANETTA: No, not at all. I think, again, the important thing is to look at the overall career of Dr. Foster, which covers a 38-year career. Those who know him have great respect for the integrity of the work he's done in medicine, as a teacher, as an administrator, the work he's done in preventing teen-age pregnancies. With regards to the hysterectomy issue, this was something that was accepted practice at the time that he wrote the articles involved with that issue. As a result of finding new medication, new drugs, that practice has changed and Dr. Foster's views have changed as well. But, again, the main focus ought to be on the principal thrust of his career, which has been aimed at trying to prevent teen-age pregnancies.

MR. RUSSERT: But politically speaking, did the president and did you conclude that abortion and sterilization would not be a big issue?

MR. PANETTA: We never made the issue of a woman's right to choice a disqualifying factor with regards to surgeon general in the United States, and I don't think that ought to be done. You're looking at a surgeon general, you're looking at a doctor who has a great reputation. The main focus by the president was on the need to try to do something about this growing problem of teen-age pregnancies for unwed mothers. We're looking at a problem that, in 1960, involved something like 92,000 births. Now it's quadrupled to almost 368,000. This is a major problem in our society. Dr. Foster developed a signature program aimed at trying to prevent teen-age pregnancies.

You know, it's not a question of what people within the Beltway feel about Dr. Foster; he's going to get torn up by the attack groups that are out there that, basically, have an agenda that says, "Women's right to choose ought to be made illegal." That's what the battle is within the Beltway. Talk to the people from where he's from; talk to the kids that were involved in that program; talk to the doctors that he worked for; talk to the individuals that he worked with in the community. All of them have great respect for his work. That's the test of whether or not he ought to be affirmed as surgeon general.

MR. RUSSERT: But the position of surgeon general is a position an important symbolism to the country; it's a teaching role. Does Dr. Foster believe in abortion on demand?

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MR. PANETTA: Dr. Foster believes, as the president does, in a woman's right to choose. He does not believe, you know, that abortions ought to be thrust upon individuals, nor ought it to be something that we encourage. The reality is that he, basically, has encouraged, in this program to prevent teen-age pregnancies, abstinence and he continues to do that. And all of his work has been aimed at trying to prevent abortions.

When you're trying to target teen-age pregnancies, what are you trying to do? You're trying to prevent women from being put into a position where they're going to turn to abortions, so that's the key. But let's understand what's going on here, all right. If people focus on his qualifications, on his background, what he's about as an individual, then he'll be affirmed as surgeon general. If, on the other hand, they focus on the attack groups, the extreme right, which is basically trying to say, "We ought to make illegal a woman's right to choose," then that will, indeed, become the attack point that we're seeing right now. That should not be the issue. The issue should be, "Is he qualified overall to be surgeon general of the United States and deal with some tough problems that we face in this country in the health care area?"

MR. RUSSERT: But the issue of credibility, of trustworthiness, has also been raised. The president has said that abortion should be safe, legal and rare. Along comes Dr. Foster, who said, "I performed one abortion." "Well, no, it's actually less than a dozen." "Well, no, it's 39." "Well, yes, it actually did include 55 more with an experimental pill." And now there may be more abortions in Alabama and-- "Oh, by the way, I also sterilized mentally retarded women." Is that consistent with safe, legal and rare?

MR. PANETTA: Dr. Foster himself has said that, you know, when you have a 38-, 40-year career as an OB/GYN, somebody who deals with women's problems in medicine, that when he responded to the question and he responded to the best of his recollection, and there was obviously some misunderstanding at the time, but look at his overall career. That's the point. This is not a question of a few abortions that were legal, that did involve a woman's right to choose. I mean, there's nothing illegal with what he did in that area, as an OB/GYN. Look at the overall record, however. His main thrust of his career has been aimed at trying to prevent teen-age pregnancies; trying to protect children; trying to give babies a chance. He's got thousands of births that he's been involved with during his career. That's the main thrust of what he's about.

You know, a doctor is a little bit like dealing with a policeman. You can't just isolate what a doctor does. He deals with real-life issues. He's got to confront those issues, just like a cop has to confront those issues. And so it's not always the easy choices that you have to deal with. But overall, he's trying to provide for the health and the safety of women in this country, and that's what his career's been about.

MR. RUSSERT: So the president enthusiastically and wholeheartedly supports Dr. Henry Foster?

MR. PANETTA: That's correct, and we will fight for his nomination.

MR. RUSSERT: If Dr. Foster came to you and voluntarily said, "Mr. President, Mr. Panetta, I've had enough of this. I want out," would you allow him to withdraw?

MR. PANETTA: Well, Dr. Foster himself--and I've had a conversation with him just the other day--is in this to the end. He wants to fight for this nomination. He believes that he does have the kind of reputation and background and experience that is important to the job of surgeon general and he's willing to confront this.

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Listen, there's no question that, when you come to this town and start getting the rap that you sometimes get when you're nominated for any position, that you're going to take some hits. He knows that now, but overall, he also knows what he's about. And what he's about is what Dr. Lou Sullivan says--that he is an outstanding physician; it's about what those kids in that program say; it's about what others say about his career. This is a good man. He ought to be given a chance for this nomination.

MR. RUSSERT: What about priorities, Mr. Panetta? The country, in the election of '92 and '94, said, "We want to talk about the economy; we want to talk about crime; we want to talk about immigration." And here the administration is suggesting we have a debate about abortion and sterilization.

MR. PANETTA: Family values have always been a part of the president's statements to the country about what needs to be done. He talked about a New Covenant; he talked about the importance of family values of people being involved in the community. And that involves the issue of health care and it involves teen-age pregnancies and involves the kind of social breakdown that's taking place in our society.

You know, I know it's an uncomfortable issue, God forbid that we ought to have senators and congressmen not have to be uncomfortable in dealing with the issues that confront the American people, but families have to deal with this issue every day. Yes, it's uncomfortable. Communities have to deal with this issue every day. Yes, it's uncomfortable. Churches have to deal with this issue every day. Yes, it's uncomfortable. But it's part of what our society's all about, part of the problem that we have to confront, and that's why the president nominated this surgeon general.

MR. RUSSERT: Let's look at the tape. This is what two Democrats had to say--not Republicans; these are Democrats--about Dr. Foster.

(Videotapes from February 9 and 10, 1995)

SENATOR BARBARA MIKULSKI (Democrat, Maryland): Unfortunately, the White House did not do the best job in putting Dr. Foster's nomination forth and that's just the way, maybe, that White House is.

SENATOR JOSEPH BIDEN (Democrat, Delaware): I am just, quite frankly, angry that I'm even having to occupy any of my time, no matter how good or bad or indifferent a man Dr. Foster is, with this nomination. I think it is a political blunder in the extreme that we're even debating it. Why are we doing this? Why don't we just go out and find the single best doctor in America, appoint that doctor? There's got to be one out there that's not controversial and competent.

(End of videotapes)

MR. RUSSERT: Who committed the political blunder?

MR. PANETTA: Well, first of all, I have a lot of respect for those two senators, but, again, God forbid that we ought to make senators uncomfortable about having to deal with issues like this. I mean, that's essentially what they're saying. They're basically saying, "God, why do I have to face this kind of controversial issue?" Because it is a controversial issue; because dealing with teen-age pregnancies is a controversial issue; because dealing with doctors that have to confront those issues is controversial. So what? That's what the name of the game is all about. And the fact is, you know, they can talk about the

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White House, this or that. That's not the issue. You know, this isn't a vote about White House process. This is a vote about the qualifications of this surgeon general. Let that be the issue.

MR. RUSSERT: But the White House process was lacking.

MR. PANETTA: Well, listen, there's no question that we could have served the president better in this process, and I've said that. And it's not going to happen again, I can assure you, because, in this case, we had the department doing the vetting as well as the White House, and that should not happen. But the reality is, don't make that the test of whether or not Dr. Foster is worth nominating for surgeon general. Look at his credentials; look at his qualifications; look at his background.

MR. RUSSERT: Senator Biden had something else to say about another issue you got involved in last week.

SEN. BIDEN (Videotape from February 10, 1995): The only thing we should be spending less time on than this nomination is baseball. Forget about baseball and get on with other issues.

MR. WILLIAMS: Which brings us, magically, to baseball, Mr. Panetta. The president chose to get his uniform dirty in this fight. As a friend of mine put it, and I know you love these comparisons, "Had this been Reagan, Jim Baker would have beat him over the head in the Cabinet room; in comes Reagan to cut the ribbon." Is it unfair to criticize the president for getting personally involved in baseball?

MR. PANETTA: The president has said, and I think the American people sense this, that, you know, we're dealing with a national pastime and it is an important issue. It certainly is an important issue to those communities that are involved; it's an important issue to those people that have jobs that are related to baseball; it's an important issue to Americans, generally, that we try to deal with this issue. He made the effort to try to see if we could resolve it. He did he through a mediator; he did it through trying to bring them into the White House. I think it was important for him to make that effort and to try to get the Congress involved, hopefully, in getting some kind of compulsory arbitration enacted. That is worth the effort.

You know, people kind of assume that when you get elected to the presidency, maybe what you ought to do is run and hide from the key issues that face this country. Maybe you ought not to take on these controversies. Maybe you ought to just try to tell people what they like to hear and do nothing else. That's not what this president's about. He's going to taking on these issues. He's taken on controversial issues in the past. I think this was the right thing to do.

MR. WILLIAMS: I'm going to quote from a Reuters' article by our good friend Gene Gibbons, who covers the White House for Reuters. Quote, "Watching Bill Clinton's presidency unfold is like watching an old movie starring the master of slap stick, Charlie Chaplin. No matter how hard he tries, the end result is always a prattfall." Your job, it takes on even more gloss on Sunday mornings when you have to listen to things like that. Have the forces of evil and disorganization crept back into the West Wing? I--I know it was your task to put a big arm on them and stop them.

MR. PANETTA: I don't think so. I think we've made a lot of progress. When I came in, I said we had to enact better discipline and we have. We've gotten better lines of authority developed in the White House than we had. I think we've gotten a much better focus in terms of the issues that we have to confront from day-to-day. Does that mean we're going to avoid controversies? No. Does it mean that mistakes aren't going to be made? No. And does it mean that there isn't a lot more to be done? Yes.

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But in the end, I want people to judge this president and I think the president wants to be judged based on his performance. Has he done a good job on the economy? Has he done a good job in terms of dealing with the deficit in this country? Has he done a good job in terms of trying to confront health care issues? Crime? Those are the issues that people have to weigh in terms of whether or not this White House is successful or not.

MR. WILLIAMS: You mention crime. On the crime bill currently being talked about, for days, in fact, in the House. The White House, for some time now, has been saying, "We're going to draw lines on certain issues. We're going to mark where we disagree with the new Republican-controlled Congress." The president yesterday said--he threatened a veto if the House goes against--if he gets a crime bill that calls for less than 100,000 new police officers on America's streets. The problem is, there's a lot more in the crime bill. There are things like the much pilloried midnight basketball. There are things being discussed in the House like differences in the exclusionary rule, illegally obtained evidence. Does the veto threat apply to anything but 100,000 new police officers on the streets of America?

MR. PANETTA: Well, there are something like five or six bills, I guess, going through the House that involve crime issues, some of which we agree with. There are some that we have concerns about. You've mentioned some of those. The prison issue: We don't particularly like the approach that's being taken here--only three states qualify for prisons. Somebody made the comment that the Republicans are becoming the party of small government and big prisons. We have some concerns about that. But, clearly, the fundamental issue and the issue we addressed yesterday is the president is not going to back away from 100,000 cops. We want 100,000 cops out there; we want the money to go specifically for that purpose and we don't want to create some kind of block grant that's going to wind up as some of the similar programs in the past have wound up, not producing cops on the street, but buying hunting trucks and doing some of the things that, frankly, don't relate to good law enforcement in this country.

MR. RUSSERT: Mr. Panetta, affirmative action: the Republicans have decided that they want to undo affirmative action, preferential treatment for minority based on minority, race or sex. In your native state of California there will be a proposition in 1996 which will say, "Color blind: There will be no preferential treatment or discrimination based on race." What is the president's position?

MR. PANETTA: The president's position is that we have to stand by the principles involved with regards to a civil rights and equal opportunity in this country. We've come too far in this country from the days of segregation and discrimination. We've made a tremendous amount of progress. It has not been easy. A lot of people have sacrificed over those years. We're not going to go backwards. I think the worst thing that can happen is, you take an issue like affirmative action or the whole issue of civil rights and race relations in this country and make it a political issue. That's the most dangerous thing that can happen. You cannot divide this nation on that issue; we cannot allow it to happen.

And so, you know, if we're going to confront an issue and there are concerns about how it's being enforced or are there areas where it can be improved, you know, we can look at that. But let us not wholesale, back away from the issue of confronting equal justice and equal opportunity in this country. We have made too many sacrifices to turn back.

MR. RUSSERT: So you oppose the California initiative?

MR. PANETTA: We oppose the efforts to turn the clock back on civil rights.

MR. RUSSERT: And affirmative action?

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MR. PANETTA: On affirmative action, we clearly oppose moving backwards. Where you have discrimination, you need to have a remedy; that includes affirmative action.

MR. RUSSERT: On the deficit, you are widely regarded in this town as a deficit hawk, and yet, you signed off on a budget that was sent up to The Hill. Democrat Bradley said he was disappointed; Democrat Exxon said, "The president dropped the ball"; Democrat Tsongas said, "It was a disaster." It guarantees deficits of \$200 billion as far as the eye can see. Haven't you given the Republicans enormous ammunition to say, "Listen, we need a balanced budget amendment because this president will not balance the budget"?

MR. PANETTA: Tim, you know, I think, in the end, people have to judge based on action; that's really the test. There are a lot of great speeches about balancing the budget and there are a lot of great comments on the floor and you can find some of the toughest deficit cutters in this town when they're just talking about it. But look at the votes; that's ultimately what counts, and look at the actions taken to deal with the deficit. That's what counts. This president proposed \$500 billion in deficit reduction. Not one Republican voted for that package--not one--although that's where all the big talk is coming from right now. We added another \$80 billion in deficit reduction in this budget. We are cutting the deficit in terms of GDP in half and it's going down. Is there more that can be done? Yes. We're willing to work with the Congress to do more. But in the end, it involves tough choices on issues, not gimmicks like balanced budget amendments, not gimmicks like speeches on the floor about how tough you are. It means tough votes on tough issues. That's what this president did and that's what we're going to propose in terms of our budget.

MR. RUSSERT: Are you going to win the vote on the balanced budget amendment?

MR. PANETTA: I think it's going to be a close vote in the Senate. Very frankly, our concern is that they are going to proceed with adopting a balanced budget amendment without telling the American people exactly how they're going to get there, and that's just another example of what I'm talking about. Here's \$1.2 trillion. Yeah, there are tax cuts on top of it; it's \$1.6 trillion. I have yet to see one Republican senator or congressman say to the American people, "This is how we're going to do it. These are the cuts we're going to make; these are the programs we're going to eliminate; this is what's going to be done."

MR. RUSSERT: But, Mr. Panetta, you had your chance with the Clinton budget and you didn't do it. You kept \$200 billion deficits all the way through 1992. US News & World Report reports today that you wanted more deficit reduction, more budget cuts and the first lady, Hillary Clinton, overruled you. It says, because there, quote, "was no political payoff." Is that accurate?

MR. PANETTA: That's not true, Tim. The--the bottom line here is, again, look at our record. Look at the record of this administration. In the last election, the Republicans came out and attacked this president for deficit reduction, for the \$500 billion we put in place.

MR. RUSSERT: But they would say 60 percent of the deficit reduction came from increasing ~~taxes~~ from cutting budgets.

MR. PANETTA: Look, when you're dealing the confronting the deficit, you've got to take on all of the tough choices. We did. We did about \$255 billion in spending cuts, including \$100 billion in entitlement cuts. Yes, we did revenues--taxes on the wealthiest in this country--because they ought to participate in deficit reduction as well. So when you're doing deficit reduction, you've got to come down and vote

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some very tough choices. Republicans decided, "\$500 billion, with that as a part of it? I'm not going to vote for it. Come up with something else." I'm waiting to see what they're coming up with.

MR. RUSSERT: Vice President Quayle just said something. He said there's a Social Security crisis around the corner. Do you agree?

MR. PANETTA: I think, in the long term, there's a crisis. At the present time, there's a surplus. Social Security is not one of the entitlements that's in trouble at the present time. But down the road, into the next century, there are some concerns about what happens, that's correct.

MR. RUSSERT: He also said, "That you cannot be serious about balancing the budget unless you deal with Medicare and Social Security." Fair?

MR. PANETTA: I think, when it comes to balancing the budget, Social Security is not a problem. You know, we look at entitlements, overall, you have to say most of the entitlements are in pretty good shape with the exception of Medicare, Medicaid--health care issues. And we have continually taken the position that if you're going to control costs in health care, as we should, it has to be related to health care reform. Otherwise, it's not going to happen.

MR. RUSSERT: Final question, Mr. Panetta: The Russians are giving aid to the Iranians to help them build a nuclear bomb. Will this put aid from the United States to Russia at risk if they continue to assist the Iranians?

MR. PANETTA: We have expressed our concerns on that issue and continue to express our concerns. And, obviously, we think that, ultimately, there's some hope that this will not take place. But I can assure you that we will continue to review our relationship on the basis that they adhere to the policy that we believe in, which is, "Let us not give aid to terrorists in this world."

MR. RUSSERT: And if they continue to go forward?

MR. PANETTA: Well, we're going to continue to review it, and that's the best I can say right now.

MR. RUSSERT: Leon Panetta, White House chief of staff, thanks for being our guest this morning on MEET THE PRESS.

MR. PANETTA: Thank you.

MR. RUSSERT: And we'll be right back.

(Announcements)

MR. RUSSERT: We're back on MEET THE PRESS. And here to help us sort things out a little bit, Gwen Ifill and Brian Williams.

All right, Mr. White House.

MR. WILLIAMS: Yeah.

MR. RUSSERT: ... Dan Quayle raised the charge of incompetence.

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MR. WILLIAMS: Yeah.

MR. RUSSERT: How are they feeling at the White House?

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MS. IFILL: That's all they need.

MR. RUSSERT: Gwen Ifill, this is reminiscent of the whole issue, to me, of gays in the military and--hear me out. When the president came to office, he was going to focus like a laser beam on the economy, and suddenly, along came this issue of gays in the military and the whole country said, "Why is he focusing on that issue? Why is that central here?" Suddenly, we have a referendum in November: Focus on that economy; deal with those deficits; fight crime; deal with immigration. And now the country for the last week has been debating abortion and sterilization. Off message, and I'm not sure--not only, as Mr. Panetta said, are the congressmen uneasy about that debate, I think the American public, too.

MS. IFILL: Well, here's the difference. The difference is that on the gays in the military, he was on the wrong side in the opinion polls. And on abortion, he's generally on the right side in the opinion polls. And that's why you saw Leon Panetta wanting to make this a fight. Unfortunately, it wasn't a fight they exactly chose. Everybody has been criticizing the White House this week but saying, "They allowed to us get into an argument about the numbers of abortions that Dr. Foster had," when, in fact, what happened is that they got beat at their own game. The pro-life forces came out and said, "It was 700 abortions," and as a result, in order to say that wasn't true, they had to say, "It was only 39." It was like during the campaign when the Bush forces were saying that Bill Clinton had raised taxes 27 times and the Clinton people came back and said, "It was only 26." Well, it wasn't the argument they wanted to have then either.

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MS. IFILL: What about you?

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more. Our guests: Republican Jack Kemp; Democratic Congressman Charles Rangel; Charles Murray, author of the "Bell Curve"; and Professor William Julius Wilson of the University of Chicago. And in our political roundtable next week, the author of the controversial new biography of Bill Clinton, David Maraniss.

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more. Our guests: Republican Jack Kemp; Democratic Congressman Charles Rangel; Charles Murray, author of the "Bell Curve"; and Professor William Julius Wilson of the University of Chicago. And in our political roundtable next week, the author of the controversial new biography of Bill Clinton, David Maraniss.

We'll see you then. If it's Sunday, it's MEET THE PRESS.



Leading the News

Affirmative Action

NO 'WIDESPREAD ABUSE' IN JOB CASES, FEW REVERSE BIAS CLAIMS, STUDY SAYS

An internal report prepared for the Labor Department by a prominent employment law professor concludes that there is "no widespread abuse" of affirmative action programs in employment and that there are only a small number of reported reverse discrimination cases by white males—a high proportion of which have been dismissed by federal courts.

Reverse discrimination cases accounted for between 1 percent and 3 percent of some 3,000 reported employment discrimination cases between 1990 and 1994, according to the study prepared by Alfred W. Blumrosen, a law professor at Rutgers University, for the department's Office of Federal Contract Compliance Programs. "Nothing in these cases would justify dismantling the existing structure of equal employment opportunity programs," he concluded.

A draft of the study, which has not been released by the Labor Department, was obtained by BNA.

Federal agencies currently are compiling data on affirmative action programs for an ongoing White House review. Bernard Anderson, assistant secretary of labor for employment standards, said earlier this month that he expected information submitted by the department to show that programs administered by OFCCP under Executive Order 11246 have made a "major difference" in expanding employment opportunities for women and minorities and should be continued (53 DLR AA-1, 3/20/95).

A Labor Department official declined to comment on the report, other than to say it is a draft that has not been reviewed. It reportedly is one of several that Blumrosen has prepared under a DOL contract. Blumrosen was out of the country and unavailable for comment.

'No Widespread Abuse'

Based on an analysis of reported federal district and appeals court decisions between mid-1990 and 1994, Blumrosen concluded that there was "no widespread abuse of affirmative action programs in employment" and that many of the individual reverse discrimination claims were brought by "disappointed" job applicants, who were found by the courts to be less qualified for the job than the chosen female or minority applicant.

"This research suggests that the problem of 'reverse discrimination' is not widespread; and that where it exists, the courts have given relief," he wrote.

Blumrosen analyzed both individualized claims of reverse discrimination and broader challenges to affirmative action programs, which were either voluntarily undertaken or adopted because of a court order or consent decree. Of the challenges to affirmative action programs, 12 upheld the programs and six either invalidated them or called for a re-examination in light of current conditions.

None of the cases challenging affirmative action programs involved application of Executive Order 11246—the affirmative action order covering federal contractors that is administered by OFCCP—or the Labor Department regulations implementing that order. Blumrosen attributed the absence of litigation under the executive order to the parameters of the program: goals are agreed to between OFCCP and the contractor; the obligation is to use "good faith efforts" to meet the goal; and the contractor "is not required or encouraged to hire unqualified personnel."

"An affirmative action plan applied as intended by OFCCP regulations will not provide a basis for 'reverse discrimination' suits," he concluded.

'Significant Minority, Female Improvement'

Citing earlier research he has compiled on the subject (122 DLR C-1, 6/28/94), Blumrosen wrote that ongoing EEO programs have produced "significant improvements" in the occupational position of women and minorities since the 1960s.

"My estimate is that more than five million people of color and six million women are in higher occupational categories today than they would be if we still distributed people through the labor force the way we did in the sixties," he wrote.

"One fascinating aspect of these statistics is that affirmative action apparently continued through the Reagan-Bush period of intense opposition to affirmative action and broad interpretation of [Title VII of the 1964 Civil Rights Act]," Blumrosen observed. "These figures tend to confirm my suggestion based on earlier statistics that 'affirmative action has deep roots in the industrial relations system'."

Although "improvement and simplification" of the federal EEO programs "is desirable," he concluded, "nothing in these cases would justify dis-

mantling the existing structure of equal employment opportunity programs."

(Text of the reverse discrimination study appears in Section E.)

—By Nancy Montwieler

Affirmative Action

EEOC, OFCCP NEED MORE VISIBLE ROLE IN CIVIL RIGHTS DEBATE, JACKSON ASSERTS

The federal government's leading fair employment agencies—the Equal Employment Opportunity Commission and the Labor Department's Office of Federal Contract Compliance Programs—should become more visible players in the affirmative action debate, the Rev. Jesse Jackson asserted March 22, following a meeting with EEOC Chairman Gilbert Casellas.

EEOC and OFCCP officials "are not in the inner circle" of Clinton administration discussions on the issue, Jackson charged, and their absence has had an impact in drawing the direction of the debate toward politics and away from substance.

During a meeting with President Clinton earlier this month, Jackson said he had "made it clear" that the enforcement agencies should be taking a greater

role in defending the merits of affirmative action. He said he intended to reassert his views on the subject with Clinton aide George Stephanopoulos.

"At this point, EEOC and OFCCP are not even in the debate," he said. "Fear and foolishness is prevailing over fact. Evidence is not part of the debate."

Citing the Labor Department's recently released Glass Ceiling Report as evidence of the barriers that still prevent minorities and women from advancing to higher-paying jobs, Jackson said more "substantive data" must be brought into the debate. "That data's not out there," he said. "If most Americans knew about it, they would be for affirmative action as a conservative remedy."

Casellas and Vice-Chairman Paul Igasaki said they had provided Jackson with data on EEOC charges and litigation and that he was "impressed by the statistics."

EEOC has been providing similar information to the White House for its ongoing review of affirmative action programs, Casellas said, and has been "involved to a degree" in the review.

"The public debate [over affirmative action] is based on a lot of misinformation," Casellas said. "My role has been to provide fact to counter some of that fiction and misinformation."

End of Section

**PHOTOCOPY
PRESERVATION**

Wernath

STUDY SHOWS NO WIDESPREAD REVERSE BIAS CLAIMS

- ▶ A report prepared by Rutgers Law Professor Alfred W. Blumrosen for the Office of Federal Contract Compliance Programs shows there is no widespread abuse of affirmative action programs in employment. It also shows there are only a small number of reported reverse discrimination cases by white males -- a high proportion of which have been dismissed by federal courts.

- ▶ Based on an analysis of reported federal district and appeals court decisions, Professor Blumrosen found that reverse discrimination cases accounted for between 1 and 3% of some 3,000 reported employment discrimination cases between 1990 and 1994.

- ▶ The study was based on an analysis of both individualized claims and broader challenges to affirmative action programs, which were either voluntarily undertaken or adopted because of a court order or consent decree.

- ▶ Many of the reverse discrimination claims were brought by disappointed job applicants, who were found by the courts to be less qualified for the job than the chosen female or minority applicant.

- ▶ None of the cases challenging affirmative action programs involved application of Executive Order 11246.

*FYI
Robt Neas*

**PHOTOCOPY
PRESERVATION**

Re: Appreciative Act

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 1, 1995

REMARKS BY THE PRESIDENT
AT EMILY'S LIST EVENT

Grand Ballroom
Washington Hilton
Washington, D.C.

1:02 P.M. EDT

THE PRESIDENT: That may be the best introduction I ever received. (Laughter.) And if I had really good judgment, I'd just sit down. (Laughter.)

Thank you, Ellen Malcolm, Senator Mikulski and Congresswoman Sheila Jackson Lee, and members of Congress who are out in the audience. My longtime friend, Ann Richards. I met Ann Richards over 20 years ago. And I think she was living in a place called Lacy Lake View*. And it was easy for me to see even then and even by Texas standards, she was a little bit larger than life. (Laughter.) Humor and empathy, grit and grace, courage and decency, I respect her, and I envy her. Her jokes are always better than mine. (Laughter.) And you'll all remember that she delivered one of the best political lines ever. (Applause.) It perfectly captured the mood of America. Do you remember? "Pass the Doritos, Mario." (Laughter and applause.)

Didn't you always want to do one of those commercials? I did. (Laughter.) I'm also indebted to Ann Richards for another reason. She and Hillary went out to dinner last night, and by apparent happenstance, Julia Child was eating at the same restaurant. So the people who were running the show decided that they should have everything Julia was having, plus whatever they ordered. According to my wife, anyway, they had a 10-course, four-hour meal -- (laughter) -- after which they were wheeled out on gurneys. (Laughter.) The good news is, I got home from New York last night about 1:30 p.m., and it was perfectly easy to get Hillary up to talk with me. (Laughter.)

I want to say a special word of appreciation to Ellen Malcolm for her vision and her work, her phenomenal energy have played an immeasurable role in electing more women to high public office in this country than would have been conceivable before she began her important work. (Applause.)

I thank her for her recitation of the work that our administration has done. We have tried to involve women at an unprecedented level. I notice when I started this administration, people were even some of the great establishment newspapers, they were always criticizing me for trying to have a diverse administration, as if there were something wrong with it. Well, I never had any quotas, and evidence of that is, we still only have only 44 percent of my appointees are women, but that's about twice as good as anybody else ever did, and I'm proud of that. (Applause.)

But I have always believed we could achieve excellence with outreach and effort without quotas, and I always thought we had kind of a stupid quota system before. It was just never stated. There were just some things that weren't women's work. Now, that's a

MORE

quota system, and we paid for it. And our country's better off now that we're scrapping it. (Applause.)

In the beginning, they used to criticize the judicial appointments process. But after two years, mercy, they looked up, and we'd named more judges in that time period than previous administrations, and more women and minorities than the three previous presidents -- Democratic and Republican -- combined. But the thing that was interesting and important to me is, we had the highest percentage of people rated well-qualified by the American Bar Association of any administration since they'd been keeping the records.

So, under the leadership of Erskine Bowles, who is now my Deputy Chief of Staff, the Small Business Administration increased loans to women businesses by over 80 percent in one year. (Applause.) And they did it without reducing the number of loans to white males, and they did it without making a single unqualified loan.

We can do this, folks. The old system was the quota system. We need a system where everybody in America has a chance to serve and live up to the fullest of their God-given abilities. (Applause.)

Women's health is a terribly important issue to me. Ellen talked about it. My grandmother and my mother were working women and nurses. And this morning Hillary kicked off a new chapter in our campaign against breast cancer. The most important issue in women's health this week is the need to raise our voices in support of Dr. Henry Foster to be our Surgeon General. (Applause.)

He is a good man. He is a good doctor. He has spent his entire life delivering babies, bringing health care to people who wouldn't otherwise have it, training doctors to go out and help give health care to people who otherwise wouldn't have it, and spearheading a nationally televised -- nationally recognized program to reduce teenage pregnancy. It received one of President Bush's Point of Light awards. Henry Foster is a pro-life, pro-choice doctor who deserves to be confirmed as Surgeon General. (Applause.)

Henry Foster's record should be seen in the lives of thousands of babies that he has helped come into this world in a health way and the people he has tried to educate and the people he has tried to help. And he deserves to be more than a political football in the emerging politics of this season. (Applause.)

We are on the verge of a new century and a difficult and different time where everything is changing and everything, including our politics, is somewhat unpredictable. As we look into the next century, we have a lot to be happy about -- the end of the Cold War, the receding of the conventional nuclear threat, the emergence of the Information Age, and all the exciting possibilities of a global economy.

But the great challenge of this age and the great challenge I predict to you of the next 50 is that all the forces that are lifting us up and opening unlimited possibilities to our children and our grandchildren, all the forces that are driving us toward a more integrated and cooperative world have a dark underside of disintegration because of so many of the things that are happening, we are lifting people up and seeing people beat down at the same time. There is great economic division in all the advanced countries. Why? Because more than ever before, education determines income and future prospects. So there is a great fault line in the great American middle class today which is responsible for a lot of the anxiety and a lot of the political issues and a lot of the

on the table in Italy last year. Are the institutions which were established at the end of the second world war to promote growth and developing trade, are they adequate to meet the challenges of this new age? When so many people in the world are struggling for democracy and are struggling to support enterprise, are they going to be rewarded for those efforts? And if they're going to be rewarded for those efforts, what do we have to do to make sure that the movement to democracy and the movement to enterprise, that that is not derailed with the inevitable kinds of crises that will arise from time to time, such as the recent one in Mexico?

I am confident that we can meet that challenge, and I'm glad we're coming back to Halifax because you've been such a leader in that regard. And I thank, you, sir.

Thank you all very much and we'd be glad to answer questions. Thank you. (Applause.)

Q Mr. President, you've said some admirable things about Canada, Mr. President. Can I ask you --

PRIME MINISTER CHRETIEN: No, no. You know that family -- French and English. So I will use my privilege to (in French) -- (laughter.)

Q Mr. Chretien, I would like to ask you if you're satisfied with the winks in favor of Canadian unity from the President?

PRIME MINISTER CHRETIEN: Is it to me or to him? (Laughter.)

Q Both.

Q First, Mr. Clinton, you said yesterday that Canada's future was for Canadians to decide. After having met with Lucien Bouchard, can you tell us if you consider it -- if the Quebeckers were to vote yes in the upcoming referendum in favor of pulling out from Canada, would you consider this from an American perspective as a minor or a major disturbance, or no disturbance at all?

THE PRESIDENT: You already said I winked yesterday. I was never consciously aware of having winked at Prime Minister Chretien. That will, doubtless, be a story at home. (Laughter and applause.) Look, I came here to celebrate, not to speculate. I'm celebrating the relationship we now have. I said everything I had to say yesterday, and I think that most reasonable people reading or hearing my words knew what I said and process it accordingly. And I don't think that I have anything to add to what I said yesterday about this.

Q Can you just help us with this interpretation? Since you said so many admirable things about Canada, can one assume that you would like to see it stay united, that would be your preference?

THE PRESIDENT: You can assume that I meant what I said yesterday. (Laughter and applause.)

Q Mr. President, is it true that you have ordered a review of affirmative action programs? And does it mean that you are backing off from giving a leg up to disadvantaged from past eras?

THE PRESIDENT: No, it's not true that I'm backing off -- it's not true that I'm backing off from giving a leg up. It is true, as I have said publicly now for some time, that I believe that we should not permit this affirmative action issue to degenerate into exactly what is happening -- just another political wedge issue to divide the American people.

I believe that every American would acknowledge that there are affirmative action programs which have made a great deal of difference to the lives of Americans who have been disadvantaged and who, in turn, have made our country stronger. The best examples of all, I believe, are the people who have served in the United States military; who, because of the efforts that have been made to deal with disadvantaged minorities who had not been given a chance to rise as high as their abilities could take them. In education, training, leadership, development, the military today is a model -- it looks like America and it works.

I, furthermore, think that it is time to look at all these programs which have developed over the last 20 to 25 years and ask ourselves, do they work; are they fair; do they achieve the desired objectives? That is very different from trying to use this issue as a political wedge one way or the other. I think it would be a great mistake.

So we have been talking for, oh, months now with people about this issue -- people who have participated in these programs; people who are knowledgeable about them; people who have both philosophical and practical convictions about them. I think we need to have a national conversation not only about affirmative action, but about what our obligations are to make sure every American has a chance to make it. And I'm going to do my dead-level best -- and some of you may try to get in the way of it -- but I'm going to try to stop this from becoming another cheap, political, emotional wedge issue. This country -- our country has been divided too often by issues that, substantively, were not as important as the political benefit that the dividers got. And that --

Q You don't think that we have equality in our country, do you?

THE PRESIDENT: I absolutely do not, and I think we -- we don't have equality. We may never have total equality. But we need -- and we don't have -- we don't even guarantee equality of results. What we need to guarantee is genuine equality of opportunity. That's what the affirmative action concept is designed to do. And I'm convinced that most Americans want us to continue to do that in the appropriate way. But we shouldn't be defending things that we can't defend. So it's time to review it, discuss it and be straightforward about it.

Q Mr. Prime Minister, during the election you talked about not wanting to go fishing with the President of the United States in case you looked like the fish and things like that. (Laughter.) Can I ask you, your relationship has been pretty close during this visit. Are you referring to the President by his first name, or is it still Mr. President? How would you describe your relationship?

PRIME MINISTER CHRETIEN: You know, he his Mr. President when there is another person in the room. And when we're alone, I don't call him William J., I call him Bill. (Laughter and applause.)

THE PRESIDENT: Thank you.

Q Mr. President --

THE PRESIDENT: I'd be honored to put the bait on his pole if he wanted to go fishing. (Laughter.)

Q Mr. President, back home the balanced budget drive is picking up steam. Two more Democratic senators came out in favor of it. Is this an idea whose time has come, or are you going to try to stop this or get on the bandwagon? What's your position on it now?

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 13, 1995

STATEMENT BY THE PRESIDENT

The Supreme Court's decision sets a new legal standard for judging affirmative action, but it must not set us back in our fight to end discrimination and create equal opportunity for all.

Despite great progress, discrimination and exclusion on the basis of race and gender are still facts of life in America. I have always believed that affirmative action is needed to remedy discrimination and to create a more inclusive society that truly provides equal opportunity. But I have also said that affirmative action must be carefully justified and must be done the right way. The Court's opinion in *Adarand* is not inconsistent with that view.

It is regrettable that already, with the ink barely dry, many are using the Court's opinion as a reason to abandon that fight. Exaggerated claims about the end of affirmative action — whether in celebration or dismay — do not serve the interest all of us have in a responsible national conversation about how to move forward together and create equal opportunity.

The Supreme Court has raised the hurdle, but it is not insurmountable. Make no mistake: the Court has approved affirmative action that is narrowly tailored to achieve a compelling interest. The constitutional test is now tougher than it was, but I am confident that the test can be met in many cases. We know that from the experience of state and local governments, which have operated under the tougher standard for some years now.

Some weeks ago, I directed my staff conducting the review of federal affirmative action programs to ask agencies a number of probing questions about programs that make race or sex a condition of eligibility for any kind of benefit. What, concretely, is the justification for this particular program? Have race and gender-neutral alternatives been considered? Is the program flexible? Does it avoid quotas, in theory and in practice? Is it transitional and temporary? Is it narrowly drawn? Is it balanced, so that it avoids concentrating its benefits and its costs? These are tough questions, but they are the right policy questions and they need answers.

I have instructed the team conducting the Administration's affirmative action review to include an analysis of the *Adarand* decision and its implications in their report.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 13, 1995

PRESS BRIEFING
BY MIKE MCCURRY

The Briefing Room

1:12 P.M. EDT

MR. MCCURRY: Good afternoon, ladies and gentlemen. This briefing will be brief because I don't have any news to impart upon you at the moment. But I'll make a reasonably good effort to answer questions.

Hello, Mr. Wolf Blitzer, of the Cable News Network. Good afternoon.

Q Can you explain the White House reaction on affirmative action -- the Supreme Court decision yesterday? How will this impact on the continuing reassessment of all of the affirmative action programs?

MR. MCCURRY: The Court's decision on Adarand is a profoundly important decision in many respects. The President has instructed those working on a review of affirmative action to analyze the opinion carefully and determine what impact that will have on the President's own review of affirmative action programs. We expect that that is going to take some time. And I will suggest to you that it -- the President, himself having talked about the opinion with some others, may have a statement later today, but it will be probably late this afternoon before that will be completed. We'll be doing a little bit of work on that during the day today and try to have a further statement later.

Q What kind of statement is that?

Q Would that be a written --

MR. MCCURRY: Written -- written statement from the President later.

Q Who did he talk to?

MR. MCCURRY: He's been working with those who have had a chance now to take a careful look at the opinion.

Q The President submitted a budget in February; the Republicans did what they did; and now he doesn't like what they're doing, so he wants to propose something new. Can you tell me what Vice President Gore's selling point to the networks was as why this is something so compelling that it demands television time to address the nation when he's had months and months to talk about the budget process?

MR. MCCURRY: Let me back up -- let me back up a little bit and maybe siphon out some of the belligerency from that question.

Q No belligerency, sir, just facts.

MR. MCCURRY: What the President did in February was submit an FY '96 budget proposal that you'll recall at the time

suggested that there could be additional significant budget reduction in the context of health care reform.

We've said all along that absent health care reform it's difficult to go into entitlement programs, to Medicare-Medicare, achieve additional savings. That's something that's abundantly clear in watching the Senate and House deal with the budget resolution as well.

Now, the President put down a significant statement about priorities in the FY '96 budget proposal, and what he will do tonight is build upon that document by adding in not only additional savings that result from health care reform, but then also assess what the House and the Senate have done to date in the context of their own consideration of a budget resolution.

Now, there was a significant debate and a significant choice for the President on whether to intervene in this process now, or wait for the House and the Senate Conference Committee to complete work on their own budget resolution. The President's assessment is that the House and the Senate Conference Committee is heading towards a budget resolution that will give guidelines to the appropriations committees in Congress, that would surely result in bills that he would, of necessity, have to veto over and over again. That would then raise the very strong prospect as we go through August and September that we come close to the end of the fiscal year with nothing having been achieved in the appropriations process that allows the federal government to continue its orderly functions; thus, the very real prospect of a complete shutdown in the functioning of the federal government, with no spending authority, the likelihood of no action on a debt ceiling measure, and the train wreck that is implied by an inability of the federal government to function. The train wreck suggested by the Speaker, himself, when he said that was a very real prospect.

So the President, by intervening in this process now as the House and Senate conferees are deliberating, offers the Congress the opportunity of achieving a budget resolution that gives formula to the appropriations process that could result in compromise rather than vetoes and train wrecks.

Q Perhaps my belligerency confused you, but that wasn't what my question was getting at.

MR. MCCURRY: Look, the urgency --

Q I'm talking about in February he did not go on national television to announce a budget. Why does he feel it necessary to raise it to that level at this point?

MR. MCCURRY: Well, I think -- he feels we're at a point in this process, the Congress having deliberated now -- this new Congress, this new Congress that is a result of the elections of November 1994, which is not an insignificant aspect of this -- they have deliberated and it is now timely for him to reenter this process in a way that allows him to shape the priorities that will be expressed in the budget resolution that is the result of the House conference -- House-Senate conference work.

Q He could do that in many other venues, though. A national speech like this is kind of puts an emphasis on it.

MR. MCCURRY: This is a good opportunity to frame that debate, to focus the attention of Congress on the President's priorities and what he believes will be a significant statement that offers a way out of the difficulty we will find ourselves in at the end of summer if we don't avert the train wreck the President suggests will be the likely result of the deliberations to date.

TALKING POINTS AFFIRMATIVE ACTION

OPPORTUNITY FOR AMERICANS -- BUILDING A STRONGER NATION

- Increasing opportunity for all Americans produces stronger citizens and a stronger nation. This country has not yet achieved equality of opportunity or stamped out discrimination. We must help people develop their capacities so they can fully participate in our society.
- This Administration is against quotas and guaranteed results. But we do need to guarantee a genuine equality of opportunity for all Americans. We should not move backward on this; where we can move ahead based on need we ought to move forward.
- There are affirmative action programs which have made a great deal of difference to the lives of Americans who have been disadvantaged and who, in turn, have made our country stronger.
- The best example is the United States military, where an intense effort is made to develop peoples' capacities to fully participate and contribute as much as possible. Disadvantaged minorities have been given a chance to rise as high as their abilities can take them. In education, training, leadership, development, the military is a model -- it looks like America and it works.

REVIEWING AFFIRMATIVE ACTION PROGRAMS

- The President has directed that the Administration undertake a review of all Federal affirmative action programs and ask: Does it work? Is it fair? Is it necessary? Does it achieve the desired objective or is there an alternative way to achieve the objective without giving a preference by race or gender?

PROTECTING ALL CITIZENS AGAINST DISCRIMINATION

- Improperly designed or implemented affirmative action plans weaken our national community. We want to support the programs that are working, but we want to get rid of ones that are not.

I take it that there is virtually no opposition to the affirmative action programs that are the most successful in our country, which are the ones adopted by the United States military, which have not resulted in people of inferior quality or ability a getting preferential treatment, but

[The Administration will explore emphasizing need-based programs where we can because they work better and have a bigger impact.]

This is too important to allow those who would make this a "wedge" political issue to try to drive Americans and their communities apart.

AN ADMINISTRATION THAT LOOKS LIKE AMERICA
INCREASING OPPORTUNITY FOR ALL AMERICANS

. More minorities and women

This Administration has taken to benefit

expanding the Head Start program
expanding the college loan program

expanding the earned income tax credit, the working families tax credit which has given an average tax cut of \$1,000 to families with incomes under \$25,000

empowerment zones

community development banks

The American people want an end to discrimination. They want discrimination where it exists to be punished. They don't want people to have an unfair break that is unwarranted. We can work this out, and I'm determined to do it.

"I want to continue to fight discrimination where it exists. I want to continue to give people a chance to develop their capacities where they need help."

-- President Clinton
Press conference

" . . . [T]he absence of discrimination is not the same thing as the presence of opportunity. It is not the same thing as having the security you need to build your lives, your families, and your communities. So I say to you, it is our duty to continue the struggle that is not yet finished, to fight discrimination. We will, and we must. But it is not the same thing as the presence of opportunity."

-- President Clinton
January 17, 1994



DATE: 3/11/97
PAGE: 1B

Nationwide settles redlining charges

By Christine Dugas
USA TODAY

Nationwide Insurance has reached an agreement with the Justice Department, settling charges that it discriminated against minority homeowners.

Justice called the settlement the most comprehensive ever with an insurance company under the Fair Housing Act. But some fair-housing advocates called it inadequate.

Among other things, Nationwide, the USA's fifth-largest home insurer, has agreed to invest \$13.2 million — \$2.2 million a year for six years — in up to 10 cities where Nationwide does business to help home buyers in largely minority neighborhoods with such things as down payments, closing costs and home ownership counseling.

Nationwide also agreed to change its rules for deciding who it will insure.

But unlike previous Justice Department settlements, Nationwide isn't setting aside money to compensate victims of discrimination. "Everything in the settlement is good, but it doesn't go far enough," says Shanna Smith of the National

Fair Housing Alliance.

Paul Hancock, in Justice's civil rights division, says the agreement "is appropriate because damage is inflicted on a community as a whole. And Nationwide is doing more to invest in communities than other insurance companies" in other settlements.

Hancock says individuals still can pursue their own claims for damages. About a dozen lawsuits and complaints are pending.

In a complaint filed with the settlement, Justice alleges that Nationwide imposed geographic restrictions against writing homeowners insurance in minority neighborhoods — a practice called redlining. And it claims Nationwide pressured agents to move their offices out of minority areas.

Those and other allegations were the subject of a USA TODAY Cover Story Jan. 27. Nationwide denies it did anything wrong. But after the story appeared, it announced it would change its underwriting guidelines to make more properties in minority neighborhoods eligible for insurance.

Those changes became part of Monday's settlement.

Insurer Settles Justice Dispute In Housing Bias

By JOSH GREENBERG

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — Nationwide Insurance Co. agreed to halt underwriting practices that the government said discriminated against minority homeowners.

The company, as part of the settlement of a long-running housing-discrimination dispute, also agreed to invest more than \$13 million in minority neighborhoods, the Justice Department said.

The government said the settlement is the most comprehensive it has ever reached with an insurance company found in violation of the Fair Housing Act.

"Nationwide had policies where it didn't insure homes that sold for less than \$50,000 and didn't insure homes that were more than 30 years old," said Paul Hancock, chief of the Justice Department's Housing and Civil Enforcement Section. That left many residents of inner-city neighborhoods, where houses are typically older, less expensive and undervalued, without any homeowner's insurance and, therefore, also unable to purchase mortgages.

More than 90% of homes in minority neighborhoods in Philadelphia, for example, have a value of less than \$50,000, Mr. Hancock said.

Nationwide, the country's fifth largest seller of homeowner policies, applied the guidelines to all cities where it did business.

Similar complaints have been registered against a number of insurance companies in recent years. Allstate Corp. and State Farm Group reached settlements with the Department of Housing and Urban Development, but Nationwide disputed the allegations and took the agency to court, unsuccessfully.

Under yesterday's settlement, reached in federal district court in Columbus, Ohio, Nationwide, without admitting any violations, will be required to open urban services centers within minority neighborhoods in 15 cities, provide \$13.2 million in grants to low-income and moderate-income home buyers, subject itself to independent investigations, file compliance reports with the Justice Department and send letters to those homeowners it rejected explaining why they were rejected.

Richard D. Crabtree, president of the Nationwide's property and casualty insurance companies, says he is satisfied with the result of the investigation. He said the requirements reaffirm the company's commitment to urban neighborhoods. "These markets represent attractive sources of business for us as we strive to strengthen our position as a leading insurance provider," he said.

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*re: two-tiered
Citizenship +
welfare
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HEADLINE: Judge Gives Naturalized Citizens Right to U.S. Security Clearances

BYLINE: By RICHARD HALLORAN, Special to the New York Times

DATELINE: WASHINGTON, Feb. 14

BODY:

A Federal district judge has ruled that naturalized American citizens have the same rights as other Americans to security clearances that give them access to government secrets.

The ruling reaffirms the constitutional principle that an American citizen is entitled to the same rights whether he is native born or has immigrated from a foreign nation and subsequently sworn allegiance to the United States as a naturalized citizen.

As a result of the ruling, the Defense Department has rescinded a 13-month-old regulation that had restricted security clearances to naturalized citizens from 30 nations considered to have interests adverse to those of the United States. There will be no appeal of the judge's ruling.

Defense Department Affected

The ruling directly affects an estimated 23,600 naturalized citizens who are employees of the Defense Department or who are employed by contractors working for the Defense Department. The estimate is contained in a court document.

The only significant constitutional distinction between a native-born citizen and a naturalized citizen is that only a native-born citizen can be President. The immigration laws make minor distinctions between native-born and naturalized citizens.

Had the principle of equal treatment, established by previous court rulings, been in effect in December 1941, thousands of American citizens of Japanese descent could not legally have been placed in relocation centers, as they were after Japan attacked the United States at Pearl Harbor.

The ruling by Judge Thomas F. Hogan here Friday ended a suit brought against the Defense Department by two naturalized Americans of Vietnamese birth, Phong Huynh and Vien U. Huynh, who are brother and sister.

No 'Compelling' Interest

Judge Hogan said in his ruling that the Defense Department had failed to produce evidence that the blanket denial of clearances to former citizens of a hostile country "is supported by a compelling state interest or has even a

The New York Times, February 15, 1988

ational basis.'

The judge noted that Defense Department counterintelligence specialists had been able to identify 'only one spy in the past 22 years who would have been denied security clearance under the regulation.' Judge Hogan added: 'During the last three years alone, however, there have been at least 23 incidents of spying by citizens who would not have been subject to the regulation.'

'The regulation, moreover, stigmatizes plaintiffs and other recently naturalized citizens with a badge of disloyalty,' the judge wrote in granting an injunction that 'serves the public interest by insuring protection of constitutional rights.'

The Huynhs were born in Saigon, South Vietnam, and fled to the United States in 1979 after North Vietnam consolidated its communist rule. Both Huynhs became American citizens in 1985. They were employed at the Naval Surface Warfare Center in Dahlgren, Va., when the issue of security clearances arose.

The Defense Department said that Mr. Huynh's interim clearance would be canceled and that Ms. Huynh would not be granted a clearance because they did not meet the criteria set down in the new regulation. They were advised to seek employment elsewhere.

Response to Spy Scandals

The Huynhs, who were represented by Philip LeB. Douglas, of the Wall Street firm of Winthrop, Stimson, Putnam & Roberts, contended that their civil rights had been violated because they had not been given the equal protection of the law.

After several spy scandals in the early 1980's, the Defense Department set up a new personnel security program in January 1987. It provided that naturalized citizens from 30 designated nations or areas could not be granted clearances until they had been citizens for five years, or had been United States residents for 10 years if citizens for less than five years.

Among the 30 countries considered hostile to the United States were Vietnam, the Soviet Union, Cuba, Nicaragua, Iran, Iraq and Libya. China was not on the list, but, as Judge Hogan noted, the Defense Department had secretly been applying the regulation to naturalized citizens from there.

In response to an inquiry, a Pentagon spokesman said the provisions of the security regulation applying to naturalized citizens had been revoked in view of the court ruling. 'Henceforth,' he said in a statement, 'all U.S. citizens, whether naturalized or native born, will be processed on an equal basis' for a Defense Department security clearance.

In any case of security clearance, the citizen is investigated. The judge's ruling in the Huyhn case noted that anyone applying for a clearance would be subject to scrutiny as to loyalty, reliability, police record and personal habits.

LANGUAGE: ENGLISH

AA

Steve Warnath
Office of Policy Development
Room 220 OEOP

THE WHITE HOUSE
Office of the Press Secretary

Press Release

February 22, 1995

PRESS BRIEFING
BY MIKE MCCURRY

The Briefing Room

1:55 P.M. EST

MR. MCCURRY: We've got -- Calvin has just produced a piece of paper on some -- the inauguration of the U.S.-South African Binational Commission. So we've got a piece of paper on that. Anything else --

Q (inaudible)

MR. MCCURRY: Yes. When he -- he comes later in the month. I believe towards the end of the month.

Not much that I can add to that lucid presentation.

Q Mike, when was the President briefed on these French allegations of espionage against France by allegedly CIA officials?

MR. MCCURRY: The President is regularly informed about developments in foreign policy that affect the United States. And you can trust that he was well advised about this matter as well.

Q How long has this been brewing?

MR. MCCURRY: I don't want to -- I don't want to answer that, because that goes into the discussions that are underway between the French government and the United States.

Q Are they still --

MR. MCCURRY: There have been and will be discussions with the French government on this matter. The French government is -- the Chief of Staff has just indicated -- has now publicly said some things about the matter. I suspect the U.S. government will have something to say later today as well.

Q Are there any French officials being expelled from this country?

MR. MCCURRY: I don't want to get into anything beyond what the State Department will suggest in its remarks later today.

Q Were you surprised that the French government leaked all of this to Le Monde this morning instead of --

MR. MCCURRY: Well, you're making suppositions about sources, and I don't think it's fair to journalists to make suppositions about sources. (Laughter.)

Q Could I follow up a little bit on the -- going back -- a serious question, though. The House Appropriations Committee is meeting this evening to discuss major cuts in the public broadcasting, all but a small portion. Where does the White House stand on major cuts to public broadcasting?

MR. MCCURRY: I'll have to check in our statement of administration policy to see if we've addressed that specifically. To my knowledge, we haven't, but we'll -- can I take that and see if we've got anything particular on it.

Q Has no one in the administration said anything? I mean, the issue's been kicking around now for months --

MR. MCCURRY: Well, I just don't know. Brit, I'm being honest and saying I'm not sure whether we've said anything specific on it or not.

Q What is the President doing today besides the Hill --

MR. MCCURRY: Well, he's met -- had a rousing meeting with the House Democratic Caucus that went very, very well. Spoke for about 20 minutes. Took questions from eight or nine members -- very positive reception, as I'm sure some of your colleagues on the Hill have been around to talk to members of the House Democratic Caucus. But it's clear both the members of the caucus and the President himself got a big lift out of what was a very good and enthusiastic meeting.

Q Mike, in the days when the Democrats controlled the chamber, my understanding is they let Republican presidents go up there and caucus with their caucuses on the House floor. Apparently the President was sent to the basement today. Do you know if there was anything --

MR. MCCURRY: I am not aware of that. I'll have to check on that.

MS. TERZANO: It was a room in the lower level, which is the caucus room --

MR. MCCURRY: It was a caucus room that is used by the House Democratic Caucus for their regular weekly meetings. And that is the place. But you are correct that the majority on the House side now has control over the facilities and scheduling of certain meeting rooms and of the House floor.

Q In addition to this nutrition issue and the star wars point that the President made when he was up on the Hill, did he and the Democrats agree on any common areas where they thought that they really needed to get together, and a list of specifics where they needed to block the Contract or at least to put in unified opposing positions to Republican positions?

MR. MCCURRY: Well, I don't want to get too detailed into the type of strategy they discussed, but the President did caution the members that not every element of the Republican approach on certain issues deserves or should receive a veto threat. He said that he would use that threat sparingly, use it on specific cases where he felt that he had to make absolutely clear his intent. But he also suggested to his Democratic friends in the House that it would be important to lay out some of the areas of contrast so that we could encourage either the Senate or perhaps the House as it revisits issues later in the year, to amend and modify change legislation so that it's more to the liking of both the President and the minority in the Congress.

Q The question was really what were those areas that he laid out?

MR. MCCURRY: He's discussed some specific areas, but I just decline to get into any specific discussions of tactics or strategy that he had up there.

Q I'm not talking about strategy and tactics, I'm talking about substance. What are the dividing line issues?

MR. MCCURRY: Well, the dividing line issues, I think the President has made abundantly clear. And they talked about those during this session. They talked about the crime bill. They talked about 100,000 cops. They talked about the school lunch program in specific. They talked about welfare reform, education, the direct college loan program. They talked about the importance of protecting Social Security benefits. And they talked about the importance of not using cuts in Medicare to pay for capital gains tax cuts that might go disproportionately to the wealthy. So the discussion was largely along the lines of what the President has been telling all of you publicly. There's a good opportunity to reinforce that discussion and to make it very clear that the next 50 days of the first 100 days of this 104th Congress will continue to be a period in which the President lays out differences with the Congress, tries to get them to modify and amend their approach, hopefully find some areas of cooperation where we can make progress together in a bipartisan fashion, but will also be a time in which there are very sharp differences that emerge as the Republic majority veers off to an extreme direction in some of its approaches on this legislation.

Q Mike, Leon Panetta and the others who were here today have phrases like, mean-spirited, shortsighted, cruel, an attack on children, for a proposal that would leave, by most estimates, about 80 percent of the funding for these programs intact. What language would you use if it cut it back to 50 percent? I mean, do you have vocabulary for that? What would you do, set yourselves on fire? (Laughter.)

MR. MCCURRY: You could imagine that you would go from the incendiary to the thermonuclear in that case. (Laughter.)

Q Can we get a little preview here, a little sample of what -- of the hysteria that we might be able to witness?

MR. MCCURRY: Look, I -- you are -- you just witnessed Democrats feeling passionately about programs that have done enormous good and programs that has, as was correctly pointed out, have enjoyed bipartisan support. And I think that the fact that Democrats feel a little exorcised from time to time, and standing up for what we believe is good for the American people to see, because they see what sharp differences there are as we contrast alternative visions of what this country is about as we look ahead.

Q Mike, were there any areas in which the President suggested to the Caucus that they should, or even must, set aside what you might call some traditional Democratic approaches to work with Republicans? Did he say, I know there are going to be some things that you may not want to do that I think would be good for you, going for our party, good for our effort?

MR. MCCURRY: He suggested not -- I'm going to say specific areas, but he said there are going to be some times where we have to recognize that we've got to pull together and we've got to forge a common direction; that we can't keep everybody in this Caucus happy. And I think it's correct to say that some of those remarks were directed to those who might be to the left side of the political spectrum within the Caucus. But that was more of a generic discussion. I don't recall that that was a very specific discussion about any particular substantive --

Q Why did he say he found so much unity, when they haven't been voting -- they've been voting with the Republicans?

MR. MCCURRY: Well, in the last week, they have held together pretty well on things like the star wars vote and on making clear in pass -- in looking at some of the crime issues that they've got a substantial cohesive group there that can make good on the President's pledge on 100,000 cops. On the National Security Act, they very clearly were together in standing up for the Constitutional prerogatives of the President and some of the concerns the administration has about -- the approach on peacekeeping, NATO expansion, some of the other issues embedded in that National Security Act.

So I think, among other things, the President wanted to compliment them on the unity they have shown, particularly in the last week to 10 days.

Q Does the President have a position on tort reform, which Gingrich says is going to be the toughest thing that they do in the next 50 days?

MR. MCCURRY: That is an issue that the White House has been looking at very carefully. I don't have anything I can share with you publicly right now on it, but as soon as we do have something on that, I will.

Q Mike, the other day you mentioned the President's basic premise with regard to affirmative action -- that he feels that there's still lingering discrimination and that we're not there yet in terms of a color-blind society. Speaker Gingrich was asked about this topic today, and particularly the impact of centuries of systematic discrimination. And his answer was, well, that's true of all Americans -- Anglo-Saxons were discriminated against by Normans. Do you feel that that disposes of the President's --

MR. MCCURRY: He, as a historian, has, sometimes, a unique view of history. So I will let the Speaker's comments speak for themselves. But he also -- if I understand correctly, something he said talked about the genetic basis for evaluating instances of discrimination. And I think that it is important to point out, that discrimination in our society has, in fact, sometimes been genetic-based; it's been racially based. And I think most Americans understand that and know that. I don't think they need a history lesson to remind themselves of that truth.

Q Following up on that, what Gingrich was really talking about is, he's sent out a memo to talk about the next second 100 days. And that second 100 days is going to have a theme that they'll do other things, such as look at affirmative rules dealing with affirmative action with the --

MR. MCCURRY: Oh, boy, we're going to be in for fun. The next 100 days.

Q What is your reaction?

MR. MCCURRY: Well, specifically on affirmative action, as we communicated earlier, the President has said often that he believes that where there is discrimination, there should be affirmative remedies; and I think he's made that clear. He also believes that we need an honest and a civil national conversation about what could be a potentially divisive issue.

What concerns the President is attempts that we have seen, frankly, all too often in the past to use race as a wedge issue within our political culture, as an issue that divides Americans. And I think the President starts from the premise that on these

issues, a national conversation ought to be designed to generate unity and a sense of common purpose as we deal with the vestiges of discrimination. So among other things, I think he feels we need a real analysis of the actual effect of specific affirmative action policies. He wants to ensure that we oppose all attempts to use race as a weapon to, as I say, divide people. And that ultimately we arrive at policies and decisions that bring people together in our society.

Q Since that kind of debate is unlikely to happen, what position are you going to take on --

MR. MCCURRY: Well, why -- why? Why do you suggest that?

Q Well, because it doesn't -- it just sounds like it would be --

MR. MCCURRY: So you're assuming the motive of the Republicans who want to raise this are to be divisive?

Q I'm just saying, this is a very hot issue, and it's by nature divisive. And what I'm asking you is--

MR. MCCURRY: It is, but I mean --

Q Dole has a list of 160 or so affirmative action rules and regulations --

MR. MCCURRY: But you're suggesting that he has developed that list specifically because they --

Q No, no -- I want to know what you're going to do --

MR. MCCURRY: -- want to use that issue politically to divide Americans from one another?

Q No.

MR. MCCURRY: That's a very damning comment on the motives of the Majority Leader. You should ask the Majority Leader more about his specific view.

Q All I want to know is what are you going to -- what position are you going to take on this whole long list of rules as they get examined one by one --

MR. MCCURRY: I just -- as I just indicated, I think that we think there should be a real analysis of the specific effect of affirmative action policies that allow for a rational civil national conversation on these issues.

You're suggesting to me that that's not likely to happen because you're suggesting that the Republicans will use these issues as they have in the past -- correctly, I think it's fair to say -- to divide Americans. And I'm just suggesting that that's a fairly dispiriting view of what this debate is going to be about. Hopefully it will not be about that.

Q Mike from the sublime to something less, was it the same -- was the ketchup bottle that was brandished here today at this platform the same one that Gephardt was waving around on the Hill? And if so, or if not, where did it come from?

MR. MCCURRY: It is a -- that was a bottle of Heinz ketchup that was procured locally for the Chief of Staff because, my understanding is, that a bottle of Heinz ketchup is not available from the White House staff mess.

Q I see, now had the label been --

MR. MCCURRY: They prefer, I am told, small little packets of ketchup.

Q Had label been -- had the main label been removed to avoid a commercial endorsement, or a seeming commercial endorsement?

MR. MCCURRY: No, the Chief of Staff is wise enough to hold the bottle in such a fashion, Mr. Hume, that the --

Q But it was still there.

MR. MCCURRY: -- maker of that particular brand of ketchup was not identified. It was not a generic brand.

Q You're not trying to avoid offense to a particular politically prominent family or anything like that.

MR. MCCURRY: Not providing any commercial value.

Q So this is a different bottle than the one Gephardt was waving around? As far as you know.

MS. TERZANO: Mr. Gephardt kept his bottle.

MR. MCCURRY: As far as we know. As far as we know this is a -- this was a 1600 Pennsylvania Avenue bottle of ketchup.

Q Separation of ketchup being --

MR. MCCURRY: Separation of ketchup being something that you're into.

Q Did Mr. Panetta decide to use --

MR. MCCURRY: The French, by the way, as you recall, don't consider ketchup a vegetable either. (Laughter.)

Q Is that why we spy on them?

Q Did Mr. Panetta decide to introduce --

MR. MCCURRY: We're not looking for menus, as far as I know.

Q Did Mr. Panetta decide to introduce his bottle of ketchup after Mr. Gephardt apparently had some difficulty with his bottle?

MR. MCCURRY: Oh, he -- I'm not aware that Mr. -- the Minority Leader did have some difficulty.

Q He sort of stepped on his line --

Q He kind of messed up the line -- very sad.

MR. MCCURRY: I noticed that there was seemed to be competitive pressures here with the bottle of ketchup today, and who might most effectively hold it at just the right angle.

Q The competition is --

MR. MCCURRY: But it does make -- you know, look -- we're joking around a little bit -- this does, for most Americans remind them of something -- a debate from the 1980s. They remember



Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
202/466-3311

March 10, 1995

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*Please join us in
honoring Ralph and
LCCR's 45th Anniversary!*

Dear Mr. Reed:

The Leadership Conference on Civil Rights, the largest, oldest, and most broadly based coalition in the nation, marks its 45th Anniversary this year. This milestone will be commemorated at our annual Hubert H. Humphrey Civil Rights Award Dinner, Wednesday evening, May 3, at the Hyatt Regency Washington on Capitol Hill.

This year's recipient of the prestigious award for "selfless and devoted service in the cause of equality" is Ralph G. Neas, Executive Director of the Leadership Conference for the past 14 years. As you know, Ralph will be stepping down from his post this spring to practice and to teach law.

In celebration of this auspicious occasion, the Leadership Conference is preparing a tribute Journal documenting the growth and changes of the organization, the civil rights movement and its leadership.

We are also collecting personal letters and anecdotes from Ralph's colleagues and friends to be placed in a book for presentation at the Dinner on May 3rd. If you wish to be included in this book, please send your letter on standard 8 1/2 x 11 letterhead mailed flat (not folded), to the Leadership Conference on or before April 20.

More than 1,000 civil rights, political, labor, corporate, legal and organizational leaders from across the country traditionally gather for this annual bipartisan event.

We hope that you will mark your calendar and plan to be our guest on May 3. If you need any additional information,

"Equality In a Free, Plural, Democratic Society"

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Special Counsel for Immigration Related
Unfair Employment Practices

Office of Special Counsel
(202) 653-8121

1100 Connecticut Avenue, N.W.
P.O. Box 65490
Washington, D.C. 20035-5490

FEB 13 1989

OFFICE OF SPECIAL COUNSEL FILES FIRST NEW YORK SUIT

On February 13, 1989, the Department of Justice filed a civil suit charging Marcel Watch Corporation of New York City, New York, with citizenship status discrimination in refusing to hire a U.S. citizen from Puerto Rico.

The suit was filed by the Office of Special Counsel for Immigration Related Unfair Employment Practices to enforce the anti-discrimination provision of the Immigration Reform and Control Act of 1986. The action was filed with the Executive Office for Immigration Review and will be heard by an administrative law judge.

The anti-discrimination provision protects U.S. citizens and aliens authorized to work in the United States from employment discrimination on the basis of national origin and citizenship status.

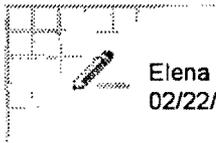
The complaint was the first filed by the Office of Special Counsel based on a charge arising from New York. To date, the Office of Special Counsel has received 44 charges from New York, which ranks fourth behind California (170), Texas (52), and Illinois (51), in number of charges. Of the 44, 31 have been dismissed and 12 are pending. One charge, against Pan American World Airways, was settled last March.

The complaint arose from a charge filed with the Office of Special Counsel on October 27, 1988 by Rosita Martinez, a U.S. citizen from Puerto Rico. The complaint alleges that Ms. Martinez was referred to Marcel Watch Corporation by the New York State Employment Service for a watch packer job. She presented the Company hiring officer with her birth certificate, social security card, and New York City voter registration card, to prove her identity and employment eligibility.

The hiring officer requested her to produce a "green card," a popular name for the Alien Registration Receipt Card which is given to most permanent resident aliens. Since Ms. Martinez is a U.S. citizen, she could not produce the document. As a result, Marcel Watch Corporation refused to hire her.

The complaint seeks an order requiring the Company to hire Ms. Martinez as a watch packer with full back pay, benefits, and seniority. It also seeks a \$1,000 civil penalty.

PHOTOCOPY
PRESERVATION



Elena Kagan
02/22/97 12:58:54 PM

Record Type: Record

To: Stephen C. Warnath/OPD/EOP

cc:

Subject: Procurement Affirmative Action meeting

steve: please go if you can. I may or may not join you.

----- Forwarded by Elena Kagan/OPD/EOP on 02/22/97 12:58 PM -----



June G. Turner

02/21/97 01:53:34 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Procurement Affirmative Action meeting



Sylvia Mathews will chair an Affirmative Action Meeting (dealing with Procurement Issues) on Monday, Feb. 24 at 4:00 pm in the Roosevelt Room.

I would appreciate confirmation of your attendance. And if you notice that I have left someone off, please let me know.

Invited Attendees:

- Sylvia Mathews
- John Podesta
- Melanne Verveer (for Maggie Williams)
- Chuck Ruff
- Richard Hayes
- Dawn Chirwa
- Rob Weiner
- Alphonse Maldon
- Kathy Wallman
- Kumiki Gibson
- Janet Murguia
- Elena Kagan
- Bob Nash
- Steven Kelman
- Susan Liss

Nancy McFadden (Transportation)
Isabelle Pinzler, Bill Yeomans, John Dwyer (Justice)
Emily Hewitt (GSA)
Ev Ehrlich, Peter Scher (Commerce)
John Spotila (SBA)
Witt Peters (DoD)

Message Sent To:

Richard L. Hayes/WHO/EOP
Andrew J. Mayock/WHO/EOP
Elena Kagan/OPD/EOP
Dawn M. Chirwa/WHO/EOP
John Podesta/WHO/EOP
Rahm I. Emanuel/WHO/EOP
Sara M. Latham/WHO/EOP
Michelle Crisci/WHO/EOP
Steven J. Kelman/OMB/EOP
Alphonse J. Maldon/WHO/EOP
Kathleen M. Wallman/WHO/EOP
Kumiki S. Gibson/OVP @ OVP
Janet Murguia/WHO/EOP
Margaret A. Williams/WHO/EOP
Odetta S. Walker/WHO/EOP
Bob J. Nash/WHO/EOP
Evan Ryan/WHO/EOP
Katharine Button/WHO/EOP

TO ADHERE TO THESE PRINCIPLES. FOR IF WE DON'T, WE WILL SURELY PERISH. AND THE NATION OUR FOREBEARS IMAGINED -- AND HAVE ENTRUSTED NOW TO US -- WILL NEVER COME TO PASS. WE MUST STICK TOGETHER IN THIS STRUGGLE: NOT SIMPLY BECAUSE IT MAY IN SOME SENSE BE POLITICALLY CORRECT, BUT BECAUSE IT IS MORALLY CORRECT.

FACING SIMILAR CHALLENGES AT A DIFFERENT TIME, DR. KING SAID THAT "THE ROAD AHEAD IS NOT ALTOGETHER A SMOOTH ONE. THERE ARE NO BROAD HIGHWAYS TO LEAD US EASILY AND INEVITABLY TO QUICK SOLUTIONS. [BUT] WE MUST KEEP GOING." SO, KEEP GOING, LADIES AND GENTLEMEN. DESTINY DEMANDS OF US NO LESS.

THANK YOU.

Affirmative Action and Proposition 209

Last week, a panel of federal appeals court judges upheld a federal district judge's December 23rd injunction blocking implementation of the "California Civil Rights Initiative" (CCRI), also known as Proposition 209, pending full consideration of an appeal later this winter. Consistent with the Administration's policy to "mend-it, don't-end-it", the Administration had submitted a brief in the case opposing implementation of the Proposition.

The core of the plaintiffs' position is that Proposition 209 is unconstitutional on equal protections grounds because it places a special burden on minorities and women, but not other groups (e.g. veterans or residency status in employment or alumni or athletic preferences in state universities), to have preference programs enacted by state and local entities to protect their interests. They also contend that the proposition is preempted by federal law because it prohibits voluntary affirmative action efforts.

(As you know, Prop. 209 was adopted by referendum on November 5, 1996. The referendum amends the California constitution to provide that governmental entities "shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting.")

At U.C. Berkeley -- On July 20, 1995, the U.C. Board of Regents voted to end affirmative action programs at the University of California. This action was opposed by then-President Peltason, by all the U. C. Chancellors, the faculty senate and student government -- a degree of unanimity unprecedented for the University. Shortly after the Regents vote, U.C. Berkeley Chancellor, Chaing Lin Tien announced "The Berkeley Pledge," an outreach program to prepare talented minority students for admission to U.C. Berkeley. Chancellor Ten contributed \$10,000 of his salary to kick-off the private funding drive for the Pledge.

In his State of the Union, the President expressed the importance of diversity in building a strong national community:

My fellow Americans, we must never, ever believe that our diversity is a weakness -- it is our greatest strength. Americans speak every language, know every country. People on every continent can look to us and see the reflection of their own great potential -- and they always will, as long as we strive to give all of our citizens, whatever their background, an opportunity to achieve their own greatness.

We're not there yet. We still see evidence of abiding bigotry and intolerance, in ugly words and awful violence, in burned churches and bombed buildings. We must fight against this, in our country and in our hearts.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

July 19, 1995

July 19, 1995

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Evaluation of Affirmative Action Programs

This Administration is committed to expanding the economy, to strengthening programs that support children and families, and to vigorous, effective enforcement of laws prohibiting discrimination. These commitments reflect bedrock values -- equality, opportunity, and fair play -- which extend to all Americans, regardless of race, ethnicity, or gender.

While our Nation has made enormous strides toward eliminating inequality and barriers to opportunity, the job is not complete. As the United States Supreme Court recognized only one month ago in *Adarand Constructors, Inc. v. Peña*, "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." This Administration will continue to support affirmative measures that promote opportunities in employment, education, and government contracting for Americans subject to discrimination or its continuing effects. In every instance, we will seek reasonable ways to achieve the objectives of inclusion and antidiscrimination without specific reliance on group membership. But where our legitimate objectives cannot be achieved through such means, the Federal Government will continue to support lawful consideration of race, ethnicity, and gender under programs that are flexible, realistic, subject to reevaluation, and fair.

Accordingly, in all programs you administer that use race, ethnicity, or gender as a consideration to expand opportunity or provide benefits to members of groups that have suffered discrimination, I ask you to take steps to ensure adherence to the following policy principles. The policy principles are that any program must be eliminated or reformed if it:

- (a) creates a quota;
- (b) creates preferences for unqualified individuals;
- (c) creates reverse discrimination; or
- (d) continues even after its equal opportunity purposes have been achieved.

In addition, the Supreme Court's recent decision in *Adarand Constructors, Inc. v. Peña* requires strict scrutiny of the justifications for, and provisions of, a broad range of existing race-based affirmative action programs. You recently received a detailed legal analysis of *Adarand* from the Department of Justice. Consistent with that guidance, I am today instructing each of you to undertake, in consultation with and pursuant to the overall direction of the Attorney

more

(OVER)

General, an evaluation of programs you administer that use race or ethnicity in decision making. With regard to programs that affect more than one agency, the Attorney General shall determine, after consultations, which agency shall take the lead in performing this analysis.

Using all of the tools at your disposal, you should develop any information that is necessary to evaluate whether your programs are narrowly tailored to serve a compelling interest, as required under Adarand's strict scrutiny standard. Any program that does not meet the constitutional standard must be reformed or eliminated.

WILLIAM J. CLINTON

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Text

SHIRLEY J. WILCHER'S STATEMENT TO SENATE LABOR COMMITTEE

June 15, 1995

Madam Chair and Members of the Committee:

My name is Shirley J. Wilcher, and I am the Deputy Assistant Secretary for Federal Contract Compliance, Employment Standards Administration, U.S. Department of Labor. I appreciate the opportunity to appear before the Committee to discuss the Office of Federal Contract Compliance Programs (OFCCP), its mission and its efforts to promote equal employment opportunity in the American workplace. In particular, I would like to thank the Chair, Senator Kassebaum, with whom we had an opportunity to meet earlier this year and who I know has a keen interest in and understanding of our program. I would also like to thank Senator Kennedy, the Ranking Minority Member for inviting me to address the Committee. I request that my written statement be entered into the record of these proceedings and I will briefly summarize my remarks.

As you are all aware, President Clinton has asked for a comprehensive review of Federal affirmative action policies. The reasons for this review are: (a) to examine current Federal laws and regulations regarding affirmative action policies; (b) to analyze their effectiveness and relevance to the current economic climate; and (c) to recommend changes as appropriate. This review is ongoing, and I am advised that the President has drawn no conclusions and made no decisions about the continued need for certain affirmative action policies. Until such time as the President's review has been completed, I can only respond to questions that pertain to the OFCCP and the enforcement of its nondiscrimination and affirmative action mandates under the laws we administer.

I do note, of course, that on June 12 the Supreme Court handed down its decision in *Adarand Constructors, Inc. v. Peña*. The decision has significant implications for Federal programs that accord minority preferences. However, Executive Order 11246 does not require the use of racial or gender preferences. The numerical goals approach, which implements the affirmative action provision of Executive Order 11246, is *not* based on racial or gender preferences, or quotas. Rather, it is a mechanism designed to measure the success of contractors' good faith efforts at broadening the pool of qualified candidates for entry level or promotional opportunities. Quotas are expressly prohibited by OFCCP's regulations, and selections for employment or promotion must be made without regard to race or gender, consistent with Title VII of the Civil Rights Act. Accordingly, the *Adarand* decision should not have an effect on affirmative action as it is implemented by OFCCP under Executive Order 11246.

While I cannot, in this forum, engage in a general debate about the Nation's affirmative action policies, I am pleased to discuss the OFCCP, our mission and our methods of administering the laws that have been entrusted to the agency. Additionally, I would like to discuss how we are also working to update our procedures, streamline our operations and improve our ability to respond to contractor and constituent needs.

Over the past few months there has been an extended national debate about affirmative action programs. At times,

the debate has been characterized by historical inaccuracies, factual errors, and a complete misuse of the terms that describe these important public policies. Even worse, at times the discussion has degenerated to the point that reasonable voices could not be heard.

I would like to thank the Senate Labor and Human Resources Committee for the opportunity to have a calm, reasoned, and informed discussion about affirmative action as enforced by the OFCCP.

OFCCP is responsible for the administration of three equal employment opportunity programs that apply to Government contractors and subcontractors: Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973 and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Taken together, these laws ban discrimination and require Federal contractors and subcontractors, as a condition of their Government contracts, to take affirmative action to ensure that minorities, women, individuals with disabilities, special disabled and Vietnam era veterans have an equal opportunity to compete for employment.

Approximately 22 percent of the labor force (about 26 million workers) is employed by Federal contractors or subcontractors subject to the laws administered by OFCCP. In Fiscal Year 1993, OFCCP's covered Federal contractors included 92,500 non-construction establishments and an estimated 100,000 construction establishments. The Federal Government awarded more than \$161 billion involving 176,000 prime contracts in Fiscal Year 1993.

The requirement that Government contracts contain a clause prohibiting the contractor from discriminating in employment on the basis of race, color, creed, and national origin has been an established part of Federal contracting policy since 1941, when President Roosevelt signed Executive Order 8802 outlawing discrimination in the Federal Government and in the war industries. It has been maintained by Executive Orders of five successive presidents — Presidents Roosevelt, Truman, Eisenhower, Kennedy and Johnson.

The early Executive Orders prohibited discrimination alone. Experience, however, indicated that something more than mere nondiscrimination was needed to overcome the lingering effects of past discrimination and the continuing barriers that prevented minorities from being hired and promoted on the basis of merit. In its Final Report to President Eisenhower, the Committee on Government Contracts, headed by Vice President Richard M. Nixon, concluded:

Overt discrimination, in the sense that an employer actually refuses to hire solely because of race, religion, color, or national origin is not as prevalent as is generally believed. To a greater degree, *the indifference of employers to establishing a positive policy of nondiscrimination* hinders qualified applicants and employees from being hired and promoted on the basis of equality.

President Kennedy incorporated the concept of "affirmative action," when he issued Executive Order 10925 in 1961. Affirmative action was not contingent upon a finding of dis-

crimination. Rather, Executive Order 10925 imposed on all covered contractors a general obligation requiring positive steps designed to overcome obstacles to equal employment opportunity. In 1965 President Johnson issued Executive Order 11246, which assigned responsibility for the contract compliance program to the Secretary of Labor.

WHAT IS AFFIRMATIVE ACTION UNDER EXECUTIVE ORDER 11246?

In the employment context, affirmative action is the set of positive steps that employers use to promote equal employment opportunity. Affirmative action under Executive Order 11246 refers to a process that requires a Government contractor to examine and evaluate the total scope of its personnel practices for the purpose of identifying and correcting any barriers to equal employment opportunity. Where problems are identified, the contractor is required to develop a program that is precisely tailored to correct the deficiencies. Where appropriate, the contractor is required to establish reasonable "goals and timetables" to measure success toward achieving that result.

A non-construction contractor or subcontractor with a Federal contract of \$50,000 or more, and 50 or more employees, is required to develop a written affirmative action program for each of its establishments. A written affirmative action program helps the contractor identify and analyze potential problems in the participation and utilization of women, minorities, Vietnam era veterans and the disabled in the contractor's workforce.

The "goals and timetables" component of affirmative action planning sometimes gives rise to the erroneous claim that Executive Order 11246 is a "preference" or "quota" program. It is critical that we attempt to correct the public's misconceptions and clarify the essential characteristics of the affirmative action requirements Executive Order 11246 imposes upon employers that contract with the Federal government.

ARE GOALS A SUBTERFUGE FOR QUOTAS?

No. The numerical goals component of the affirmative action programs under the Executive Order has never been designed to be, nor may it properly or lawfully be, interpreted as employment quotas or preferential treatment with respect to persons of any color, race, religion, sex or national origin. The Executive Order regulations are explicit on that point: "*Goals may not be rigid and inflexible quotas which must be met, but must be targets, reasonably attainable, by means of applying every good faith effort to make all aspects of the entire affirmative action program work.*" (41 CFR 60-2.12(c).)

In addition to the prohibition regarding quotas contained in the regulations, OFCCP (then OFCC) was one of the signatories to a 1973 inter-agency Memorandum that distinguished between goals and quotas. The 1973 Memorandum, which also was signed by the Department of Justice, the then Civil Service Commission and the Equal Employment Opportunity Commission, was one of the earliest and most comprehensive policy statements on the subject. The Memorandum described goals to be a *numerical objective realistically established based on the availability of qualified applicants in the job market and expected vacancies*. Quota systems, on the other hand, were described as "any system which requires that considerations of relative abilities and qualifications be subordinated to considerations of race, religion, sex or national origin in determining who is to be hired, promoted, etc. in order to achieve a certain numerical position. . . ." There is no basis for the often repeated assertion that affirmative action requires employers to disregard the relative qualifications of employees and prospective employees. The numerical goals utilized by the Executive Order program meet the definition of goals as described in the 1973 Memorandum and not the quota systems the Memorandum also defined.

ARE GOALS INTENDED TO ACHIEVE PROPORTIONAL REPRESENTATION OR EQUAL RESULTS?

Not at all. Numerical goals do not create guarantees for specific groups, nor are they designed to achieve proportional representation or equal results. Rather, the goal-setting process in affirmative action planning is used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent discrimination. While the employer's performance in achieving goals may indicate the effectiveness of that employer's current efforts, the goals are not ends unto themselves. Moreover, the numerical benchmarks are realistically established based on the availability of qualified applicants in the job market or qualified candidates in the employer's work force.

DOES AFFIRMATIVE ACTION UNDER EXECUTIVE ORDER 1246 REQUIRE EMPLOYERS TO HIRE OR PROMOTE WOMEN OR MINORITIES ON THE BASIS OF RACE OR SEX?

Absolutely not. No requirement exists that any specific position be filled by a person of a particular race, gender or ethnicity, even where the phenomena of jobs traditionally segregated by race or sex, remain intact. Instead, the requirement is to engage in outreach and other efforts to broaden the pool of qualified candidates to include groups previously excluded. The selection decision — to hire, promote or lay off — is to be made on a non-discriminatory basis.

DOES AFFIRMATIVE ACTION UNDER EXECUTIVE ORDER 11246 CONFLICT WITH THE PRINCIPLES OF MERIT?

No. In seeking to achieve its goals, an employer is never required to hire a person who does not have the qualifications needed to perform the job successfully; hire an unqualified person in preference to another applicant who is qualified; or hire a less qualified person in preference to a more qualified one. Thus, unlike quotas, numerical goals allow persons to be judged on individual ability, and are, therefore, entirely consistent with the principles of merit. *Moreover, employers who select unqualified individuals on the bases of race or gender or who pass over others with demonstrably better qualifications in order to meet a numerical goal would violate the Executive Order.* It is noteworthy that during a random survey of conciliation agreements obtained by the field in FY'93 and FY'94, OFCCP found an example of an OFCCP regional office requiring corrective action by a contractor who had an employment practice that discriminated against males, both whites and minorities. The office cited the contractor and required it to enter into an agreement providing relief to both white and minority male victims.

SHOULD GOALS BE TREATED AS A CEILING OR A FLOOR?

Neither. The Executive Order does not require that contractors treat goals as either a ceiling or a floor for the employment of particular groups. Goals establish neither a minimum nor a maximum number of individuals of any group that must be employed. Moreover, using numerical goals as a minimum or a maximum without regard to job qualifications would be an impermissible quota and in violation of the Executive Order.

WHAT IS THE STANDARD FOR COMPLIANCE UNDER THE EXECUTIVE ORDER?

The standard is and has always been "*good faith effort.*" Good faith is measured by the extent to which the contractor has taken steps to overcome real and artificial barriers to nondiscriminatory employment. These steps include expanded recruitment of minorities and women, modification of non-job related selection criteria, expansion of training and educational opportunities and reduction of subjective evaluation tools. Compliance is never measured solely by whether the goals are met. Failure to meet the goals, for example, simply raises the question of whether good faith efforts were undertaken to achieve the goals, and to make the overall affirmative action program work. Failure to meet the goals by itself is not a violation of the Executive Order; and no contractor should ever

be sanctioned on merely numerical grounds. A recent random review of conciliation (settlement) agreements between OFCCP and Federal contractors has shown that this agency has not required quotas or insisted on the attainment of a goal without regard to job qualifications or the circumstances in which contractors operate.

IS AFFIRMATIVE ACTION UNDER EXECUTIVE ORDER 11246 SIMPLY A "RACIAL SPOILS SYSTEM"?

Unquestionably no. Critics of affirmative action have argued that affirmative action is a system of spoils for unqualified African Americans or Hispanics, and is intended to benefit only these groups. As indicated above, affirmative action is not, nor has it ever been, intended to require preferences. It does not entail the disregard of qualifications. Moreover, affirmative action at OFCCP is not merely a race issue, it is a gender issue, a disability issue and a veterans' issue. Not only does OFCCP enforce Executive Order 11246, amended to include gender in 1967, it also enforces Section 503 of the Rehabilitation Act of 1973 and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Both statutes, signed into law by a Republican president, require affirmative action. Thus, using affirmative action as a racial "wedge issue" misrepresents its scope as well as its intent.

SHOULD AFFIRMATIVE ACTION AS IMPLEMENTED UNDER EXECUTIVE ORDER 11246 BE ABOLISHED BECAUSE IT STIGMATIZES ITS BENEFICIARIES?

Finally, no. Beneficiaries of affirmative action have nothing to be ashamed of. Affirmative action is a rejection of employment discrimination rather than a reflection of the abilities of minorities, women, the disabled and veteran workers. Those who understand the intent of the architects of affirmative action under Executive Order 11246 know that what affirmative action essentially requires is that employers "cast a wider net"; that they make additional efforts to seek and recruit persons who may not ordinarily be considered for opportunities for positions in a company. Affirmative action requires employers who underutilize qualified women and minorities to extend beyond their usual networks, where they would be likely to find others resembling themselves, and locate qualified women, minorities, persons with disabilities or disabled veterans for consideration. Once identified, these persons should be allowed to compete with their counterparts without any diminution in standards or expectations. Moreover, one must compare any stigma of benefiting from affirmative action with the stigma and frustration of being unemployed or under-employed, and feeling altogether shut out.

HOW DOES OFCCP ADMINISTER THE CONTRACT COMPLIANCE PROGRAM?

OFCCP enforces the nondiscrimination and affirmative action requirements by conducting compliance reviews of contractors and subcontractors. In Fiscal Year 1994, the program completed more than 4,000 reviews. Consistent with the dual mandate of Executive Order 11246 — nondiscrimination and affirmative action — a compliance review is a bifurcated process, consisting of an examination of the contractor's affirmative action program and a determination of whether there is discrimination in a contractor's employment policies and practices. The review focuses on both the possible existence of discrimination and the contractor's good faith steps that have been taken to increase the utilization of minorities and females, if required. OFCCP utilizes principles developed in Title VII case law to identify areas of potential discrimination for further analysis.

OFCCP also responds to discrimination complaints. In 1994, more than 800 complaints of discrimination were investigated. OFCCP investigates primarily those Executive Order complaints involving a class of individuals or indicating a pattern of

potential discrimination. Complaints involving only one individual are normally referred to the EEOC pursuant to a Memorandum of Understanding between the two agencies. OFCCP also investigates complaints filed under Section 503 of the Rehabilitation Act of 1973, alleging discrimination on the basis of disability, or under the Vietnam Era Veterans' Readjustment Assistance Act, in which discriminatory actions against disabled and Vietnam Era veterans may be alleged.

Where problems are found, OFCCP attempts to work with the contractor, often entering into a conciliation agreement or a letter of commitment to resolve minor problems. A conciliation agreement may involve back pay, job offers, seniority credit, promotions or other forms of make-whole remedies to those who have been discriminated against. Where a contractor appears to be underutilizing members of the protected groups and has not made good faith efforts, the conciliation agreement may also involve new training programs, special recruitment efforts, or other affirmative action measures. If conciliation efforts prove unsuccessful, OFCCP refers the case to the Solicitor of Labor for administrative enforcement proceedings under which a contractor is entitled to a hearing before an administrative law judge. Where a settlement is not reached before or after a hearing, the Secretary of Labor, upon the recommendation of the administrative law judge, may impose sanctions on the contractor, including loss of its government contract or debarment from future contracts. However, contractors are provided with full due process rights in the administrative process and may appeal the Secretary's order in Federal court.

HAS THE OFCCP HAD MUCH SUCCESS IN REDUCING EMPLOYMENT DISCRIMINATION?

Yes, progress has been made; but there is more work to be done. Research studies conducted in the 1980s documented that affirmative action had been effective in raising the occupational status of minority and female workers. (Leonard, Jonathan S., *Employment and Occupational Advance Under Affirmative Action*, August 1984). A similar conclusion was reached in a study of OFCCP-reviewed and unreviewed contractor establishments; with reviewed establishments showing a greater utilization of women and minorities in the higher-skilled and white collar jobs. (Crump, Griffin, *Employment Patterns of Minorities and Women in Federal Contractor and Noncontractor Establishments, 1974-1980: a Report of the Office of Federal Contract Compliance Programs*, June 1984.)

In spite of this progress, we know discrimination still exists. Studies such as the Glass Ceiling Commission report have provided evidence of continuing discrimination. Additionally, OFCCP's enforcement statistics also provide a testament to the continuing problem of discrimination in America: benefits worth nearly \$40 million, including back pay, for 11,000 victims of discrimination were obtained in settlements in 1994 alone. During FY 1994, four debarments were also ordered for contractors who had violated conciliation agreements that had been previously entered to resolve violations of Executive Order 11246.

The cases in which OFCCP is finding discrimination are at the entry level as well as in the executive suite. From New York City to San Diego, Atlanta to Seattle, companies continue to deny access to women, minorities, veterans and the disabled. In banking, engineering, construction, computers, higher education, the hotel industry, manufacturing, utilities, and hospitals, OFCCP continues to find discrimination; no industry has been without discrimination.

One egregious example of discrimination is an investigation of discrimination at an Alabama bank, in which our compliance officers recently found that the personnel officer, in interviewing potential hires, had interview notes that revealed

statements pertaining to race, the color of one's eyes, hair and other physical attributes. This bank official wrote:

"Candidate A was attractive white female, blond hair, blue eyes teller type appearance. . . Candidate B [however was described as] very large lips and hips, overweight, dark skin, black girl. Her hair is longer than most. Appearance is not good enough to meet the public."

These are not the interview notes of a bank official in 1965; these are the perceptions, stereotypes and biases of a person working for a Federal contractor in 1995. *And this is not an isolated case.*

Other examples include a large manufacturer of business machines in California that agreed to a back pay settlement to thirty qualified individuals who were discriminatorily denied jobs. This was in response to charges of gender and racial discrimination. The Washington, D.C. headquarters of an internationally known hotel and restaurant chain agreed to back pay and salary adjustments to forty top-level women and minorities who were paid less than their white male peers. In addition, the firm agreed to review its compensation practices to prevent a recurrence of the wage disparity.

A suburban Washington, D.C. hospital was found to have engaged in gender-based salary discrimination. Back pay was given to 52 women in the top six grades at the hospital. More than 100 minority applicants for part-time meter reader positions benefitted when an Ohio utility agreed to a financial settlement to resolve charges of racial discrimination.

A nationally known poultry processor in Texas agreed to back pay for 82 qualified individuals with disabilities who were discriminatorily denied employment. There are dozens of African-American women in Southern California who benefitted when a Southern California hotel agreed to provide back pay to resolve charges of race and sex discrimination in hiring. The hotel also agreed to consider them for job openings as they occur. In the State of Washington, veterans who were discriminated against by a utility, benefitted from the OFCCP's settlement in which the contractor agreed to provide back pay, training and hire a specialist to address veterans issues. And in resolving a case that was more than 18 years old, more than 6,000 women who were victims of gender discrimination were eligible to share in a multimillion dollar settlement.

To those who think that discrimination is no longer a problem, I submit that this nation has not reached the point of being a colorblind society and that the color of one's skin, or one's gender, continues to be considered in an assessment of one's ability to perform a job. As long as OFCCP continues to find discrimination at the entry level as well as in the executive suite; as long as the workplace fails to reflect the qualified and available women, minorities, disabled and veterans that are in the workforce and deserve a chance to prove their worth, then affirmative action is still necessary. And OFCCP must and will utilize affirmative action to ensure that all persons receive a fair opportunity to compete in employment with government contractors and subcontractors.

These enforcement cases are an important aspect of the contract compliance program. However, we not only enforce the law, we also seek out opportunities to discuss the underlying principles of the law and assist contractors in complying with the law.

MANAGERIAL REFORMS

Madam Chair, I recognize that OFCCP can do a better job in serving its "customers" — both contractors and individuals who are denied employment opportunities on the basis of their race, color, religion, sex, national origin, disability or veterans status. And I am committed to making sure that it does. Since I became head of the OFCCP on February 14, 1994, we have embarked on an exciting and exhaustive program of self-

assessment, streamlining and self-improvement with a primary focus on serving our customers better. Much has happened that I am very proud of and which I believe is good not only for OFCCP, but more importantly for Federal contractors and individuals who rely on us for employment protection.

We are considering ways to reduce paperwork requirements, eliminate unnecessary regulations, and simplify and clarify the regulations while improving the efficiency and effectiveness of our programs. This is not only in response to Vice-President Gore's initiative to Reinvent Government — but also in response to feedback we received from Federal contractors and complainants to our 1994 customer survey.

As a result of our regulatory review, which consisted, in part, of meetings with the public and our front line staff, we have begun the process for proposing regulatory changes that I believe will help transform OFCCP into a more customer service oriented organization. OFCCP is considering revisions to its affirmative action procedures in a number of areas, including these three: revision of the structure and format of the Affirmative Action Program (AAP); implementing the requirement for the annual summary report; and revising the compliance review process.

Our overall objectives are to reduce the paperwork, reduce the time it takes to prepare an Affirmative Action Plan, devise reporting requirements that make sense and that are tailored to the contractor's organization, and to focus on substantive issues, rather than boilerplate text. A revised review process will also allow OFCCP to better tailor and focus its limited compliance review resources. This should shorten the compliance review process in many instances. It also has the benefit of allowing OFCCP to concentrate its compliance efforts on contractors with the most significant employment problems.

We also plan to issue final rules under Section 503 in order to conform them with EEOC's regulations implementing Title I of the Americans with Disabilities Act. In addition, we plan to issue proposed regulatory revisions to our veterans' program regulations to conform them with the section 503 regulations where appropriate.

In order to insure that OFCCP has procedures and regulations that make sense, we will continue to have consultation meetings and regularly seek input from the contractor and constituent communities. Before finally implementing these revised review procedures, OFCCP will also engage in substantial pilot testing, in order to gauge the relative burden and impact of the changes on both the contractor community and the agency.

Working with the major contracting agencies, OFCCP is creating partnerships with contractors, community groups, and labor unions, to monitor the construction mega-projects, focusing on good faith efforts for recruiting women and minorities. We will provide technical assistance and consult on affirmative action from the preaward stage through the completion of these mega-projects. Finally, in an effort to ensure that our policies and procedures are well-grounded, we are testing several different strategies on a regional level.

PARTNERSHIPS AND OUTREACH

OFCCP continuously engages in efforts to foster partnerships between the Federal government, state and local governments, organized labor, employers including higher education institutions, public interest organizations and the contracting agencies, with the ultimate goal to ensure that equal employment opportunities are available to minorities, women, individuals with disabilities and covered veterans. In 1994, well over 17,000 customers received nearly 48,000 hours of compliance assistance.

For the first time, we are now drafting a "how to" manual — a technical assistance guide which will be used by compliance officers during workshops and seminars. This manual also will

be provided to contractors and the public upon request, and an electronic data network is being established to allow prompt responses to requests for information from customers. We are also providing first-time contractors with individualized assistance in developing their first affirmative action program. This one-on-one service is, we believe, a critical step in developing a partnership with the contractor.

OFCCP also plans to implement a customer service improvement plan which was developed based on data and comments received from surveys of construction and supply and service contractors. In the fourth quarter of FY 1994, we established a complaint appeals task force which successfully eliminated our entire backlog of discrimination complaint appeals in five weeks and developed procedures that are now used to avoid having future backlogs. We also meet regularly with other civil rights enforcement agencies to share information and to better coordinate our actions so as to avoid duplicating efforts and wasting limited resources.

RECOGNITION AND AWARDS

The Department of Labor believes that it is important to recognize exemplary efforts contractors have taken to ensure equal employment opportunity. The Secretary's Opportunity 2000 and our Exemplary Voluntary Efforts (EVE) annual awards programs recognize private employers who have worked effectively to support the creation of innovative and successful efforts to advance equal employment opportunity. The awards also recognize the significant investment that these employers are making to advance equal employment. In 1994, recipients of the Opportunity 2000 and EVE awards included Proctor and Gamble (Cincinnati, Ohio), Hyman/Manhattan Joint Venture (Fort Sam Houston, Texas), Rohm and Haas (Philadelphia, Pennsylvania), Union Bank (San Francisco, California) and Marshall University (West Virginia). Previous recipients include Hallmark of Kansas; Motorola of Illinois; Digital Equipment of Massachusetts; United Technologies of Connecticut; Saturn Corporation of Tennessee; and Dow Corning of Michigan.

Recipients of our first annual Exemplary Public Interest Contribution (EPIC) Awards included Women Employed (Chicago, Illinois), for its critical role in combating discrimination in the workplace; Crispus Attucks Association (York, Pennsylvania), for its efforts to provide jobs and training for

low income and minority residents; and the Council for Tribal Employment Rights and Cheyenne River Sioux Tribe (South Dakota and Washington) for providing exceptional training and employment for Native Americans on reservations.

CONCLUSION

Madam Chair and Members of this Committee, I believe that nondiscrimination and affirmative action as enforced by the OFCCP are useful, and indeed vital, tools in preventing and combating employment discrimination by Government contractors. I also believe that we can, and must, eliminate unnecessary regulation and paperwork imposed on contractors. Additionally, I am committed to ensuring that we are as efficient as possible in our agency's efforts to ensure equal opportunity in the workplace. Much remains to be done to achieve the Nation's goal of equal employment opportunity. Outreach and recruitment to expand the pool of qualified applicants and goals to measure progress are reasonable and useful elements of our program to ensure equal employment opportunity. With the changes we are implementing, I believe you will see OFCCP move much closer than ever to fulfilling this commitment.

As to the question of affirmative action as administered by OFCCP, I believe that Edwin L. Artzt, Chairman and Chief Executive Officer of Procter and Gamble, said it best earlier this year when he said:

Affirmative action has been a positive force in our Company. What's more, we have always thought of affirmative action as a starting point. We have never limited our standards for providing opportunities to women and minorities to levels mandated by law. We've always set our goals higher, and we have achieved them. Regardless of what government may do, we believe we have a moral contract with all of the women and minorities in our Company — a moral contract to provide equal opportunity for employment, equal opportunity for advancement, and equal opportunity for financial reward — and no change in law or regulation would cause us to turn back the clock. . . . Government can simplify the bureaucracy, and it should, but Government can also still preserve the principle that compliance mechanisms must exist, and it should do that, too.

This concludes my prepared testimony. I would be pleased to answer any questions. THANK YOU.

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resources, to see if there were other jobs within the company that he could fill. Binder said that he wanted to remain at LILCO, and Kelleher told Binder he would investigate available positions. Binder testified that he primarily relied on Kelleher to find him a new position within the company.

Meanwhile, Binder sought a transfer to a new project management group at LILCO but the move was blocked by William Catacosinos, the utility's chief executive officer. Near the end of 1986, the company informed Binder that his job would be eliminated effective Feb. 1, 1987. When no new job within the company came up, Binder was terminated on Feb. 3, 1987, and told that Catacosinos considered him a poor performer. Binder asked Kelleher about the CEO's reported comments but Kelleher told Binder that he should consider his termination as part of the reduction in force dismissals that had begun at LILCO in 1984. Binder told Kelleher he was incredulous that no other position could be found for him at LILCO.

Binder sued LILCO under ADEA and the New York Human Rights Law, claiming that LILCO had eliminated his staff assistant position, refused to create a new position for him, and had refused to consider him for other available positions because of his age. The U.S. District Court for the Eastern District of New York initially granted summary judgment for LILCO but that decision was reversed by the Second Circuit in 1991 and the case was sent back for trial (55 FEP Cases 1525).

At trial, Binder contended that LILCO considered only his age in declining to offer him another job within the company. LILCO claimed that it had legitimate, nondiscriminatory reasons for terminating Binder—he never applied for jobs that required self-nomination and he was overqualified for three vacant positions that were filled by management succession.

When the jury returned a verdict of approximately \$1.3 million in favor of Binder, Judge Jacob I. Mishler declined to accept the verdict. Instead, he sent the jury back to answer supplemental questions about exactly what jobs they thought Binder had been denied because of his age. After two tries, the jury identified 10 specific jobs that could have been but were not offered to Binder. Finding that the evidence did not support the jury's findings, Mishler granted LILCO's motion for judgment notwithstanding the verdict and in the alternative, its motion for a new trial (68 DLR AA-1, 4/11/94).

Lower Court Misconstrued *Hicks*

On appeal, the court held that Mishler should not have sent the jury back to answer supplemental

questions after it had reached its verdict for Binder.

The appeals court emphasized that neither party had asked that the jury be instructed to identify the specific jobs that Binder was allegedly denied, and that attorneys for both sides had delivered closing arguments in anticipation of a general verdict. Although the Second Circuit acknowledged that sometimes it has approved the use of special interrogatories to a jury that were not disclosed to counsel until after closing argument, Winter found that their use in this case was improper. "[T]here is no authority upholding the submission of fact-specific interrogatories to a jury after a general verdict has been returned, and we note our disapproval of this procedure absent extraordinary circumstances," the court said.

The court also held that Mishler misconstrued the Supreme Court's 1993 decision in *Hicks* by faulting Binder's failure to produce "affirmative evidence" of age discrimination in addition to evidence that cast doubt on LILCO's stated reasons for terminating him. Under *Hicks*, a jury's rejection of the employer's asserted reasons does not compel a finding of discrimination but it permits the jury to infer discrimination, the Second Circuit said. In this case, the jury had sufficient evidence to reject LILCO's argument that it did not want to transfer Binder to a job for which he was overqualified and that those were the only jobs available when he was terminated.

"Resort to a pretextual explanation is, like flight from the scene of a crime, evidence indicating consciousness of guilt, which is, of course, evidence of illegal conduct," Winter wrote. "In so stating, we do not exclude the possibility that an employer may explain away the proffer of a pretextual reason for an unfavorable employment decision. Such an explanation might include, for example, protection of a business secret or even protection of the reputation of an employee who had engaged in undesirable conduct. No such explanation was offered in the instant matter."

Binder's failure to apply for jobs through the company's posting process does not bar recovery because the jury could reasonably find that the plaintiff had effectively applied for any available job within the company through his conversation with Kelleher, the court added. "While such a conclusion was by no means required, it was permissible," Winter wrote.

The Second Circuit also held that the district court abused its discretion in granting a new trial to LILCO, finding that the jury's verdict "while not inexorable, was clearly not seriously erroneous."

DLR

7-6-95

Age Discrimination

EVIDENCE OF PRETEXT HELD SUFFICIENT TO SUPPORT JURY'S AGE BIAS VERDICT

A federal district court erred in overturning a jury verdict in favor of a former Long Island Lighting Co. engineer on the grounds that the plaintiff failed to produce "affirmative evidence" of age discrimination in addition to evidence that LILCO's stated reasons for terminating him were pretextual, the U.S. Court of Appeals for the Second Circuit has ruled (*Binder v. Long Island Lighting Co.*, CA 2, No. 94-7483, 6/8/95).

Reinstating a jury verdict in favor of former LILCO employee Donald Binder, the appeals court rejected the "pretext plus" standard embraced by the district court. Instead, the Second Circuit said that under the U.S. Supreme Court's 1993 opinion in *St. Mary's Honor Center v. Hicks*, a jury may infer age discrimination from evidence that the employer's stated reason for an employment decision was a pretext, even if there is no direct evidence of age discrimination (62 FEP Cases 96).

In his opinion for the court, Judge Ralph Winter also held that the trial judge improperly relied on the jury's answers to post-verdict supplemental questions to overturn the jury's original verdict in favor of Binder. The district court abused its discretion by requiring the jury to answer supplemental questions when they had not been requested by the parties and were administered by the judge after closing arguments and the jury's original verdict, the Second Circuit said.

The court reduced the jury award, however, concluding that Binder is entitled to approximately \$1.1 million, representing lost wages plus liquidated damages for a willful violation of the Age Discrimination in Employment Act. Binder's award for pain and suffering was also reduced to \$5,000. The case was remanded for further consideration of attorneys' fees and post-judgment interest.

Judges J. Daniel Mahoney and John C. Godbold joined in the court's opinion.

Jury Asked To Identify Specific Jobs

A mechanical engineer and nuclear physicist by training, Binder had worked for LILCO in a variety of positions for 31 years when he was told in 1986 that his job was being eliminated. Binder, who was 57 years old at the time, conferred with Robert Kelleher, LILCO's vice president of human

(MORE)

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DLR

7-6-95

EEOC

COMMISSIONER RICKY SILBERMAN WILL HEAD NEW CONGRESSIONAL OFFICE

Ricky Silberman, a long-time Republican member of the Equal Employment Opportunity Commission, will leave the agency later this month to become executive director of the newly created Office of Compliance, which will oversee the application of federal civil rights and labor protection laws to employees on Capitol Hill.

Silberman, whose commission term expires this month, will assume her new duties July 24.

She was named to EEOC by President Reagan in 1984 and served as vice-chairman for eight of her nearly 11 years at the agency. A former teacher, Capitol Hill aide, and staffer at the Federal Communications Commission, she is married to Judge Laurence Silberman of the U.S. Court of Appeals for the District of Columbia Circuit.

The Office of Compliance was created under the Republican-supported Congressional Accountability Act, signed by President Clinton earlier this year. The new law applies major workplace laws—including Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act—to some 39,000 employees of Congress and related, legislative agencies. The office is charged with promulgating regulations and procedures for enforcing the act.

Silberman was selected by the five-member board of directors of the office, headed by Washington, D.C., labor lawyer Glen Nager. The board members—all labor lawyers—serve for five-year terms in an unpaid capacity and were named to their positions in May by the congressional leadership (101 DLR A-13, 5/25/95).

EEOC General Counsel Sworn In

Newly confirmed General Counsel Clifford Gregory Stewart was sworn in at EEOC headquarters July 5 by Chairman Gilbert Casellas.

Stewart, the former director of the New Jersey Division on Civil Rights, was named to the top legal job at the commission by Clinton in February and was confirmed by the Senate June 30 (128 DLR A-14, 7/5/95).

EEOC News Clips

for
July 6, 1995



Compiled by
The Office of Communications and Legislative Affairs

It's pretty easy for people like that to be told by somebody else in the middle of a political campaign with a hot 30-second ad, "You didn't do anything wrong; they did it to you." But what I want you to understand is, that doesn't make their feelings any less real. You maybe aggrieved. Somebody may have been discriminatory against you, but that doesn't make their feelings any less real, either.

I got a letter the other day from a guy I went to grade school with. He was a very poor boy. He grew up and became an engineer. He worked over 20 years for a Fortune 500 company. They had a good year last year; they made a bunch of money. They laid off three of their engineers, gave their work to two others who were younger and less well-paid. And they trumpeted the fact that one of the other people was a minority. This guy wrote me a letter saying, "Mr. President, I'm glad you ordered a review of those programs, and I'm glad you didn't abandon them." But he said, "You have to understand what a lot of people are feeling out here is what I'm feeling. Three of us who are 50-year-old white males got fired. Now, they got rid of us because they wanted to cut their salary costs and cut their future health care and retirement costs. And the fact that we'd given over 20 years to our company didn't mean anything. There was no affirmative action reason they got rid of us. But it's easy for people like us to believe that's why it happened, because people then say, well, look at us, we're doing better on another front."

What I'm telling you, folks, is that what we have done to give more opportunities to women and minorities is a very good thing. And we should not stop doing that. But—and I'll give you three examples that I talk about all across the country that I'm proud of that prove that what we're doing is right.

If you look at the United States military, the United States Army not only produced General Powell, it produced a lot of other African-American generals and a lot of Hispanic generals. I was with a retired African-American general in Dallas yesterday who is phenomenally successful in business now in leading the fight to preserve the national service movement in Texas, because he sees it as giving young people the kind of oppor-

tunity that he got in the Army. And nobody in America thinks that's a bad thing.

But they do make a special effort to make sure every time there's a promotion pool that it reflects the racial and gender makeup of the people in the rank just below. No unqualified person ever gets promoted, but they do really work hard to make sure that people's innate abilities get developed and that they're there and they get a chance. And it's made a difference.

I'll give you another example. The Small Business Administration under my administration last year increased loans to minorities by over two-thirds, to women by over 80 percent, but didn't increase loans to white men. And we didn't make a single loan to an unqualified person. We gave people who never had a chance before a chance to get in business. I'm proud of that. We didn't hurt anybody.

Look at the appointments our administration has made to Federal judgeships. Look at them. We have appointed more women and minorities to the Federal bench than the past three Presidents, one Democrat and two Republicans, combined. But you know what I'm really proud of? We have by far the largest percentage of judges rated well-qualified by the American Bar Association. We did the right thing giving people a chance.

So we have to keep working on this, but we have to realize that there is a real problem out there in this country. We can't deny that. There are a lot of people who go home every night and look across the table at their families and think that either they have failed or they have been stuck by somebody treating them unfairly. That is what we must respond to.

What the people who want to use this issue out here for political gain hope is that we will get in a big old shouting match with them, and they'll have more people on their side of the shouting match than we will, and it'll be a wedge, and they will drive it right through the stake of progressive efforts in the State and in this Nation.

And what we need here is what I've tried to do in Washington. We need to evaluate all these programs; we need to defend without any apology whatever anything we're

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But we do not—we do not need to say that we're insensitive to what's going on in these other people's lives. We do not need to say that we are for people who are unqualified getting Government-mandated benefits over people who are. And we do not need to shrink as Democrats when we think there has been a case, however rare, of reverse discrimination. We entered a lawsuit, our Justice Department did, on behalf of a young, white man at Southern Illinois University who was told he couldn't even apply for a public job because he was the wrong gender and the wrong race. Now, that's clearly wrong.

So what we need to do is to say to these people—and what you ought to do in California—you can do it—you need to say, look, look around this room here. We're living in a global society. Does anybody seriously believe that we'd be better off if we were divided by race and gender? Look at this room. California, when you get through this terrible downturn caused by the military cutbacks, is once again going to become the engine of America's economy in large measure because of your diversity. Because of your diversity. And everything we do to empower people, everything we do to empower people to contribute—when you empower people with disabilities to work and to be self-sufficient, you strengthen the rest of us. When we empower Native Americans through letting them have more economic power, more say over their own tribal affairs, that helps the rest of us because more people live up to their God-given capacity. That's important. When we find every person we can—however poor, however different, wherever they are—and give them a chance to become what they ought to be, we're all better off.

So we can use this occasion for a great national conversation. We don't have to retreat from these affirmative action programs that have done great things for the American people and haven't hurt other people. We don't. But we do have to ask ourselves, are they all working? Are they all fair? Has there been any kind of reverse discrimination? And more importantly, what we really ought to ask ourselves is, what are we going to do

about all these folks that are out there working hard and never getting ahead. That's what the middle class tax cut is all about.

What are we going to do? What are we going to do about all these people who are being riffed by these big companies and by the Federal Government—although our severance package is much more humane—what are we going to do about these people in middle age who are being told, "Thank you very much for the last 25 years, but goodbye, goodbye before your full pension vests, goodbye 15 years before you can draw your pension. Goodbye to your nice health care package for yourself and your family. Goodbye to your future raises." What are we going to do for them?

~~Use this opportunity to tell people that we have to do this together. I'm pleading with you, stand up for the affirmative action programs that are good, that work, that bring us together, but don't do it in a way that gives them a cheap political victory. Do it in a way that reaches out and brings people in and says we care about you, too. Don't do it in a way that gives them a cheap political victory.~~

Now, I want to read you something. I want to read you something, and then I'm done. I got a letter—I got a great little poster. I had two posters greeting me when I came in from my morning run, one from a local kindergarten and one from the Bowling Green Charter School Number 8, Sacramento, California. And these children had written in their little handprints the virtues they were being taught in school. I want you to listen to these. These are what we are teaching our children: cooperation, respect, patience, caring, sense of humor, common sense, friendship, responsibility, flexibility, effort, creativity, initiative, communication, problem-solving, integrity, perseverance.

You know what? No place in there, this list of what we are teaching our children about how they ought to live is—demonize people that aren't like you, look for ways to divide people one from another, take a quick victory if you can by making people angry at one another. We do not practice our lives as citizens the way we teach our children to live, the way we try to run our families, the way we try to run our workplaces.

Now, that's what I'm asking you to do. Go out of here and engage these people and say, "Listen, we are moving this economy, we're moving on the problems of the country, we're changing the way the Government works, but we had better behave as citizens the way we try to teach our children to behave as human beings and the way we try to run the rest of our lives." You do that, and the Democrats are coming back.

Thank you, and God bless you.

NOTE: The President spoke at 10:22 a.m. at the Convention Center. In his remarks, he referred to Don Fowler, chairman, Democratic National Committee; Bill Press, chairman, and Arlene Holt, first vice chair, California Democratic Party; Willie L. Brown, Jr., California State Assembly speaker; and Bill Lockyer, California State Senate president pro tem.

Remarks at the National Education Association School Safety Summit in Los Angeles, California
April 8, 1995

Thank you. Thank you for your welcome. Thank you for your work. Thank you for that very moving film. Thank you, Keith Geiger, for your introduction and for your outstanding leadership of this organization. You know, Keith Geiger is quite a gardener, and it's quite a beautiful day. It shows you how devoted he is that he's even inside, much less giving a speech. [Laughter] Thank you, Dick Riley, for such a wonderful job as Secretary of Education and for those fine remarks. Senator Carol Moseley-Braun, I'm delighted to see you. We're a little out of place here today. It's actually a pretty good time to be in Washington, DC. The cherry blossoms are out—and so is Congress. [Laughter] It's a pretty good time to be there. [Laughter] I know there are a lot of Los Angeles county supervisors and city council members here today, and I see your distinguished police chief. I know there are other—[applause]—and I thank you for being here, sir.

I also know that this is not just a gathering of teachers. There are a lot of school support folks here and parents and police officers and concerned citizens about a subject that I care

a great deal about as you could see from the film that was put together by the NEA.

Shortly before the New Hampshire primary in 1992, I was walking in a hotel one night in New York, and some of you may remember, since you helped me, that I was not doing very well then, and my political obituary was being written over and over again. [Laughter] "Will he fall into single digits in New Hampshire, or will he hang on at 11 percent?" And I was feeling pretty sorry for myself. And we were having this big fundraiser in New York, and for all I knew, there wouldn't be three people there. And they took me in the back way, you know, and I walked through the kitchen, totally preoccupied with my own problems.

And all of a sudden this gentleman who was working in the hotel came up to me and said, "Governor, my boy, who is 10, he studies politics in the school, and he says I should vote for you." "So," he says, "I'm going to vote for you." "But" he said, "I want you to do something for me." I said, "What is it?" He said, "I want you to make my boy free."

I said, "Well, what do you mean?" He said, "Well, I came here from another country, and we were very poor there, but at least we were free." He said, "Now we live in a place where we have a park across the street, but my boy can't go to the park unless I go with him to protect him. We have a neighborhood school that's just down the street, but my boy can't go to school unless I walk with him. If my boy is not safe, he is not free. So, if I vote for you as he asks, will you make my boy free?"

And the first thing I felt, frankly, was shame that I was preoccupied with my own problems. And the second thing I thought was, you know, how can we have learning in this country until our children are free?

Now, we're having this huge debate in Washington about what the role of Government ought to be. Yesterday at the American Newspaper Editors Association in Dallas, I had a chance to say where I stood on the issues remaining, both in the Republican contract and in the New Covenant that I ran on in 1992.

We know that we have a lot of economic challenges, that we have to grow the middle

THE WHITE HOUSE
WASHINGTON

DATE: 3/8/96

TO: Affirmative Action Meeting Attendees
Monday 3/11 @ 4:00 p.m.

FROM: White House Counsel Marvin Krislov
Room 130, OEOB, x6-7903

- FYI Additional background/
reading material for
- Appropriate Action Monday's
- Let's Discuss meeting.
- Per Our Conversation
- Per Your Request
- Please Return
- Other

PROPOSED REFORM OF AFFIRMATIVE ACTION IN FEDERAL PROCUREMENT

- This document summarizes a proposal for reform of race-based affirmative action measures in federal procurement that target assistance to minority-owned businesses through programs that aid small firms that are owned by socially and economically disadvantaged individuals ("SDB's"). The proposal is designed to ensure that such programs comport with the Supreme Court's ruling last June in Adarand Constructors, Inc. v. Peña, which held that federal race-based affirmative action programs are subject to the constitutional standard of strict scrutiny.
- The Justice Department has reviewed the SBA's 8(a) program, pursuant to which, some federal contracts are reserved for disadvantaged businesses that are participants in that program. The Department currently is defending the 8(a) program in litigation under the Adarand standards. The proposed reforms do not directly address possible modifications to the 8(a) program. However, through application of the "benchmark" limitations discussed below, the proposal would affect agency use of 8(a).

I. CERTIFICATION AND ELIGIBILITY

- SDB programs assist small firms owned by individuals that are disadvantaged socially (subjected to racial or cultural bias), and economically (that bias has led to decreased economic opportunities compared to others). Applicants to these programs will be required to submit a form to the procuring agency verifying their eligibility.
- Members of designated racial and national origin groups presently are presumed by statute to be socially and economically disadvantaged. The proposal does not affect those presumptions. Under the proposal, nonminority applicants may establish by a preponderance of evidence -- instead of the current clear and convincing standard -- that they are socially and economically disadvantaged. This change will open SDB participation to more women and nonminorities.
- All applicants to SDB programs will be required to submit a certification from an SBA approved organization verifying that the individuals claiming disadvantage own and control the company as defined by SBA regulations.

II. RACE-NEUTRAL MECHANISMS

- Agencies will be required to maximize the use of technical assistance, outreach, and other race neutral means to increase minority opportunity and participation in federal procurement, thereby decreasing reliance on race-based mechanisms.

III. ESTABLISHMENT OF BENCHMARK LIMITATIONS

- In order to ensure that race-conscious procurement is not used unnecessarily, benchmarks will be developed for each industry in which the government contracts. Benchmarks will seek to measure the level of minority contracting that would exist absent the effects of discrimination.
- Benchmarks will be calculated by combining the availability of minority firms in the industry (using census figures) with an adjustment for the amount that discrimination has suppressed that availability (using a regression analysis similar to that used in employment discrimination cases).

IV. APPLICATION OF BENCHMARK LIMITATIONS

- Where minority participation falls below the benchmark, a price or evaluation credit will be authorized for the evaluation of bids by SDBs and prime contractors who commit to subcontract with SDBs.
- When SDB participation exceeds the benchmark, the Office of Federal Procurement Policy will lower or suspend the use of the credit. When that occurs, the SBA concurrently will limit the use of the 8(a) program in that industry by limiting entry, speeding graduation, or limiting the number of 8(a) awards in the industry.
- The proposal would establish a three-year moratorium on the use of existing statutory authority to set-aside contracts for SDB's, other than through the 8(a) program. Thereafter, SDB set-asides may only be employed in agency procurement in an industry if particular conditions are found to exist in that industry.

THE WHITE HOUSE

WASHINGTON

February 3, 1997

MEMORANDUM

FOR: SYLVIA MATHEWS
VICKI RADD

CC: STEVE WARNATH

FROM: DAWN CHIRWA *me*

SUBJECT: Piscataway Case

For your information, I am forwarding to you a memorandum I sent to Jack and Cheryl concerning the recent Supreme Court request for the Justice Department's views in the Piscataway case. I wanted to inform you also as to timing on this issue: The Office of Civil Rights at Justice is in the process of drafting a response to the Supreme Court's request. Civil Rights plans to complete a draft response by the end of this month to circulate within Justice.

If you have any questions on this issue at any time, please let me know.

Attachment

THE WHITE HOUSE

WASHINGTON

January 23, 1997

MEMORANDUM FOR JACK QUINN

CC: CHERYL MILLS

FROM: DAWN CHIRWA *DWC*

SUBJECT: Board of Education of Piscataway v. Taxman

On Tuesday of this week, in the case of The Board of Education of Piscataway v. Taxman, the Supreme Court requested the views of the Justice Department in the case, even though, at this time Justice is not a party to the case. Specifically, the Supreme Court requested Justice's view as to whether the Piscataway school board violated federal law in deciding to lay off the appellee Sharon Taxman.

Taxman sued the school board after the board, which needed to lay off a teacher, chose to lay off Taxman, who is white, rather than a black teacher. Both Taxman and the black teacher had similar seniority and credentials, and the board claimed that it's decision was proper for the sole reason of providing students with a racially diverse staff. The board did not provide any further justification for its action. Taxman claimed that the board's action violated Title VII. When this case was first filed in 1989, the Justice Department joined the case on the side of Taxman. The school board lost the case in the district court and appealed in 1994.

You may remember that in 1994, after much heated discussion within Justice, the Department decided to switch sides in the case in order to defend affirmative action policies -- both in hiring and lay off situations -- aimed at promoting racial diversity. However, the Third Circuit denied Justice's request to submit an amicus brief on the side of the school board and ruled against the board.

Now, Justice must decide whether to maintain its 1994 position or moderate or change entirely that position in responding to the Supreme Court's request. This is going to be a difficult decision for Justice to make, but it has a few months to file its response. However, I wanted to alert you to the situation now as the Department has begun internal discussions on the matter. Also, I will make sure to keep abreast of the progress of these ongoing discussions.

Withdrawal/Redaction Marker

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001. draft	Event Briefing (1 page)	n.d.	P5

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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 advise 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]

. 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.

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]



Text

**EQUAL OPPORTUNITY ACT OF 1996 (HR 2128)
AS AMENDED BY HOUSE JUDICIARY SUBCOMMITTEE MARCH 7, 1996
AND SECTION-BY-SECTION ANALYSIS**

**Amendment in the Nature of a Substitute
To H.R. 2128
Offered by Mr. Canady of Florida**

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Equal Opportunity Act of 1996".

SEC. 2. PROHIBITION AGAINST DISCRIMINATION AND PREFERENTIAL TREATMENT.

Notwithstanding any other provision of law, neither the Federal Government nor any officer, employee, or agent of the Federal Government—

(1) may intentionally discriminate against, or may grant a preference to, any person or group based in whole or in part on race, color, national origin, or sex, in connection with—

(A) a Federal contract or subcontract;

(B) Federal employment; or

(C) any other federally conducted program or activity; or

(2) may, in connection with any Federal contract or subcontract or Federal financial assistance, require or encourage the Federal contractor or subcontractor, or the recipient of that assistance, to discriminate intentionally against, or grant a preference to, any person or group based in whole or in part on race, color, national origin, or sex.

SEC. 3. AFFIRMATIVE ACTION PERMITTED.

This Act does not prohibit or limit any effort by the Federal Government or any officer, employee, or agent of the Federal Government—

(1) to encourage businesses owned by women and minorities to bid for Federal contracts or subcontracts, to recruit qualified women or qualified minorities into an applicant pool for Federal employment, or to encourage participation by qualified women and minorities in any other federally conducted program or activity, if such recruitment or encouragement does not involve granting a preference, based in whole or in part on race, color, national origin, or sex, in selecting any person or group for the relevant employment, contract or subcontract, benefit, opportunity, or program; or

(2) to require or encourage any Federal contractor, subcontractor, or recipient of Federal financial assistance to recruit qualified women or qualified minorities into an applicant pool for employment, or to encourage businesses owned by women and minorities to bid for Federal contracts or subcontracts, if such requirement or encouragement does not involve granting a preference, based in whole or in part on race, color, national origin, or sex, in selecting any individual or group for the relevant employment, contract or subcontract, benefit, opportunity, or program.

SEC. 4. EXEMPTIONS.

(a) **Historically Black Colleges and Universities.**—This Act does not prohibit or limit any act that is designed to benefit an

institution that is a historically Black college or university on the basis that the institution is a historically Black college or university.

(b) **Indian Tribes.**—This Act does not prohibit or limit any action taken—

(1) pursuant to a law enacted under the constitutional powers of Congress relating to the Indian tribes; or

(2) under a treaty between an Indian tribe and the United States.

(c) **Certain Sex-Based Classifications.**—This Act does not prohibit or limit any classification based on sex if—

(1) sex is a bona fide occupational qualification reasonably necessary to the normal operation of the entity subject to the classification;

(2) the classification is designed to protect the privacy of individuals; or

(3)(A) the occupancy of the position for which the classification is made, or access to the premises in or on which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any Act or any Executive order of the President; or

(B) the classification is applied with respect to a member of the Armed Forces pursuant to lawful authority.

(d) **Immigration and Nationality Laws.**—This Act does not affect any law governing immigration or nationality, or the administration of any such law.

SEC. 5. COMPLIANCE REVIEW OF POLICIES AND REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the head of each department or agency of the Federal Government, in consultation with the Attorney General, shall review all existing policies and regulations that such department or agency head is charged with administering, modify such policies and regulations to conform to the requirements of this Act, and report to the Committee on the Judiciary of the House Of Representatives and the Committee on the Judiciary of the Senate the results of the review and any modifications to the policies and regulations.

SEC. 6. REMEDIES.

(a) **In General.**—Any person aggrieved by a violation of section 2 may, in a civil action, obtain injunctive or equitable relief (which may include back pay). A prevailing plaintiff in a civil action under this section shall be awarded a reasonable attorney's fee as part of the costs.

(b) **Construction.**—The section does not affect any remedy available under any other law.

SEC. 7. EFFECT ON PENDING MATTERS.

(a) **Pending Cases.**—This Act does not affect any case pending on the date of enactment of this Act.

Bill reversing affirmative action advances

Panel Democrats rip GOP measure

By Ruth Larson
THE WASHINGTON TIMES

Legislation aimed at rolling back 30 years of affirmative-action programs yesterday cleared its first hurdle as a House Judiciary subcommittee passed a measure to bar race- or sex-based preferences in federal programs.

After three hours of sometimes contentious debate, members voted 8-5 along party lines to send the Equal Opportunity Act of 1996 to the full Judiciary Committee.

The Equal Opportunity Act of 1996 would bar race and sex preferences in federal hiring, awarding of federal contracts, and administering federal programs.

During yesterday's session, the definition of "preference" was modified to include "an advantage of any kind," including quotas, set-asides, numerical goals, timetables, or other numerical objectives.

The explosive issue seemed a high priority just after the 1994 elections that swept Republicans into power, but

it has all but dropped off the national agenda in recent months.

The California presidential primary on March 26 could rekindle the debate, in part because of the state's controversial civil rights initiative.

"I don't see how it can be avoided," Rep. Charles T. Canady, the bill's chief sponsor, told The Washington Times. "It's an issue on the ballot of the largest state in the country. People will be talking about it."

The Florida Republican argues that affirmative-action policies adopted with the best of intentions in the early 1960s have grown into a discriminatory system of preferences that threatens to Balkanize America.

"We now have a sprawling regime of hundreds of federal programs that treat citizens differently based on skin color and sex. All it takes to qualify is to possess the right skin color or gender," Mr. Canady said.

"This is a system which is based on

the belief that in order to overcome discrimination, we must practice discrimination," he told the panel.

Democrats on the panel disagreed vociferously. Rep. Patricia Schroeder, Colorado Democrat, said, "This bill is an attempt to say to the 'angry white males' of the 1994 election, 'You won! We're going back to the 1950s.'"

"This is just a cheap way of getting support by turning one group of people against another," charged Rep. Jose E. Serrano, New York Democrat.

Rep. John Conyers Jr., Michigan Democrat, said the bill appealed to "fear and misunderstanding." "The shadow of [Pat] Buchanan hangs very heavy over this committee today."

Rep. Henry J. Hyde, Illinois Republican and Judiciary Committee chairman, has not yet set a firm date for considering the measure, although it is unlikely to come up before the Easter recess at the end of March, said spokesman Sam Stratman.

Six months ago, House Majority Leader Dick Arney, Texas Republican, said in a memo that the House leadership was committed to bringing the bill to the House floor by spring. Mr. Arney's office now says it expects floor consideration sometime later in the year.

The companion Senate bill, introduced in July, is pending in the Labor and Human Resources Committee.

Rep. Barney Frank, Massachusetts Democrat, contended the bill goes far beyond simply codifying last summer's Supreme Court ruling that federal affirmative-action programs must meet narrowly defined criteria.

For example, he complained that the bill outlaws any use of numerical standards to measure progress.

"This is one of the few examples in human life where you're not allowed to count," he said. "If I need to lose weight, I can't say 'I need to lose 20 pounds,' because that'd be a violation of this law. I can only say, 'I better lose some pounds.'"

(b) Pending Contracts and Subcontracts.—This Act does not affect any contract or subcontract in effect on the date of enactment of this Act, including any option exercised under such contract or subcontract before or after such date of enactment.

SEC. 8. DEFINITIONS.

In this Act, the following definitions apply:

(1) Federal Government.—The term "Federal Government" means the executive and legislative branches of the Government of the United States.

(2) Preference.—The term "preference" means an advantage of any kind, and includes a quota, set-aside, numerical goal, timetable, or other numerical objective.

(3) Historically Black College or University.—The term "historically Black college or university" means a part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

EQUAL OPPORTUNITY ACT OF 1996 (H.R. 2128 as amended March 7, 1996)

Section-by-Section Analysis

The purpose of this Act is to ensure that the Federal government conducts its activities consistent with the bedrock American principles of nondiscrimination and genuine equal opportunity.

To further this purpose, the Act draws an important distinction between affirmative action, which it expressly permits and protects, and the granting of racial and sex-based preferences, which it prohibits. Under the Act, the Federal government would be permitted to make affirmative efforts — even efforts targeted at women and minorities — to increase the size of the applicant pool for Federal jobs, contracts, and other benefits. In order for opportunity genuinely to be equal, it must be made known as widely as possible.

But there is another crucial component of equal opportunity. Once the applicant pool for a given opportunity has been assembled, all candidates must be judged by the same standards and without regard to skin color or sex. This is the only policy consistent with the fact that, as the Supreme Court recently reminded us, the Constitution "protects *persons*, not *groups*." And particularly when the Federal government itself is involved, the only way to ensure that all persons are afforded the equal protection of the laws is to pursue an unyielding policy of nondiscrimination and equal treatment.

Accordingly, the Act would prohibit the Federal government from discriminating against, or granting any preference to, any person based in whole or in part on race or sex in connection with federal employment, federal contracting and subcontracting, and other federally-conducted programs and activities. It would also prevent the Federal government from requiring or encouraging others to grant such preferences as a condition of receiving Federal contracts or financial assistance.

SECTION 1. SHORT TITLE.

Section 1 provides that the Act may be cited as the "Equal Opportunity Act of 1996."

SECTION 2. PROHIBITION AGAINST DISCRIMINATION AND PREFERENTIAL TREATMENT.

Section 2(1) prohibits the Federal government or any officer, employee, or agent of the Federal government from intentionally discriminating against, or granting a preference to, any person or group, based in whole or in part on race, color,

national origin, or sex. This prohibition applies to Federal employment, contracting, subcontracting, and other federally conducted programs or activities.

Whereas Section 2(1) forbids the Federal government itself from discriminating or granting preferences, Section 2(2) prohibits the Federal government from requiring or encouraging others — private corporations, state and local governments, and the like — to discriminate or grant preferences based on race or sex in connection with Federal contracts, subcontracts, or other Federal financial assistance. These other persons or entities are entirely free to engage in preferential practices that are otherwise permitted by law; Section 2(2) simply prevents the Federal government from requiring or encouraging them to do so. Nothing in this or any other section of this Act affects the Voting Rights Act or its enforcement.

The use of race, color, national origin, or sex "in part" (*i.e.*, as one factor) in a hiring or promotion decision, a contract or subcontract award, or a decision to permit a person to participate in any Federal program, is forbidden by Section 2. When race, ethnicity, or sex is used as a so-called "plus factor" in determining the outcome of a decision, that is a prohibited preference.

There is, of course, no inconsistency between simultaneously prohibiting intentional discrimination and preferential treatment; indeed, Section 2 is premised on the notion that racial and sex-based preferential treatment is discrimination. Likewise, prohibiting discrimination and preferential treatment is fully consistent with a commitment to affirmative action. As originally conceived, Executive Order 11246 equated "affirmative action" with the principle of nondiscrimination. Pursuant to that Order, each Federal contractor is required to agree that it "will *not discriminate* against any employee or applicant for employment because of race, color, religion, sex, or national origin," and that the contractor "will take *affirmative action* to ensure that applicants are employed . . . *without regard* to their race, color, religion, sex, or national origin."

Unfortunately, bureaucratic implementation of the Executive Order over a period of years has converted it from a program aimed at eliminating discrimination into one that relies on it in the form of preferences. Section 2 does not overturn or repeal the Executive Order; rather, it restores its original meaning and purpose of ensuring that Federal contractors are vigilantly committed to the principle of nondiscrimination.

Section 2(1)(C) prohibits the Federal government from granting preferences in connection with any federally conducted programs or activities. A federally conducted program or activity is any program or activity authorized by Federal law or administered by the Federal government. As noted above, any non-Federal policies and programs are therefore permissible under the Act unless they result entirely from Federal requirements or encouragements that accompany Federal contracts, subcontracts, or other Federal financial assistance — in which case they are prohibited under section 2(2) of the Act.

Section 2 does *not* forbid preferences on any basis other than race, color, national origin, or sex. Thus, a preference in contracting based on economic criteria, the size of the company seeking the contracting business, veteran's status, or some other neutral social criteria is not forbidden by the Act, so long as every American has an equal opportunity to meet the criteria without regard to race, color, national origin, or sex.

In addition, Section 2 does *not* forbid state and local governments, colleges and universities, or other private entities, including Federal contractors or recipients of Federal financial assistance, from *voluntarily* engaging in racial, ethnic, or gender preferences that are otherwise permitted by law. Moreover, because this act applies only to the executive and legislative

branches of the Federal government, *see* section 8(1), it in no way affects a court's remedial authority under any other statute.

SECTION 3. AFFIRMATIVE ACTION PERMITTED.

Section 3 makes explicit the fact that nonpreferential efforts by the Federal government to expand opportunities — that is, affirmative action, properly understood — are consistent with the Act. This section provides that the Act does not prohibit or limit any effort by the Federal government (1) to recruit qualified members of minority groups or women, so long as there is no preference granted in the actual award of a job, promotion, contract, or other opportunity, or (2) to require the same recruitment of its contractors and subcontractors, so long as the Federal government does not require preferences in the actual award of the benefit.

All affirmative steps required by Federal agencies of their contractors and subcontractors, otherwise authorized by law and consistent with this Act, remain lawful under this Act. Thus, Federal agency requirements that contractors cast their recruiting nets widely remain valid, so long as such agencies do not require contractors to set numerical racial, ethnic, and gender objectives for recruitment, and do not require actual hiring or other decisions to be made, in whole or in part, on the basis of race, color, ethnicity, or sex.

Consistent with these conditions, for example, Federal agencies may require a contractor to: send notices of its job opportunities to organizations, if available, with large numbers of minorities or women in their membership; include educational institutions with large numbers of minorities and women among the educational institutions at which the contractor recruits; and spend a portion of the budget it uses to advertise its job opportunities with media outlets, if available, that are specially targeted to reach minorities and women.

SECTION 4. EXEMPTIONS.

Section 4 exempts from the Act's general prohibition certain types of classifications that might otherwise constitute a "preference" as defined in the Act. It is important to note that this section does not create any new classifications, and it in no way adds to, detracts from, or alters such classifications as may currently exist in the designated areas.

Section 4(a) provides that the Act does not prohibit or limit Federal assistance to a historically Black college or university on the basis that the institution is an historically Black college or university. Historically Black colleges and universities were created in response to the intentional exclusion of African-Americans from institutions of higher education, both public and private. These institutions are open to students of all races on a nondiscriminatory basis. Thus, Federal assistance to historically Black colleges and universities is not a "preference" for purposes of this Act.

Section 4(b) provides that this Act does not prohibit or limit any action taken (1) pursuant to a law enacted under the constitutional powers of Congress relating to Indian tribes, or (2) under a treaty between an Indian tribe and the United States.

Section 4(c)(1) provides that the Act does not prohibit or limit sex-based classifications that are bona fide occupational qualifications reasonably necessary to the normal operations of the entity subject to the classification. This provision is modeled on the bona fide occupational qualifications provision of Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. §2000e-2(e). Under that and other laws, the courts have determined that bona fide occupational qualifications may apply to jobs such as prison guards or occupations raising similar privacy concerns.

Section 4(c)(2) provides that the Act does not prohibit or limit any classification based on sex if the classification is

designed to protect the privacy of individuals. While there are not currently many such classifications in existence, this provision is necessary, for example, to preserve single-sex restrooms in federal buildings.

Sections 4(c)(3)(A) and (B) provide that the Act does not prohibit or limit gender classifications that (1) are imposed in the interest of national security pursuant to any Act or Executive Order, or (2) are applied with respect to a member of the Armed Forces pursuant to lawful authority.

Section 4(d) provides that the Act does not affect any law governing immigration or nationality, or the administration of any such law.

SECTION 5. COMPLIANCE REVIEW OF POLICIES AND REGULATIONS.

The Federal government currently administers many programs and engages in many activities that constitute preferential treatment as defined in this Act. Some of those preference programs are embodied in statutes or regulations; others have simply developed over time throughout the Federal bureaucracy. Under this Act, all such preferences are unlawful, regardless of whether or not they are traceable to a particular legal mandate.

Accordingly, Section 5 establishes a compliance review procedure to ensure that the Act is fully and conscientiously implemented by the Federal government. Within one year of the date of enactment, the head of each department or agency of the Federal government, in consultation with the Attorney General, must (1) review all existing policies and regulations which the department or agency head is charged with administering, (2) modify those policies or regulations to conform to the requirements of this Act, and (3) report to the Committee on the Judiciary of the Senate and the House of Representatives the results of the review and any modifications to the policies and regulations.

SECTION 6. REMEDIES.

Section 6(a) creates a civil cause of action for any person aggrieved by a violation of section 2 of the Act. This subsection also provides that the remedies for such a violation are limited to injunctive and equitable relief (which may include back pay). A prevailing plaintiff in a civil action under this section shall be awarded a reasonable attorney's fee as part of the costs.

Section 6(b) provides that nothing in this section affects any remedy available under any other law.

SECTION 7. EFFECT ON PENDING MATTERS.

Section 7(a) provides that this Act does not affect any case pending on the date of enactment of this Act. And section 7(b) provides that this Act does not affect any contract or subcontract in effect on the date of enactment of this Act, including any option exercised under such contract or subcontract before or after the date of enactment.

SECTION 8. DEFINITIONS.

Section 8 sets forth the definition of certain terms used in the Act for purposes of interpreting and applying the Act.

Section 8(1) defines the term "Federal government" to mean the executive and legislative branches of the Government of the United States.

Section 8(2) defines the term "preference" to mean an advantage of any kind, including advantages that are granted pursuant to a quota, set-aside, numerical goal, timetable, or other numerical objective.

"Numerical objectives" have an inherently coercive effect. They exert an inevitable pressure to take into consideration the characteristic that is the subject of the numerical objective. The degree of pressure or coercion depends in part on the

consequences that may follow, or may reasonably be expected to follow, the failure to achieve the objective. When established or induced by the government, these consequences can include increased government scrutiny or the threat of it, more paperwork, on-site investigations, the inability to bid for government contracts, and financial or other penalties.

In addition, some numerical objectives are accompanied not by the threat of penalties, but rather by an incentive to take into account the relevant characteristic. For example, the subcontracting compensation clause at issue in the case of *Adarand v. Peña*, and Federal employment practices offering supervisors bonuses or the prospect of promotion based on their achievement of so-called "diversity" objectives, also cause the Federal government to grant, or to require or encourage others to grant, preferential treatment on the basis of race and sex.

Consequently, it is not enough to oppose "quotas," as if the label itself is the offending practice. It is the practice and mechanism of racial, ethnic, and gender preference, not its particular label in a given circumstance, that is objectionable.

Moreover, preferences can consist of other practices not tied to numerical objectives. For example, if a Federal agency were to advise its supervisors that proposing to hire a person not in a designated racial, ethnic, or gender group would subject that proposed hiring decision to closer scrutiny than the proposed hiring of a member of such designated groups, that personnel policy too would constitute a preference as defined in this Act.

Section 8(3) defines the term "historically Black college or university" to mean a Part B institution, as defined in section 322(2) of the Higher Education Act of 1965, 20 U.S.C. §1061(2).

End of Text

White House to Suspend a Program for Minorities

By STEVEN A. HOLMES

WASHINGTON, March 7 — After a long review of affirmative action, the Clinton Administration has decided to suspend, for at least three years, all Federal programs that reserve some contracts exclusively for minority and women-owned companies, officials said today.

The officials added that the three-year moratorium on set-aside programs, which have proved to be the most hotly debated type of affirmative action, would include such stringent conditions for reintroducing the

programs that it was doubtful they would ever return.

"As a practical matter, set-asides are gone," a senior Administration official said, speaking only after being promised anonymity.

At the same time, the Administration has decided to allow Federal agencies, if they can justify it, to use other kinds of preferences, like giving price breaks and extra points in evaluating contract bids by minority and woman-headed companies.

Officials said it was not clear how great a practical effect the moratorium would have, because the number

of set-aside programs had been dwindling already. But in political and legal terms, the new guidelines represent the Administration's attempt to steer a middle course on an issue Republicans seized on after their landslide victory in 1994.

The Administration's decision to maintain some preferences puts it on a collision course with some Republicans, including Senator Bob Dole — the front-runner in the Republican race to become Mr. Clinton's opponent in November — who are moving legislation through Congress that would ban such practices. The bill sponsored by Mr. Dole in the Senate and Charles T. Canady of Florida in the House was approved today by the Constitution Subcommittee of the House Judiciary Committee by a vote of 8 to 5.

In addition to the debate in Washington, a proposal on California's ballot in November to halt virtually all affirmative action programs in that politically crucial state means that the question of race-based contracting, employment and educational programs will likely be a major issue in the fall election.

In jettisoning set-asides, the Administration ends the type of affirmative action programs that officials say are most difficult to defend and most resemble quotas, which Mr. Clinton has said he opposes.

Meanwhile, the Administration is preserving some preference programs, though setting tougher criteria for their use and requiring Federal agencies to first try race-neutral means such as increased recruitment, to increase the number of minority contractors.

"If what you want is not to have the Federal Government take any steps at all to integrate Federal procurement processes then this won't satisfy you," an Administration official said. "If what you want is to have the Federal Government try to integrate its procurement processes, and involve qualified minority contractors in as restrained and lawful a way as possible, this does it."

The alteration of procurement regulations is the latest in a series of changes to the Government's affirmative action programs that stemmed from President Clinton's promise last July to "mend, not end" race- and sex-based remedial efforts. The President ordered the review to determine whether Federal affirmative action programs are effective and if they comply with last June's Supreme Court decision in Adarand Constructors v. Peña, which set strict limits on when and how Federal agencies may grant preferences to minority and female contractors.

The Administration's alterations of Federal affirmative action programs will be contained in a set of policy guidelines that will be issued in the coming weeks, officials said.

Administration officials say the Federal Government has only one set-aside program, the so-called rule of two program that was run by the Pentagon until last October when it was suspended. Under the program, if at least two qualified small, disadvantaged businesses bid on a Defense Department contract, the Pentagon can limit the bidding to such companies. Under Federal regulations, it is difficult for any companies, other than minority-owned ones, to qualify as "disadvantaged."

It is unclear, however, whether Administration officials consider the Small Business Administration's 8(a) program to be set-aside. That program allows Federal agencies to place some contracts into a special pool where only "disadvantaged" businesses may bid on them. Last year, minority companies received \$4.5 billion in contracts under the 8(a) program.

Administration officials said today that the Justice Department will review the 8(a) program to see if is legal under the Adarand ruling.

Officials said today the guidelines are an effort to reach a goal of having five percent of the Federal Government contracts be awarded to minorities. That goal was unanimously approved by both houses of Congress in 1994 prior to the elections that year. Its passage without a dissenting vote is evidence of how quickly attitudes on affirmative action shifted among many Republicans. While the party was an architect of many affirmative action programs in the late 1960's and early 1970's, a number of prominent Republicans, like California Gov. Pete Wilson and Mr. Dole last year pushed sweeping proposals to abolish them.

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Compelling interest justifying AA in contracting

but not too narrowly ~~tailored~~ tailored

disability

① people w/ benefits are targeted class
by certification process

race-neutral

② ease requirements of minority firm
to change / make clear + convincing to
its preponderance

③ if agency goes beyond race neutrality,
it can do that, but only
- market-by-market basis

8a staying

8a not suspended

8a not ending

not a set-aside

DOJ is in court depending the constitutionality of 8a

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office for Civil Rights
Washington, D.C. 20201**DRAFT**

S. Kimberly Belshe
Director
Department of Health Services
714 P Street, Room 1253
Sacramento, California 95814

Dear Ms. Belshe:

With the passage of Proposition 187, California Health and Social Service agencies and providers, who receive Federal financial assistance are faced with the challenge of implementing laws and regulations that do not conflict with Federal requirements. As a recipient of FFA, your agency and grantees who by virtue their participation in federally funded programs, are required to comply with Title VI of the Civil Rights Act of 1964, the Hill-Burton Act, the Omnibus Budget Reconciliation Act of 1982 and other Laws that contain provisions designed to protect the rights of persons in the United States.

Although Title VI of the Civil Rights Act of 1964 and various block grant nondiscrimination provisions do not prohibit discrimination on the basis of citizenship status, they do prohibit actions that have the effect of discriminating on the basis of race, color, or national origin. Moreover, any actions that allow or intimidation of individuals such that they cannot take advantage of rights and privileges to which they are entitled may illegally prohibit the receipt of services, benefits or participation in federally funded programs.

Further, under the Department's Hill-Burton program, health care facilities that received assistance were required to provide a community service assurance. Hill-Burton recipients must make their services available to all persons residing (and, in some cases, employed) in their service area without discrimination on the ground of race, color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service.

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The Office for Civil Rights intends to investigate any complaints alleging violation of Title VI, Hill-Burton or other civil rights provisions. As you implement state laws, you may wish to seek our advice and counsel. Additional information can be obtained from the San Francisco Regional Office at (415) 556-8586.

Sincerely,

Dennis Hayashi
Director
Office for Civil Rights