POLITICS: Assessing the President's Performance

On Civil Rights, Clinton Steers Bumpy Course Between Right and Left

By STEVEN A. HOLMES

WASHINGTON, Oct. 19 — In his nearly four years in office, President Clinton has amassed a civil rights record rivaling that of any President in the last 30 years.

So why do so many civil rights advocates — both liberal and conservative — mistrust him so much?

Since he entered office in January 1993, Mr. Clinton has appointed more women and members of minorities to Cabinet and other high-level positions than any other President. He has appointed the highest percentage of minorities and women to the Federal bench.

He became the first President to back measures to end bias against homosexuals, he stepped up enforcement of fair housing laws, and he stoutly defended the Government's affirmative action role, declaring in a speech in July 1995 that his goal would be to "mend it, not end it."

"If you look at his overall record, both in the appointments he's made and the policies he's pursued," said Wade Henderson, executive director of the Leadership Conference on Civil Rights, a coalition of liberal organizations, "his record stands with the best of recent Presidents, with the possible exception of Lyndon Johnson."

But so tricky and polarizing are the politics of race and sex that the civil rights policies of the Clinton Administration have drawn praise and scorn in equal measure from liberals and conservatives.

With compelling evidence, conservatives say the Administration has pursued classically liberal policies, despite trying to portray itself as moderate. They note that the people Mr. Clinton appointed to enforce anti-discrimination laws came, by and large, from liberal organizations like the NAACP Legal Defense and Educational Fund, the Mexican-American Legal Defense Fund and the National Women's Law Center.

They also say that the Administration sought to expand the legal basis for affirmative action to include the need for a diverse work force, not just to remedy past discrimination.

And they point out that despite Mr. Clinton's promise to change any Federal affirmative action programs found ineffective or resulting in quotas, only one — a Defense Department procurement program — has been scuttled.

"Philosophically, I think they are straight, pro-preference liberals on these issues," said Linda Chavez, president of the Center for Equal Opportunity, a conservative group. "They interpret affirmative action to mean having double standards, having different rules according to race, with attention to the bottom line, according to numbers. There's not a whole lot of difference between the way the Clinton people enforce the law and the way the Carter people did."

But while conservatives complain that the Administration is too liberal on civil rights issues, liberal groups maintain that it has not been bold enough and is too willing to tack in the shifting winds.

They recall that Mr. Clinton quickly abandoned Lani Guinier, a law professor from Philadelphia who was his first choice to head the Justice Department's civil rights division, when her past writings drew fire from conservatives. They note that after the storm that followed his pledge to remove the ban on homosexuals in the military, the President put forward a policy that left the ban in place.

He delayed filling important civil rights posts, squandering what civil rights groups said had been an opportunity to undertake new initiatives while the Democrats controlled Congress. And he signed a welfare bill that civil rights advocates say will throw at least a million children into poverty.

Even Mr. Clinton's stand in defense of affirmative action, perhaps the defining civil rights moment of his Presidency, was taken with the knowledge that abandoning the policy would have meant a certain Presidential primary challenge from the Rev. Jesse Jackson.

"There is no question about it," Mr. Jackson said in a recent interview. "My position on it was quite public, and I stated it to him. I had no inclination to run. My choice was, rather, to support him. But if he had taken away that program for equal opportunity, he would have crossed the line."

Mr. Clinton's aides deny that the prospect of a Jackson challenge in the primary figured in the President's decision to support affirmative action. But that Mr. Jackson would make such a threat is indicative of what some critics regard as the President's primary failing: that he responds more to political considerations than to those of principle.

"There isn't the malevolence that there was in the Reagan Administration or the indifference that there was in the Bush Administration," said an official with a Hispanic organization who spoke on the condition of anonymity. "But there is a calculating approach to the issue that is principally politics driven."

Mr. Clinton has argued that he was seeking innovative ways to look at the divisive issues of race, ethnicity, class and sex. And in what could be read as a metaphor for his general approach to civil rights issues, Mr. Clinton, in the debate this week, touted the middle ground he had staked out on affirmative action.

"I'm against quotas — I'm against giving anybody any kind of preference for something they're not qualified for," he said. "But, because I still believe that there is some discrimination and that not everybody has an opportunity to prove they are qualified, I favor the right kind of affirmative action."

In fact, as Mr. Clinton seeks another term, his advisers and leaders of some liberal groups would argue that his stand on affirmative action has shored up support for the policy and effectively removed the issue, and with it, race, from the Presidential campaign.

"A year ago, I thought affirmative action was going to be the ultimate wedge issue in this campaign," said Linda Williams, a political science professor at the University of Maryland. "It's just disappeared."

Mr. Clinton's advisers have no doubt about why. "I think that President Clinton deserves credit for that, both for what he did in 1992 and what he's done since," said George Stephanopoulos, a senior adviser to Mr. Clinton, in a recent interview at his office. "The way he's talked about civil rights issues has raised the bar for opponents."

The Expectations

What They Heard, What They Saw

From the start, Bill Clinton seemed to be a different kind of politician when it came to civil rights issues.

From early childhood, when he watched his grandfather's respectful and courteous treatment of black patrons at his grocery store in Hope, Ark., Mr. Clinton has exhibited a comfort and ease in his personal dealings with members of minority groups, especially blacks. He has displayed, and almost flaunted, his familiarity with black culture, black music and black icons. He has looked at home in black churches, singing well-known African-American hymns by heart and even preaching with the cadence and idioms of a black Baptist minister.

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Ernest Green, a black investment banker in Washington who has known Mr. Clinton for years, recalls a conversation with the President and a number of prominent blacks on Air Force One last January. At one point, Vernon E. Jordan, Mr. Clinton's close friend and confidant, remarked that the President was one of the few white people who knew by heart all three verses of "Lift Every Voice and Sing," a hymn often sung at civil rights gatherings and called the "Negro national anthem" by many blacks.

"I said, 'Mr. President, I beg to differ,'" Mr. Green said. "'You are one of the few people, period, who know all three verses.'"

Yet as Mr. Clinton prepared to take office four years ago, both traditional civil rights groups and their conservative antagonists viewed the occasion with a mixture of hope and trepidation.

As a candidate, Mr. Clinton had criticized the civil rights record of his Republican predecessors George Bush and Ronald Reagan, who often seemed hostile or indifferent to civil rights issues. Mr. Clinton promised to push for proposals like legislation that would allow people to register to vote when they renewed their driver's licenses or applied for government benefits. He also promised to end discrimination against homosexuals, press for statehood for the District of Columbia and remove limits on the monetary damages women could win in sex-discrimination suits.

But if Mr. Clinton was expected to lead liberal civil rights groups out of the political and policy Sinai, there were indications that he might be an uncertain Moses. He had campaigned as a "new Democrat," one more moderate than the Democrats of old.

At times, he trumpeted his disagreements with groups like the National Association for the Advancement of Colored People or the National Organization for Women.

"Clinton spoke a language of racial moderation," said Will Marshall, director of the Progressive Policy Institute, a right-of-center Democratic research and advocacy organization. "He spoke of reciprocity — rights and responsibilities — rather than the language of grievance and entitlement."

In January 1992, a little more than three weeks before the New Hampshire primary, Mr. Clinton, then Governor of Arkansas, left the campaign trail and went home to approve the execution of Ricky Ray Rector, a black inmate who was mentally impaired, for killing a white police officer. On June 13, 1992, Mr. Clinton took the stage at the convention of the National Rainbow Coalition, Mr. Jackson's organization, and chastised Sister Souljah, a black rap artist, for flippantly suggesting that blacks take "a week and kill white people."

In the transition to the Presidency, Mr. Clinton criticized women's groups that were pressing him to appoint more women to his Cabinet, snapping at them for being "bean counters."

Such utterances were unusual coming from a Democrat and caused uneasy feelings among civil rights advocates.

"I think the black community felt they had invested heavily in Bill Clinton, had helped to elect him and had big expectations," said Milton Morris, senior vice president of the Joint Center for Political and Economic Studies, a research group. "But there also was some apprehension. This whole 'new Democrat' thing scared a lot of people."

Once elected, Mr. Clinton assembled a Cabinet that included four blacks, three women and two Hispanic men. Some, like Attorney General Janet Reno or Commerce Secretary Ronald H. Brown, were given jobs generally reserved for white men.

And of Mr. Clinton's 182 judicial appointees, 32 percent have been women, 20 percent black and 7 percent Hispanic, a far higher percentage than that of any other President. Those appointments could be critical in future policy questions, as Congress has tended to defer to the courts in the areas of affirmative action and gay rights.

Despite that record, however, it took the Administration nearly two years to fill important civil rights posts in the Administration. The pace, which contributed to the anxieties of civil rights groups, was a direct result of what they viewed as Mr. Clinton's disastrous handling of one of his earliest appointments, the nomination of Ms. Guinier to the top civil rights job in the Government.

The Appointments

An Abandonment Brings Turmoil

More than any other single event, the Guinier episode sent shock waves through traditional civil rights groups.

Ms. Guinier, a professor at the University of Pennsylvania Law School, had been a good friend of the President and his wife, Hillary. She had been a classmate of both at Yale law school, and they had attended her wedding on Martha's Vineyard in 1986. Moreover, she had built a reputation with the NAACP Legal Defense Fund as an innovative thinker in the area of voting rights. To many, she seemed a natural for the position of Assistant Attorney General for civil rights, considered the top civil rights position in the Federal Government.

But soon after her nomination was announced in May 1993, it began to run into trouble. In her writings, Ms. Guinier had suggested alternatives to the system of trying to guarantee blacks and other minorities representation by drawing gerrymandered districts in which blacks constituted a majority of voters.

But her proposals, including ideas like cumulative voting and proportional representation, were theories that went against the American idea of one-person-one-vote and majority rule. They were clearly outside the mainstream of American thought and were characterized by her conservative critics as dangerously radical.

Faced with strong opposition, even within his own party, Mr. Clinton withdrew Ms. Guinier's nomination a month later, declaring that if he had read her early writings, he would not have nominated her to the post. Moreover, the President jettisoned Ms. Guinier without letting her appear before the Senate Judiciary Committee, as her supporters had urged, to explain her views.

The decision enraged civil rights advocates and deepened their suspicion of Mr. Clinton. "There was a profound sense of

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betrayal in his unwillingness to stand with her and defend her as a reflection of what this Administration believed in," said one civil rights leader who spoke on the condition of anonymity. "We felt that this was a President who was not willing to put his reputation on the line, and you questioned whether he would be with you when the going got tough."

Mr. Stephanopoulos acknowledged that the White House had mishandled the Guinier nomination, primarily by not thoroughly reviewing her work before putting her name forward. The Presidential adviser also acknowledged that the episode had contributed to the unease with which many civil rights groups viewed the new Administration.

"I think it raised questions," he said. "I don't think that was fair, but I think it did."

The Guinier episode had other implications as well. Determined not to be burned again, the Administration carefully consulted with liberal organizations and with groups like the Congressional Black Caucus on its subsequent nominees for top civil rights positions. That resulted in a number of candidates being rejected and stretched out the process. It was not until Feb. 1, 1994, almost 14 months after the President took office, that Deval Patrick, a lawyer from Boston, got the job.

Other civil rights appointments were delayed as well, in part because the Administration — despite Mr. Clinton's criticism of "bean counters" — wanted to fill certain posts with representatives of particular racial or ethnic groups.

The Administration also had a difficult time agreeing on candidates with civil rights groups and the Black Caucus.

"The President's slow pace of appointments to key civil rights posts would prove damaging to hopes that momentum in civil rights enforcement would be established," the Citizens Commission on Civil Rights, a private watchdog group, wrote in 1994.

On Sept. 29, 1994, the Senate confirmed Gilbert Casellas as head of the Equal Employment Opportunity Commission, the last major unfilled civil rights position in the Administration.

(MORE)

Gould's appointment, the Dole-Kemp camp note, was opposed by Dole in 1994 when he was in the senate. Gould was criticized by Republicans for being too vocal or partisan during an oversight hearing in September.

Both Seek Family-Friendly Workplaces

Both candidates are calling for changes in labor laws in areas aimed at attracting the support of working parents, particularly women who political pundits consider a crucial swing constituency in this election. Here too, the candidates offer varying proposals that affect workers and businesses in different ways.

Dole also says he believes that many existing labor laws "simply have not kept up with the realities of today's marketplace" and need to be revamped. Clinton, on the other hand, talks of expanding already existing labor law in the areas of family and medical leave.

On the campaign trail, Clinton often spotlights his signing of the Family and Medical Leave Act in 1993 as evidence of his administration's commitment to helping workers and their families "so that workers do not have to choose between work and the health of their families."

That law—approved over GOP and business opposition—requires employers to allow workers time off to take care of a newborn or immediate family member, or attend to their own serious health needs. Clinton has proposed expanding FMLA to require employers to permit 24 hours of time off a year for children's school activities, family medical purposes, and to take care of older relatives.

GOP presidential nominee Dole, in contrast, has singled out the FMLA as an example of the intrusive long reach of the federal government. Dole, as a senator, opposed FMLA and led several filibusters blocking a vote on the matter. And as GOP presidential candidate, Dole says he opposes expanding it.

To help workers balance family and work responsibilities, Dole instead calls for changes in labor law that allow for "flexible work schedules that accommodate today's working parents."

"The Fair Labor Standards Act contains a host of out-of-date rules and regulations about when employees can have time off and what work schedules they should have," according to the Dole-Kemp campaign. "What might have been right for the workplace of the 1930s [when the FLSA was enacted] isn't right for the 1990s and the 21st century," according to Dole.

Dole and the GOP party platform endorse legislative changes, that among other things, would give nonexempt workers covered by FLSA the option of taking time off instead of overtime pay.

Clinton too, unveiled a proposal shortly before the 104th Congress adjourned that would combine the expansion of the Family and Medical Leave Act with a change to the Fair Labor Standards Act. The Clinton proposal would allow workers to choose time off in lieu of overtime pay, but with certain restrictions.

Dole has charged that Clinton has flipflopped on the area of flextime, pointing to Clinton's threatened veto of the federal minimum wage legislation if it contained a GOP proposal allowing private employers to offer comp time instead of cash for overtime worked in excess of 40 hours a week.

A sticking point in the flextime proposal is the role workers should have in deciding whether and when to accept comp time rather than overtime pay. The administration contends its proposal has safeguards to ensure workers are not coerced into accepting comp time rather than overtime, while Dole argues the GOP proposal provides employers and employees the opportunity to jointly work out an agreement that satisfies both parties.

Clash Over Affirmative Action, Immigration

Other key areas where the candidates clash include affirmative action, immigration, and welfare-to-work programs—all hotly contested issues that go beyond the employment arena and broach broader social concerns.

On the issue of affirmative action and equal employment rights, Clinton says he would continue the course he set out in his first term, while Dole calls for a dramatic change in the path Clinton has cleared.

For Clinton, a second term would include a continuation of the administration's "mend it, but don't end it" stance on federal affirmative action programs, including reforms of federal procurement programs. A second term would also likely see a push for the Employment Nondiscrimination Act, a bill that would extend employment discrimination protection to gays and lesbians that the 104th Congress did not approve.

Dole says he opposes "preferences" and "special rights" for certain groups, the latter of which he says the Employment Nondiscrimination Act would provide. Instead Dole calls for a new civil rights agenda based on expanding access to credit and capital and educational choice in the inner cities.

In the waning days of the campaign, Dole has begun to trumpet the California ballot proposition that would bar "preferential treatment" in state hiring, contracting, and educational programs. But Dole has not drawn attention to sweeping legislation that he introduced in 1995 while in the Senate that had many of the same goals as the California initiative.

Immigration is another issue that divides the candidates. The two draw sharp distinctions on the level of benefits immigrants should receive. Shortly before the 104th Congress recessed, Clinton signed GOP-crafted legislation that restricts the flow of illegal immigrants into the United States and launches several pilot programs to improve employee verification systems. Dole charges that the president tried to "water down" the measure while it was being crafted, and suggests Clinton is now trying to take credit for something he did not push.

In the first term, Clinton also issued an executive order sanctioning federal contractors that knowingly hire illegal workers. He vows in a second term to "vigorously" enforce worksite laws against employers who hire illegal aliens, test ways to verify the employment authorization of new employees, and fight discrimination that denies opportunity to legal immigrants.

As president, Dole would strengthen the border patrol and streamline the deportation process for illegal aliens. Dole has joined California Republicans in endorsing

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the Clinton campaign, is another example of the president focusing on the concerns of workers.

During his time in the Senate, Dole said he consistently voted to codify the Supreme Court's decision and as president would "continue to advocate the statutory codification of *Beck* and will ensure that the Supreme Court's decision is aggressively enforced."

Dole and other Republican candidates have denounced the AFL-CIO's $35 million political education campaign as an example of "big labor bosses" using union dues to run negative political ads against Republicans—and in essence breaching *Beck*.

"Bob Dole believes individual union members should not be forced to pick up the tab for the political activities of their union," according to a Dole briefing paper in which the candidate lays out his plan for "workplace freedom and flexibility for the future."

The administration says the *Beck* decision and the president's rescission of the Bush administration's executive order speak for themselves. On the campaign trail, Clinton and Gore do not even broach the topic, but instead stump for the union label, telling pro-union crowds in particular that the administration strongly supports collective bargaining for all employees. "It's not a privilege, but a right of all workers," the president has said.

Opposing Takes On Striker Replacement

The candidates also have opposing views on the issue of permanently replacing striking workers—a difference that would yield opposite results if the 105th Congress sends to the White House legislation barring the permanent replacement of striking workers. A Clinton administration would sign such a bill, while a Dole administration would surely veto it.

Current law prohibits employers from permanently replacing workers who strike because of unfair labor practices, but employers are permitted to do so if workers engage in an economic strike.

Clinton had supported an AFL-CIO-backed bill that would have barred the permanent replacement of striking workers. The bill passed the House in 1995 but did not clear the Senate, failing largely because Dole led filibusters that essentially killed the bill.

The Dole campaign says with pride that in 1988, 1992, 1994, and again in 1995, "Bob Dole helped lead the fight to defeat the so-called striker-replacement bill, one of organized labor's top legislative priorities."

The Clinton campaign specifically describes as pro-worker the president's 1995 executive order prohibiting federal agencies from doing business with employers that permanently replace striking workers.

The campaign fails to note, however, that the administration dropped the matter after a federal appeals court threw out the executive order on grounds that it ran afoul of federal labor law (175 DLR AA-1, 9/10/96). The administration has suggested the president might address the question in a second term with new legislation, but the issue has not been fodder for the campaign trail.

In another area related to striking workers, the Clinton campaign heralds the president's decision to rescind the Reagan administration's executive order prohibiting the rehiring of striking air traffic controllers. Dole in 1981 supported President Reagan's decision to fire the striking PATCO workers.

The Clinton campaign literature also highlights the "active role" the administration played in "helping to resolve tough collective bargaining disputes" in the last four years. The campaign targets specifically contract talks at American Airlines, the Long Island Rail Road, United Parcel Service, the International Brotherhood of Teamsters' national trucking contract, and new terms reached between the Mineworkers and the Bituminous Coal Operators Association.

Tackling Employer-Employee Relations

Promoting labor-management cooperation and making the workplace more "family-friendly" are among the workplace issues that the next occupant of the White House is likely to take up, but the party label will again clearly shape the new policies.

Both candidates agree that encouraging labor-management cooperation is a good thing, but if elected, each candidate would set a different path to achieve that goal. As a senator, Dole was a strong supporter of the Teamwork for Employees and Managers Act, a measure approved by the 104th Congress, but vetoed by President Clinton.

The bill, better known as the TEAM Act, would amend the National Labor Relations Act to allow employers and employees to establish employee involvement programs.

With the strong urging of organized labor, the president vetoed the TEAM Act, saying the bill would have paved the way for "company unions," which the NLRA currently prohibits.

The Dole camp scoffs at the administration's characterization of the TEAM Act, instead describing the measure as one that would allow managers and employees to work together in teams. Existing federal labor law and interpretations of that law by the National Labor Relations Board "stand in the way" of cooperation and partnership in the workplace, according to the Dole campaign.

Dole says the TEAM Act is needed, in part, because the NLRB has ruled in cases that nonunion companies that have created "action committees" or employer-employee involvement teams in effect created company unions and thus violated federal labor law. The GOP presidential candidate says the NLRB ruling "simply doesn't make any sense."

As president, Dole said he would push for the TEAM act. "The TEAM Act simply allows common sense to reign in the workplace," Dole said.

Clinton has promised to veto TEAM again if it ever reaches his desk. And while Dole criticizes the NLRB, the Clinton-Gore campaign specifically points to the board as an example of how the Clinton administration has supported workers. During his term, the president appointed William Gould as NLRB chairman, Peggy Browning as a member, and Fred Feinstein as general counsel. These appointments, according to the Clinton campaign, make the board "fair to workers and their unions."

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of the accused, Timothy J. Mc-
h and Terry L. Nichols.
date was set, but Judge Rich-
P. Matsch, who will hear the case
enver, ordered that Mr. McVeigh
ried first. Mr. McVeigh's lawyer,
hen Jones, said afterward that
defense could be prepared for
by March or April 1997, if pre-
discovery issues are resolved.
seph Hartzler, the special pros-
or handling the case, said he was
ly to try the case now. Although
Federal Government opposed the
nse request for separate trials,
Hartzler agreed with the judge
two trials would not take signifi-
ly more time than one.
the heart of Judge Matsch's
sion was a nine-hour interview
Mr. Nichols gave the Federal
eau of Investigation at the police

Mr. McVeigh in the days before and after the bombing. Among other things, he asserted that he went to Oklahoma City on April 16, three days before the bombing, to pick up Mr. McVeigh, that he lent Mr. McVeigh his pickup truck on April 18, the day prosecutors say the bomb was made and that Mr. McVeigh told him to fetch his belongings from a storage locker in Herington on April 20, which he did.

In seeking a joint trial, prosecutors offered to limit the evidence they would offer from this interview to these three statements. But Judge Matsch ruled today that Mr. McVeigh would be prejudiced at a joint trial even by admitting just these three statements because he would have no opportunity to cross-examine Mr. Nichols, who is protected by the Fifth Amendment from having to testify. Earlier, the judge ruled that the statements could be admitted against Mr. Nichols.

In his ruling, Judge Matsch also said that limiting the prosecutors in a joint trial to offering only some of the statements Mr. Nichols made in his interview could prejudice Mr. Nichols's rights to cross-examination as well. His lawyers, the judge said, might suggest, during cross-examination of the F.B.I. agents who interviewed Mr. Nichols, that the meaning of his statements to them needed to be considered in the context of the entire interview and the circumstances under which it was conducted.

Denying them this chance in an effort to protect Mr. McVeigh "would, in turn, severely prejudice Terry Nichols," Judge Matsch wrote. "The court cannot save a joint trial by sacrificing the interests of one defendant to protect the other.

"Timothy McVeigh will be profoundly prejudiced by a joint trial in this case. His lawyers cannot question Terry Nichols or cross-examine the F.B.I. agents on what they say Terry Nichols said.

"In short, Timothy McVeigh may be caught in cross-fire."

Continued on Page 12, Column 5

S. AND NATO PLAN EW BOSNIA FORCE

ve After the Election Could eploy Around 5,000 G.I.'s

By STEVEN LEE MYERS

ASHINGTON, Oct. 25 — Al-
gh the White House has main-
ed a deliberate silence for fear of
oking pre-election controversy,
United States and NATO have
n preparing to field a smaller
still sizable international peace-
ing force in Bosnia that would
ude at least 5,000 American
s.

a week in which Bosnia's poten-
volatile municipal elections
delayed until next year, Admin-
tion officials, NATO leaders and
pean diplomats said active
ning was under way for a force
,000 to 30,000 troops that would
ain in Bosnia at least through

ile some details remain unre-
d, the officials in Washington
Europe said the new force would
essentially the same mission as
nearly 60,000 troops, including
than 15,000 Americans, who
patrolled Bosnia for nearly a
as part of the peace accords
iated last fall in Dayton, Ohio,
d four years of civil war.
they discuss military options
he NATO allies, American offi-
have taken pains to note that
l approval for the participation
erican troops has to come from
dent Clinton. And the Presi-
aides insisted that he would

Associated Press

President Clinton, addressing a large crowd in Atlanta yesterday, did not hesitate to take a dig at Bob Dole.

Milestones and Missteps on Immigration

By ERIC SCHMITT

WASHINGTON, Oct. 25 — By all measures, the Clinton Administration has poured more money and political capital into addressing immigration problems than any other administration in recent times.

It has doubled the budget for the Immigration and Naturalization Service while most other Government agencies have suffered substantial cuts. It has increased the number of Border Patrol agents by about 45 percent, and it deported about 25,000 more illegal immigrants in the 1996 fiscal year, compared with three years ago. It has weeded out abuse in the political asylum process, and President Clinton signed a bill last month that imposes some of the toughest measures in decades against illegal immigration.

But looking at the numbers may not tell the whole story. Some immigration experts outside the Administration warn that those numbers may be misleading. Critics of Mr. Clinton's policies call them inconsistent and largely reactive.

THE CLINTON RECORD

Immigration

In contrast with the welfare issue, Mr. Clinton did not bring a wide range of experience with immigration to his Presidency; as Governor of a non-border state, his only major encounter with the issue was with a riot of Cuban refugees that he believed had helped lead to his defeat in his 1980 bid for re-election.

But, as with welfare, the immigration debate has increasingly been defined by Mr. Clinton's opponents on the right; his role has been reduced to softening provisions of bills drawn up by Republicans that make sweeping breaks with the past. The new immigration and welfare measures, as a group, are the most punitive toward immigrants in years, stripping them of some of their most important legal protections and denying them a broad range of social benefits — changes that immigration advocates denounce, while immigration opponents hail them as a belated attempt to crack down on freeloaders.

The Administration's record illustrates the tensions between humanitarian goals, the need to enforce immigration laws and political pressures — including political implications in the states with large immigrant populations — that have defined its positions on nearly every immigration issue it has encountered.

"I'd consider the Clinton record to be equal parts hypocrisy, incompetence, politics and progress," said Representative Lamar Smith, a Texas Republican who was a main au-

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A Former Stronghold Now Ignores Perot

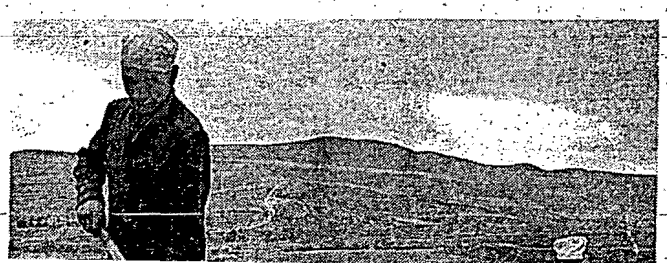
On the morning after the 1992 Presidential election, Waldo County, Me., could easily have been called Perot County. The third-party candidate finished first there, gaining 36.2 percent of the vote and beating out Bill Clinton and George Bush.

But this year, Mr. Perot's appeal seems to have worn thin in the same Maine county that once embraced him. Now, there is little tangible evidence of support, like campaign offices and signs in yards and store windows. Interviews with more than two dozen county voters found that many simply did not take Mr. Perot seriously this time. Others said they were baffled by Mr. Perot's timing in entering the Presidential race, his skirmish with Richard D. Lamm for

In China's Outlands, Poorest Grow Poorer

By PATRICK E. TYLER

NIUJUAN, China — Life is unimaginably hard in the burnt umber hills of this part of northwestern China. In four of the last five years there has been no harvest and millions of poor farmers are living in a state of hunger, poor health and illiteracy that in some areas approaches the deprivation levels of China's great famine in



Violating Public Trust

By KATHARINE Q. SEELYE

DALLAS, Oct. 25 — Sounding like a crusader, Bob Dole implored his audiences today to "rise up" against the nation's news organizations, which he said were protecting the Clinton Administration, and be outraged that President Clinton had, in Mr. Dole's words, violated the public trust.

"We got to stop the liberal bias in this country," he declared to more than 9,000 people packed into the coliseum bleachers here at Southern Methodist University. "Don't read that stuff! Don't watch television! You make up your mind! Don't let them make up your mind for you!"

The appreciative crowds greeting Mr. Dole in Texas, where he is in a virtual dead heat with President Clinton, have given him thunderous and sustained applause, shouting along with him that they do care and yelling at members of the news media as they pass by.

Listing a string of questionable practices by the Administration, including accepting what he called laundered cash from foreigners and obtaining confidential F.B.I. files, Mr. Dole demanded repeatedly in Houston earlier in the day, "Where is the outrage?"

Appearing at downtown performing arts center, where he stood before a giant mural depicting the glory days of the Lone Star State, Mr. Dole continued: "Can you imagine former President Bush doing one of those things? No! And you never imagine Bob Dole doing one of those things either. So where's the outrage? Where's the outrage? When will the voters start to focus?"

At another point he asked: "When do the American people rise up and say, 'Forget the media in America! We're going to make up our minds! You're not going to make up our minds!' This is about saving our country!"

Singling out The New York Times for the second day in a row, Mr. Dole went on: "We are not going to let the media steal this election. We're going to win this election. The country belongs to the people, not The New York Times."

For his part, President Clinton continued his tour of the South today, visiting Georgia, where he floated a proposal for tutoring third graders and where he managed to direct an insult or two at Mr. Dole. [Page 10.]

In the litany of complaints detailed by Mr. Dole today, there was a new charge: that the Democrats were "rushing" immigrants with criminal backgrounds into the country so they could vote for President Clinton.

USA TODAY

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Church fires spark a new call for action

Rights group vows movement for racial unity

By Tom Curley
USA TODAY

The U.S. Commission on Civil Rights vowed Wednesday to follow up its report on the racial division underlying black church fires with a grass-roots effort to bridge the divide.

"We intend to press and press and press until we get a plan of action," said Mary Frances Berry, chairwoman of the bipartisan and multiracial advisory panel.

The commission plans to meet with Southern governors and political leaders as a prelude to community-based programs promoting racial tolerance. Specifics will be worked out locally. Louisiana Gov. Mike Foster has agreed to a meeting Oct. 20.

The National Council of Churches plans a summit this month in Columbia, S.C.

And fund-raising drives to rebuild churches are proceeding. The Department of Housing and Urban Development holds a workshop this weekend in New Orleans to help congregations apply for a $10 million building-loan guarantee program.

"You cannot become depressed and simply give up over those who are overtly racist in their behavior," Berry said. "You have to go with the people who are willing to begin a process of change."

A commission report investigating the spate of fires at Southern black churches found that the arson wave in part reflects persistent, deep-seated racial animosity and segregation.

Echoing findings in an earlier study by USA TODAY, the commission Wednesday noted that racial tension was not the only explanation for the arson. Some fires were set in financial scams, malicious pranks or for still unexplained reasons.

Since Jan. 1, 1995, nearly 90 black churches have burned. Of those, federal law enforcement officials estimate that 20% of the solved cases appeared to be racially motivated, Berry said.

During the same time period, 72 white churches have burned in the South, but officials have found no racial link among them.

Federal and church officials stressed that racial tensions are not unique to the South.

The officials say they are encouraged by black and white support for the rebuilding of churches.

The Council of Churches has taken in more than $6 million in cash, labor and materials from donors nationwide.

"The key to ending this thing long-term is to bring congregations of different ethnic backgrounds and faiths together," said Mike Russell of the Christian Coalition.

Prison, probation for fire-starters

A Pacific Northwest man has been sentenced to five years in prison and a North Carolina teen received one year's probation for setting fire to black churches in Portland, Ore., and Charlotte, N.C., respectively.

Antoine Jamar Dean, 21, who is black, set fire to the Immanuel Christian Fellowship church in Portland. A white 13-year-old girl set fire to Charlotte's Matthews Murkland Presbyterian Church, built in 1864. Both fires occurred in June while federal agents were investigating a string of arsons at black churches.

The Washington Times

DATE: 10/10/96

PAGE: A 4

'No plot found in burnings of churches

By Thomas Hargrove
SCRIPPS HOWARD NEWS SERVICE

U.S. Civil Rights Commission leaders have concluded "there is no evidence of a national conspiracy" in the arson attacks on Southern black churches.

"Nor do we find signs of a regional conspiracy," Commission Chairman Mary Frances Berry announced yesterday. But she said the lack of a general conspiracy "makes these fires even more frightening."

The commission conducted fact-finding hearings in several Southern states to determine what fueled firebombings and arson attacks on at least 59 African American churches from October 1995 through June.

The commissioners concluded that the usual suspects — the Ku Klux Klan, white supremacist groups and ultraconservative hate organizations — were not the primary culprits in most of the burnings, although the Klan is blamed for some of the fires in South Carolina.

"This is not a monolithic problem," said commission member Carl Anderson. "I urge you to look at each of these cases individually."

Commission members and their many state affiliates concluded that the increases in arson attacks resulted from a climate of racial hostility.

"The conclusion of this information is that we really do have a problem with race relations," said Alabama psychologist Annie Wells.

Mrs. Berry praised the cooperative efforts of federal, state and local law enforcement officials to investigate the fires, but she said, "I am very disgusted about the response of some of the public officials."

She specifically cited the refusal of Alabama Gov. Fob James to meet with the national commission's state advisory committee chairman and the under-funding of a human relations commission in South Carolina.

A disproportionate number of fires have occurred in South Carolina "where we have heard evidence of Klan involvement," Mr. Anderson said.

REGULATION

SEPTEMBER 26, 1994

QUIET CRACKDOWN

THE QUARRY: CORPORATE CIVIL-RIGHTS VIOLATORS

Back in 1977, the federal government accused Honeywell Inc. of discriminating against women. The issue: The Minneapolis company printed internal job listings for heavy industrial jobs on blue paper—a code meant to discourage female applicants. The case languished during the 12 years that Republicans Ronald Reagan and George Bush lived in the White House. But a new squad of civil-rights cops in the Clinton Administration revived the matter and quietly forced Honeywell into a $6.5 million settlement on Sept. 8.

There's plenty more to come. With little fanfare, the Administration's antidiscrimination troops are gearing up a tough national enforcement drive. The crackdown's targets range from polluters who dump their muck in minority neighborhoods to companies that discriminate in hiring to banks whose loan departments redline poor areas. Business, perhaps preoccupied with issues such as health-care reform, has hardly noticed. "This wasn't on our radar screen," says Michael Rousch, a lobbyist for the National Federation of Independent Business.

MOMENTUM. Yet signs of the tougher new policy are everywhere. The U. S. Commission on Civil Rights' planned Sept. 21 hearings on Wall Street's dismal minority-employment record are only the latest example of a drive that has been gaining momentum for weeks (table). The Justice Dept. has stepped up its policing of bias in lending by banks, and it has joined the Equal Employment Opportunity Commission in more closely monitoring business discrimination against disabled Americans. The Labor Dept. is scrutinizing the civil-rights records of federal contractors. And the Environmental Protection Agency is cooking up a new program to ensure that companies don't pollute more in poor minority neighborhoods than in other areas. "There's no question they're being more aggressive," says Stephen A. Bokat, general counsel for the U. S. Chamber of Commerce.

CLINTON

The President's civil-rights team has mounted an enforcement drive that could affect an array of industries nationwide

President Clinton's antidiscrimination drive got off to a slow start because of his ill-fated nomination of Lani Guinier for Justice's top civil-rights post. But Deval L. Patrick, the new Assistant Attorney General for Civil Rights, has been on the job for nearly six months. And Gilbert F. Casellas should be confirmed any day now as the new EEOC chairman. With them and other former civil-rights activists leading the charge as Clinton appointees, critics fret that new initiatives will impose unwieldy restraints on business. Edward Yingling, chief lobbyist for the American Bankers Assn., complains that in at least one case "the government seems to be making the standards as they go along. That is scary to us."

Indeed, Justice and Treasury Dept. bank regulators are aggressively pursuing banks for unfair lending practices. The government has entered into four settlements so far. The one that irks Yingling is a controversial Aug. 22 deal suburban with Maryland's Chevy Chase Federal Savings Bank. Chevy Chase denies Justice's allegations that it adopted a policy to avoid black neighborhoods. But it agreed to provide an additional $11 million in subsidized loans and new branches in those areas.

The banking industry fears that the government is exacting overly harsh remedies in cases such as Chevy Chase. "This is credit allocation, and it's undue interference," fumes Washington banking consultant Edward E. Furash. But Justice's Patrick counters: "We're not seeking any particular remedy other than the elimination of unfair lending."

Right or wrong, many companies are reluctant to fight back. The cost of litigation is steep, and the bad publicity

(1 TO R) PHOTOS BY KATHERINE LAMBERT; LISA QUIÑONES/BLACK STAR; JOHN FICARA/SYGMA

CLINTON'S ANTIBIAS BINGE

SEPT. 21 The U.S. Civil Rights Commission plans hearings on Wall Street's minority-employment record. The inquiry will lead to recommendations for action by the White House and Congress.

SEPT. 8 The Labor Dept. reached a $6.5 million accord with Honeywell, settling a 19-year dispute over alleged discrimination against women employees. Labor is actively policing other government contractors to root out discriminatory practices.

SEPT. 6 The Justice Dept. reversed its position in a case involving a laid-off white New Jersey schoolteacher. The Bush Administration backed the teacher's claim of reverse discrimination when she was fired instead of a black teacher, but the Clintonites say that employers sometimes can choose a minority over an equally qualified nonminority.

SEPT. 1 Justice announced an agreement with Avis that requires it to provide hand-operated rental cars to disabled people. Justice is investigating 10 other rental-car companies on the same matter.

AUG. 22 Justice reached a settlement with Chevy Chase Federal Savings Bank requiring the D.C.-area bank to open more branches and to make more investments and subsidized loans in black neighborhoods. It has also stepped up investigations of lending discrimination generally.

may be costly for image-conscious execs. That makes settling and suffering in silence the preferred option. "It was a prudent decision to put it behind us," says Andrew L. Sandler, an attorney for Chevy Chase.

Probably the most perplexing new civil-rights issue confronting business is the Administration's "environmental justice" initiative. In February, the President ordered the Environmental Protection Agency to come up with a plan to protect poor minority communities from getting hit with an unfair share of pollution. Studies have shown that a disproportionate number of hazardous-waste dumps, pollution-spewing factories, and even utility plants are located in such neighborhoods. Now, that could be a problem for utilities in the densely populated East Coast and Midwest, where utilities have often "slammed" power plants into poor areas, says Scott E. Berger, senior environmental scientist for Public Service Co. of New Mexico.

The environmental drive is already gaining speed. On Sept. 7, the EPA, the U.S. Centers for Disease Control, and related agencies launched the Mississippi Delta project to study the effects of pollution on residents in that highly industrialized area. The EPA aims to start a potentially costly emission-reduction program, and other agencies will provide medical assistance to residents.

MISPLACED? The EPA also has targeted a Chicago public-housing project built on a landfill and surrounded by 11 polluting industrial plants. "No community, just because it's poor or minority, should become the dumping ground of waste," says Clarice E. Gaylord, director of the EPA's Office of Environmental Justice.

Companies grumble that the government is changing the rules on businesses long after they got lawful permits to build. Moreover, "the charge of racism may be misplaced in some of these situations," says Charles J. McDermott, government affairs director for WMX Technologies Inc.

PATRICK

Justice's new Assistant Attorney General for Civil Rights will soon be joined by a new chairman of the EEOC

Another controversy is brewing at Justice over an affirmative-action case involving a white teacher, Sharon Taxman. She had sued the Piscataway (N.J.) Board of Education in 1992 for dismissing her rather than a black colleague of equal seniority and ability. She won in U.S. District Court. But on appeal the Clintonites reversed the Bush Justice Dept.'s brief in support of Taxman. Now, Justice argues that employers can use affirmative-action goals to justify retaining minorities over comparably qualified whites.

Some legal scholars allege that if Justice's view prevails, the case could lay the groundwork for expanded racial preferences—and even quotas. That could force companies to expand diversity programs—which could inflame white work-

ers. "The Administration is giving top management a machine gun to go after expensive, middle-aged white males," claims Frederick R. Lynch, a professor of government at California's Claremont McKenna College.

Even the White House worries that its troops may be going too far. The Housing & Urban Development Dept. has already backpedaled from a controversial policy. HUD had begun an inquiry into neighborhood protests against a proposed low-income housing development in Berkeley, Calif. The investigation was prompted by housing activists' charges that the opposition was based on bias against substance abusers, who could be considered disabled. HUD dropped the matter in August, and the agency now says it will no longer investigate activities protected by the First Amendment.

Like business, Clinton has been preoccupied and hasn't paid much attention to his zealous antibias cops. But if he continues to give them free rein, companies may find that settling without a fight is too high a price to pay.

By Catherine Yang, with Amy Barrett in Washington, Richard A. Melcher in Chicago, and bureau reports

IS WALL STREET FINALLY STARTING TO GET IT?

It was hearing women employees complain about the scantily clad dancers at Merrill Lynch & Co.'s 1992 Christmas party that finally convinced Chief Executive Daniel P. Tully that it was time to act. In the six months before the party, Tully had heard about six other incidents of alleged sexual harassment at his firm. Merrill had already formed a committee to study bias and implement measures to recruit and retain more blacks and women. But Tully's concerns got things moving. Says Roger M. Vasey, the Merrill executive vice-president who is leading the firm's effort: "This program has teeth."

Wall Street could use one. The industry has a record of not hiring many women and minorities—and failing to protect them from bias once on the job. Now, with the Clinton Administration cracking down on civil-rights violations across the economy and the U.S. Civil Rights Commission holding hearings on Sept. 21 to examine the financial industry's record, Wall Street has good reason to clean up its act.

Just how bad is the Street's record? Pretty dismal. There are virtually no women and blacks in top management at the major firms. Of 546 managing directors and directors at Merrill, just 57 are women; only 38 are black, Asian, or Hispanic. At Goldman, Sachs & Co., there are just seven women and one black out of 150 partners. Salomon Brothers Inc., which also has a diversity committee, has just one black trader.

Merrill is one of the few firms taking action. Vasey, a heavy hitter who used to run its fixed-income department, has an annual budget of $1 million for his diversity committee. Merrill now awards up to 10% of the bonuses to its 10 executive vice-presidents on the basis of eight criteria, including recruitment, retention, and career development of minorities and women—with progress monitored quarterly.

Some significant steps have already been taken. Merrill also has doubled paid maternity leave to three months, for instance, and it now has a screening process to make sure it doesn't hold corporate outings at golf clubs that discriminate. It's also trying to boost the number of women branch managers—now only six out of 325—by not forcing them to move all over the country as a prerequisite for a promotion. And it just added former Securities & Exchange Commissioner Aulana Peters, a black woman, to its board.

Other firms also are getting started. To help retain female employees, Goldman Sachs has installed a day-care center in the lobby of its building that provides backup child care. Morgan Stanley & Co. has hired a full-time consultant to work exclusively on diversity issues and has assigned William M. Lewis Jr., an African American managing director in investment banking, to head its diversity task force. Among measures taken so far: Morgan has started a $2.5 million scholarship program in which it sponsors promising college students in their junior and senior years as interns. And last year, for the first time, it began recruiting at five historically black colleges.

Financial firms are addressing historically unequal hiring and treatment of women and minorities. Goldman Sachs now offers emergency day care

There are skeptics, of course. New York lawyer Jeffrey L. Liddle, who will be testifying at the Sept. 21 hearings, calls Wall Street's efforts at diversity "a cruel joke. Those committees do nothing." The companies, critics contend, are acting mainly to avoid lawsuits. For example, in December, 1993, 10 former and current African American Merrill employees from San Francisco branches filed a complaint with the National Association of Securities Dealers alleging that Merrill discriminated against them on the basis of race. Merrill says in a statement that it "is outraged by these meritless claims."

Now, Wall Street is under intensified pressure. Many state and federal agencies require detailed information on the number of women and blacks in senior positions at financial companies bidding for their business. And with the feds on the case, Wall Street may have to get more serious about promoting equality.

By Leah Nathans Spiro in New York

LISA QUINONES/BLACK STAR

tention-getters" such as the Elvis Presley stamp.[6]

FOOTNOTES

[1] There are rare occasions when the Postmaster General may select a commemorative stamp absent the Stamp Advisory Committee's recommendation.

[2] Three items of postal stationery are popular with collectors: embossed stamped envelopes, postal cards, and aerogrammes.

[3] Birth of a Stamp is a Sticky Issue. Insight, July 4, 1988. p. 61.

[4] Special postal cancellation is a phrase to commemorate a local event used by the Postal Service to cancel stamps.

[5] Semi-postals are stamps with a surcharge over and above the usual postage rate, with the extra revenue earmarked for a designated charity or government program.

[6] Stamp Trail to Oregon, Washington Post, Weekend, November 27, 1992, p. 78.●

AQUATIC WEED MANAGEMENT

● Mr. COCHRAN. Mr. President, a growing problem faces the water resources of our country. The inadvertent introduction of exotic plant species from Europe and Asia, such as Eurasian watermilfoil and hydrilla, is a nationwide ecological disaster in the making.

These nuisance aquatic weeds are rapidly choking our freshwater bodies, crowding out native and endangered aquatic species, hindering shipping lanes, restricting recreational activities, causing waterfront property values to drop, and restricting water flow through irrigation canals, drainage ditches and hydroelectric intake screens and turbines.

There are several methods of aquatic weed management, but very limited dollars are earmarked for solving this growing problem. State ecologists, fish and wildlife experts, and waterbody managers are convinced that safe, selective tools are available for controlling these nuisance weeds and restoring the ecological balance of our waters. States simply need funding to get the job done.

Therefore, I hope when we consider the Interior and related agency appropriations for fiscal year 1996, we will take a serious look at providing funding for States to institute effective methods of aquatic weed management.●

ORDER FOR STAR PRINT—S. 1991

Mr. KOHL. Mr. President, I now send to the desk and ask unanimous consent that a star print be made of S. 1991, the Professional Boxing Safety Act, in order to correct an inadvertent omission when the Senate Commerce Committee reported this matter on September 28.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 1098, 1099, 1100, 1143, 1145, 1179.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that upon confirmation, the motions to reconsider be laid upon the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Paul M. Igasaki, of California, to be a Member of the Equal Employment Opportunity Commission for the remainder of the term expiring July 1, 1997.

DEPARTMENT OF DEFENSE

Philip Edward Coyle, III, of the District of Columbia, to be Director of Operational Test and Evaluation, Department of Defense.

Jan Lodal, of Virginia, to be Deputy Under Secretary of Defense for Policy.

DEPARTMENT OF LABOR

Timothy M. Barnicle, of Maryland, to be an Assistant Secretary of Labor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

HOUSE OF REPRESENTATIVES CAMPAIGN SPENDING LIMIT AND ELECTION REFORM ACT OF 1993—MESSAGE FROM THE HOUSE

Mr. MITCHELL. Mr. President, I ask the chair to lay before the Senate a message from the House on S. 3.

The Senate resumed consideration of the message from the House.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. on Friday, September 30; that following the prayer, the Journal of proceedings be deemed approved to date and the time for the two leaders reserved for their use later in the day; that immediately thereafter, the Senate resume consideration of the motion to request a conference with the House on S. 3, campaign finance reform, with the time until 9:30 a.m. for debate on the motion to invoke cloture on the motion to request a conference; and that the time be equally divided and controlled between Senators BOREN and MCCONNELL, or their designees; that at 9:30 a.m., the Senate vote on the motion to invoke cloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate at 7:33 p.m., recessed until Friday, September 30, 1994, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 29, 1994:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PAUL M. IGASAKI, OF CALIFORNIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JULY 1, 1997.

PAUL STEVEN MILLER, OF CALIFORNIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM EXPIRING JULY 1, 1998.

GILBERT F. CASELLAS, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM EXPIRING JULY 1, 1999.

DEPARTMENT OF DEFENSE

PHILIP EDWARD COYLE III, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF OPERATIONAL TEST AND EVALUATION.

JAN LODAL, OF VIRGINIA, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY.

DEPARTMENT OF LABOR

TIMOTHY M. BARNICLE, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF LABOR.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

REGULATION

SEPTEMBER 26, 1994

QUIET CRACKDOWN

THE QUARRY: CORPORATE CIVIL-RIGHTS VIOLATORS

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There's plenty more to come. With little fanfare, the Administration's antidiscrimination troops are gearing up a tough national enforcement drive. The crackdown's targets range from polluters who dump their muck in minority neighborhoods to companies that discriminate in hiring to banks whose loan departments redline poor areas. Business, perhaps preoccupied with issues such as health-care reform, has hardly noticed. "This wasn't on our radar screen," says Michael Rousch, a lobbyist for the National Federation of Independent Business.

MOMENTUM. Yet signs of the tougher new policy are everywhere. The U. S. Commission on Civil Rights' planned Sept. 21 hearings on Wall Street's dismal minority-employment record are only the latest example of a drive that has been gaining momentum for weeks (table). The Justice Dept. has stepped up its policing of bias in lending by banks, and it has joined the Equal Employment Opportunity Commission in more closely monitoring business discrimination against disabled Americans. The Labor Dept. is scrutinizing the civil-rights records of federal contractors. And the Environmental Protection Agency is cooking up a new program to ensure that companies don't pollute more in poor minority neighborhoods than in other areas. "There's no question they're being more aggressive," says Stephen A. Bokat, general counsel for the U. S. Chamber of Commerce.

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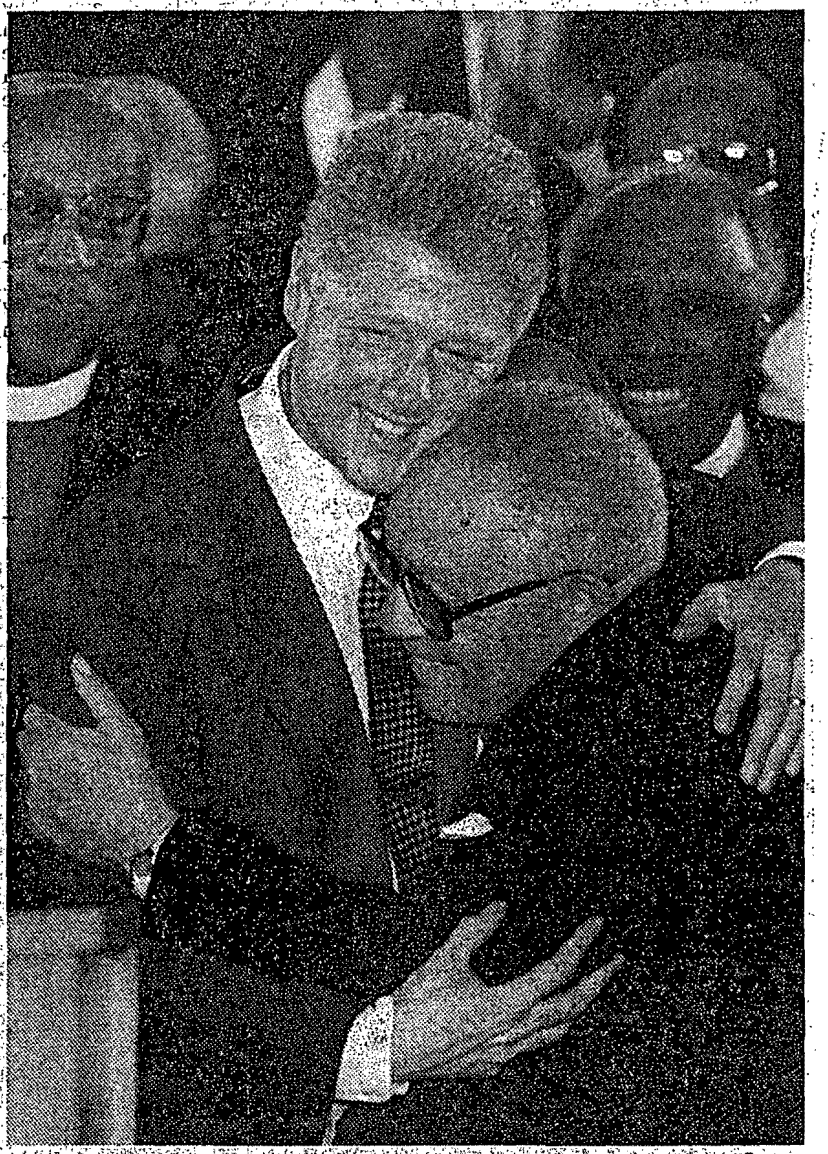
(L TO R) PHOTOGRAPHS BY KATHERINE LAMBERT; LISA QUINONES/BLACK STAR; JOHN FICARA/SYGMA

NYT 11/14/93



Reuters

President Clinton with Bishop L. H. Ford after addressing the congregation at the Mason Temple Church of God in Christ in Memphis.

At the Site of King's Last Sermon, Clinton Calls for Responsibility

Excerpts From Clinton's Speech to Black Ministers

Special to The New York Times

WASHINGTON, Nov. 13 — Following are excerpts from remarks today by President Clinton at the 86th convocation of the Church of God in Christ, held in Memphis, as transcribed by the Federal Information Systems Corporation, a private transcription service.

"I guess what I really want to say to you today, my fellow Americans, is that we can do all of this and still fail unless we meet the great crisis of the spirit that is gripping America today. When I leave you, Congressman Ford and I are going to a Baptist Church near here to a town meeting he's having on health care and violence. I tell you, unless we do something about crime and violence and drugs that is ravaging the community, we will not be able to repair this country.

"If Martin Luther King, who said, 'Like Moses, I am on the mountain top and I can see the Promised Land, but I'm not going to be able to get there with you. But we will get there.' If he were reappear by my side today and give us a report card on the last 25 years, what would he say? 'You did a good job,' he would say — voting and electing people who formerly were not electable because of the color of their skin. You have more political power — and that is good. You did a good job,' he would say, 'letting people who have the ability to do so, live wherever they want to live, go wherever they want to go in this great country.

"'You did a good job,' he would say, 'elevating people of color into the ranks of the United States armed forces to the very top or into the very top of our government. You did a very good job,' he would say. He would say, 'did a good job creating a Black middle class of people who really are doing well, and the middle class is growing more among African Americans than among non-African Americans. You did a good job. You did a good job in opening opportunity.'

"But he would say, 'I did not live and die to see the American family destroyed. I did not live and die to see 13-year-old boys get automatic weapons and gun down 9 year olds just for the kick of it. I did not live and die to see young people destroy their own lives with drugs and then build fortunes destroying the lives of others. That is not what I came here to do. I fought for freedom,' he would say, 'but not for the freedom of people to kill each other with reckless abandonment, not for the freedom of children to have children and the fathers of the children to walk away from them and abandon them, as if they don't amount to anything.

"'I fought for people to have the right to work, but not to have whole communities and people abandoned. This is not what I lived and died for, my fellow Americans,' he would say. 'I fought to stop White people from being so filled with hate that they would wreak violence on black people. I did not fight for the right of black people to murder other black people with reckless abandonment.'

"The other day, the Mayor of Baltimore, a dear friend of mine, told me a story of visiting the family of a young man who had been killed — 18 years old — on Halloween. He always went out with little-bitty kids so they could trick or treat safely. And across the street from where they were walking on Halloween, a 14-year-old boy gave a 13-year-old boy a gun and dared him to shoot the 18-year-old boy — and he shot him dead. And the Mayor had to visit the family.

"In Washington, D.C., where I live — your nation's capitol, the symbol of freedom throughout the world — look how that freedom is being exercised. The other night, a man came along the street and grabbed a 1-year-old child and put the child in his car. The child may have been the child of the man. And two people were after him and they chased him in the car and they just kept shooting with reckless abandonment — knowing that baby was in the car. And they shot the man dead, and a bullet went through his body into the baby's body and blew the little booty off the child's foot.

"The other day on the front page of our paper, the nation's capital — 'Are We Talking About World Peace or World Conflict?' You know, a big article on the front page of The Washington Post about an 11-year-old child planning her funeral. 'These are the hymns I want sung. This is the dress I want to wear. I know I'm not going to live very long.' That is not the freedom — the freedom to die before you're a teen-ager is not what Martin Luther King lived and died for.

> *"The freedom to die before you're a teen-ager is not what Martin Luther King lived and died for."*

More than 37,000 people die from gunshot wounds in this country every year. Gunfire is the leading cause of death in young men. And now that we've all gotten so cool that everybody can get a semi-automatic weapon, a person shot now is three times more likely to die than 15 years ago, because they're likely to have three bullets in them. A hundred-and-sixty-thousand children stay home from school every day because they are scared they will be hurt in their school.

"The other day, I was in California at a town meeting, and a handsome young man stood up and said, 'Mr. President, my brother and I, we don't belong to gangs. We don't have guns. We don't do drugs. We want to go to school. We want to be professionals. We want to work hard. We want to do well. We want to have families. And we changed our school, because the school we were in was so dangerous. So, when we showed up to the new school to register, my brother and I were standing in line, and somebody ran in the school and started shooting a gun, and my brother was shot down standing right in front of me at the safer school.'

"The freedom to do that kind of thing is not what Martin Luther King lived and died for. Not what people gathered in this hallowed church for the night before he was assassinated in April of 1968. If you had told anybody who was here in that church on that night that we would abuse our freedom in that way, they would have found it hard to believe. And I tell you, it is our moral duty to turn it around.

'A Chance' for Change

And now, I think, finally, we have a chance. Finally, I think, we have a chance. We have a pastor here from New Haven, Conn. I was in his church, with Reverend Jackson, when I was running for President, on a snowy day in Connecticut, to mourn the deaths of children who had been killed in that city. And afterward, we walked down the street for more than a mile in the snow. Then, the American people were not ready. People would say, "Oh, this is a terrible thing, but what can we do about it?"

Now, when we read that foreign visitors come to our shores and are killed at random in our fine state of Florida, when we see our children planning their funerals, when the American people are finally coming to grips with the accumulated waste of crime and violence and the breakdown of family and community and the increase in drugs and the decrease in jobs, I think, finally, we may be ready to do something about it.

And there is something for each of us to do. There are changes we can make from the outside in — that's the job of the President and the Congress and the governors and the mayors and the social service agencies. And then, there are some changes we're going to have to make from the inside out, or the others won't matter. That's what that magnificent song was about, isn't it?

But I say to you, my fellow Americans, we need some other things as well. I do not believe we can repair the basic fabric of society until people who are willing to work have work. Work organizes life. It gives structure and discipline to life. It gives meaning and self-esteem to people who are parents. It gives a role model to children.

The famous African American sociologist, William Julius Wilson, has written a stunning book, called "The Truly Disadvantaged," in which he chronicles in breathtaking terms how the inner cities of our country have crumbled as work has disappeared. And we must find a way, through public and private sources, to enhance the attractiveness of the American people who live there to get investment there. We cannot — I submit to you — repair the American community and restore the American family until we provide the structure, the values, the disciple, and the reward that work gives.

'Make Our People Whole'

And I say to you, we have to make our people whole again. This church has stood for that. Why do you think you have five million members in this country? Because people know you are filled with the spirit of God to do the right thing in this life by them.

So, I say to you, we have to make a partnership — all the government agencies, all the business folks. But where there are no families, where there is no order, where there is no hope, where we are reducing the size of armed services because we have won the cold war, who will be there to give structure, discipline, and love to these children. You must do that and we must help you.

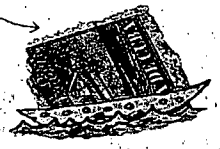
And so, I say to you today, my fellow Americans, you gave me this job, and we're making progress on the things you hired me to do. But unless we deal with the ravages of crime and drugs and violence, and unless we recognize that it's due to the breakdown of the family, the community, and the disappearance of jobs, and unless we say, Some of this cannot be done by government because we have to reach deep inside to the values, the spirit, the soul, and the truth of human nature, none of the other things we seek to do will ever take us where we need to go.

So, in this pulpit, on this day, let me ask all of you in your heart to say, "We will honor the life and the work of Martin Luther King. We will honor the meaning of our church. We will somehow, by God's grace, we will turn this around. We will give these children a future. We will take away their guns and give them books. We will take away their despair and give them hope. We will rebuild the families and the neighborhoods and the communities. We won't make all the work that has gone on here benefit just a few. We will do it together by the grace of God."

Thank you.

WHITES OUT

Ten big metropolitan areas are seeing a new kind of white flight, out of the melting pot and into another America.



Nevertheless, today's geographic concentration of immigrants is much higher. More than three-quarters of immigrants in the 1980's settled in just six states, and more than half of those immigrants were in just eight metropolitan areas.

Moreover, unlike past eras of immigration, this new wave is more than 80 percent Latin American and Asian. Most immigrants arrive to discover that they are officially classified as members of a racial group — usually Hispanic or Asian. Legally and culturally, they are all defined as minorities — just as blacks have been, even though most blacks originally came to America as slaves. In California, this pattern has altered the dynamics of affirmative action in ways that go unrecognized in the currently raging debate on the subject. Because of immigration, in the 30-odd years since the dawn of affirmative action, blacks have gone from more than two-thirds to less than half of America's minority population.

Nationally, black workers, and especially the black middle class, are disproportionately concentrated in government jobs. But with substantial numbers of new immigrants arriving, blacks in these port-of-entry cities find themselves increasingly overrepresented in government jobs vis-à-vis their shrinking percentage of the minority population. The result: The new minorities' affirmative-action claims for fairness can't help but come at the expense of blacks.

Ultimately, this interplay of immigration and affirmative action encourages Americans to identify themselves by race and ancestry, and when necessary, move to where that identity serves them best. It's happening. According to the 1990 census, blacks, like whites, are also leaving most of the high-immigration metropolitan areas, if not in the same numbers as whites, and their No. 1 destination is Atlanta. By contrast, the No. 1 destination for Hispanic-Americans is Miami, and the No. 1 destination for Asian-Americans is Los Angeles.

Meanwhile, the whites leaving high-immigration metropolitan areas are those most likely to be competing with immigrants for jobs, space and cultural primacy. Classically, those most likely to move are the most affluent and best educated; now it is the less affluent, less well-educated whites. They are not the ones who can afford to hire immigrants to mind their kids, trim their hedges and make their hotel beds. They are the whites whose neighborhoods and public school classrooms are visibly changing, and the ones most likely to be economically displaced by immigrants who pour in no matter how lousy the local economy may be. What they leave behind is a society more racially stratified, with affluent whites on top in their gated communities and private schools, and minorities at the bottom, competing with one another for jobs, turf and power.

Those who leave are not just switching neighborhoods. Consider California. It will be less than half white within a decade because of a massive influx of minority immigrants and a disproportionately white exodus, mostly to neighboring states, which are among the whitest in the nation. In Las Vegas, most of Marilyn Yarosko's neighbors and co-workers are white. Gone is any sense of identity or community Yarosko had with those she left behind. For now, when someone like Yarosko flees Los Angeles for Las Vegas, she is not just leaving one state for another, she is leaving one America for another. ■

the districts acquired their particular boundaries in an effort to protect the political base of the white incumbents in neighboring districts. The special three-judge Federal District Court in Houston invalidated the districts as racial gerrymanders: the 30th Congressional District, a majority-black district in Dallas; the 18th, a majority-black district in the Houston area, and the 29th, also in the Houston area, with a majority Hispanic population.

At the same time, the court stressed that protecting incumbents had historically been part of the goal of any redistricting plan in Texas, and noted that the state's Congressional delegation had participated in drawing these lines. Now that the case, Bush v. Vera, No. 94-805, is before the Supreme Court, the question is whether the role of incumbency-protection will lead Justice O'Connor, if not the rest of the majority, to conclude that race was not the "predominant" factor in the line-drawing choices the Texas Legislature made.

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Also, the Georgia district, linking the Atlanta suburbs with Savannah by way of Augusta, "tells a tale of disparity, not community," Justice Kennedy said in his opinion last month. But the Texas districts encompass actual communities of interest that may make it difficult for the majority to dismiss them as an artificial linking of separate population centers. Black residents of the Houston district under challenge live in one of the district's neighborhoods and drive to church in another of the neighborhoods, said Penda Hair, a lawyer representing the black and Hispanic voters for the NAACP Legal Defense and Educational Fund Inc.

A Clear Voice Becomes Less So

The majority-black 12th Congressional District of North Carolina, often labeled the I-85 district because it is at some points barely wider than the interstate highway whose course it follows, is again before the Court in the new North Carolina case, now called Shaw v. Hunt, No. 94-923. A special three-judge Federal District Court in Raleigh last year examined both the 12th district and the state's other majority-black district, the First, under the strict standard of review the Supreme Court set in the 1993 Shaw v. Reno decision.

The judicial panel upheld both districts, finding that it served the state's "compelling state interest" in complying with the Voting Rights Act to enable the state's black residents, 22 percent of the population, to elect candidates of their choice from two of the state's 12 Congressional districts. The district court's conclusion, which the five white voters who originally challenged the district are now appealing, requires the Supreme Court to confront another issue it avoided in the Georgia case: the relationship between the Voting Rights Act and the Constitution.

That is not a new issue for the Court, and its tangled history is instructive. The Court first ruled on a constitutional challenge to the Voting Rights Act in a 1966 decision, South Carolina v. Katzenbach, shortly after the law took effect. The majority opinion, written by Chief Justice Earl Warren, reviewed the Federal Government's ineffectual efforts to help Southern blacks overcome enormous obstacles to registering and voting.

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The 6-to-3 decision held that proof of intentional discrimination was required to prove a violation of Section 2 of the Act, the law's core provision that makes it illegal to use any voting practice or procedure "to deny or abridge," on account of race, the right of any citizen to vote. Congress responded two years later, after a long struggle and with the reluctant acquiescence of President Ronald Reagan, by amending Section 2 to remove the need to prove intentional discrimination.

As part of the compromise, the new section also provided that the law could not be read to guarantee a right to proportional representation. As Justice O'Connor pointed out when the Court interpreted the new Section 2 in a 1986 case, Thornburg v. Gingles, "there is an inherent tension between what Congress wished to do and what it wished to avoid." Any effort to determine whether minority voting power has been unfairly diluted must entail some notion of what those voters' undiluted power would be, "some reference to the proportion between the minority group and the electorate at large," Justice O'Connor said in her concurring opinion.

'A Different Version Of the Same Disease'

The contradiction inherent in the amended Voting Rights Act makes the law "incoherent" and unable to address the paradox at the heart of the current debate, Professor Paul Gewirtz of Yale Law School said in an interview. "Racial bloc voting really does restrict the ability of minorities to elect the candidates they prefer," he said. "But race-based districting itself can entrench racial bloc voting in an all but irreversible way. The cure brings you a different version of the same disease. It's desperately hard."

These ambiguities are part of what the Court faces in North Carolina, where the black population of 22 percent is dispersed throughout the state. The white plaintiffs maintain that, far from justifying the two challenged districts, a proper interpretation of the Voting Rights Act would find no need for any majority-black districts among the state's 12 Congressional districts. The Justice Department's insistence on creating two districts, the plaintiffs' brief says, not only "contravenes Section 2's prohibition of requiring proportional representation," but also amounts to a rewriting of the law through executive branch fiat.

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But while the Georgia case made it clear that the Court is in no mood to defer to the Justice Department's interpretation of the Voting Rights Act, that does not necessarily foreclose deference to a state's own view of its legal obligations. In finding that the challenged districts served North Carolina's "compelling interest" in complying with the Voting Rights Act, the three-judge panel in Raleigh said that "the question in the end is whether a deliberately race-based districting plan enacted by an overwhelmingly white legislature in one of the former Confederate states in order to comply with its understanding of the commands of national law" should be struck down "at the behest of five white voters."

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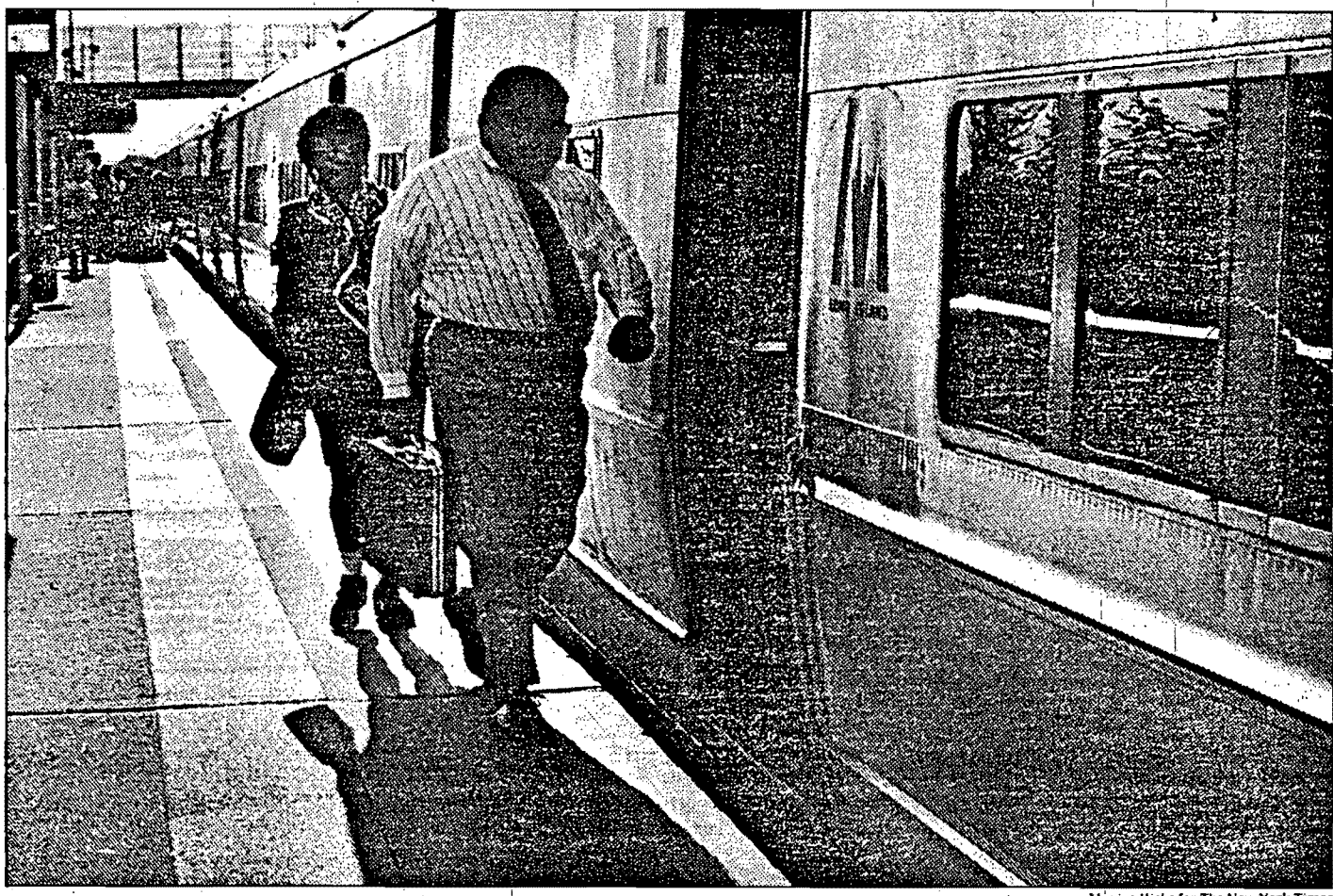
The Greening of the Black Middle Class

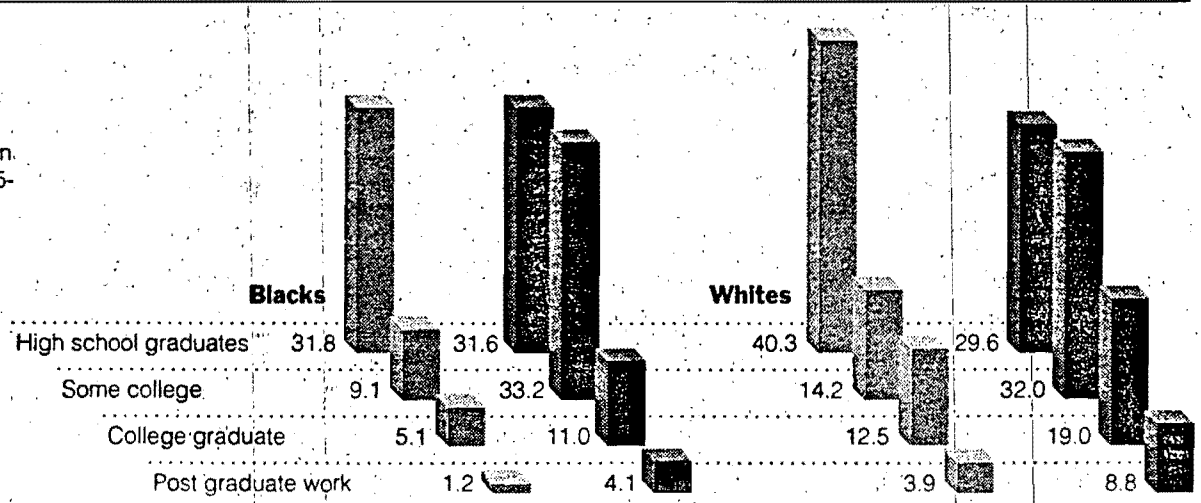


Maxine Hicks for The New York Times

Many middle-class blacks now earn as much or more than their white counterparts. Above, New York commuters.

Education Gains

The highest education levels achieved by 25- to 44-year-olds, as a percentage of each group.



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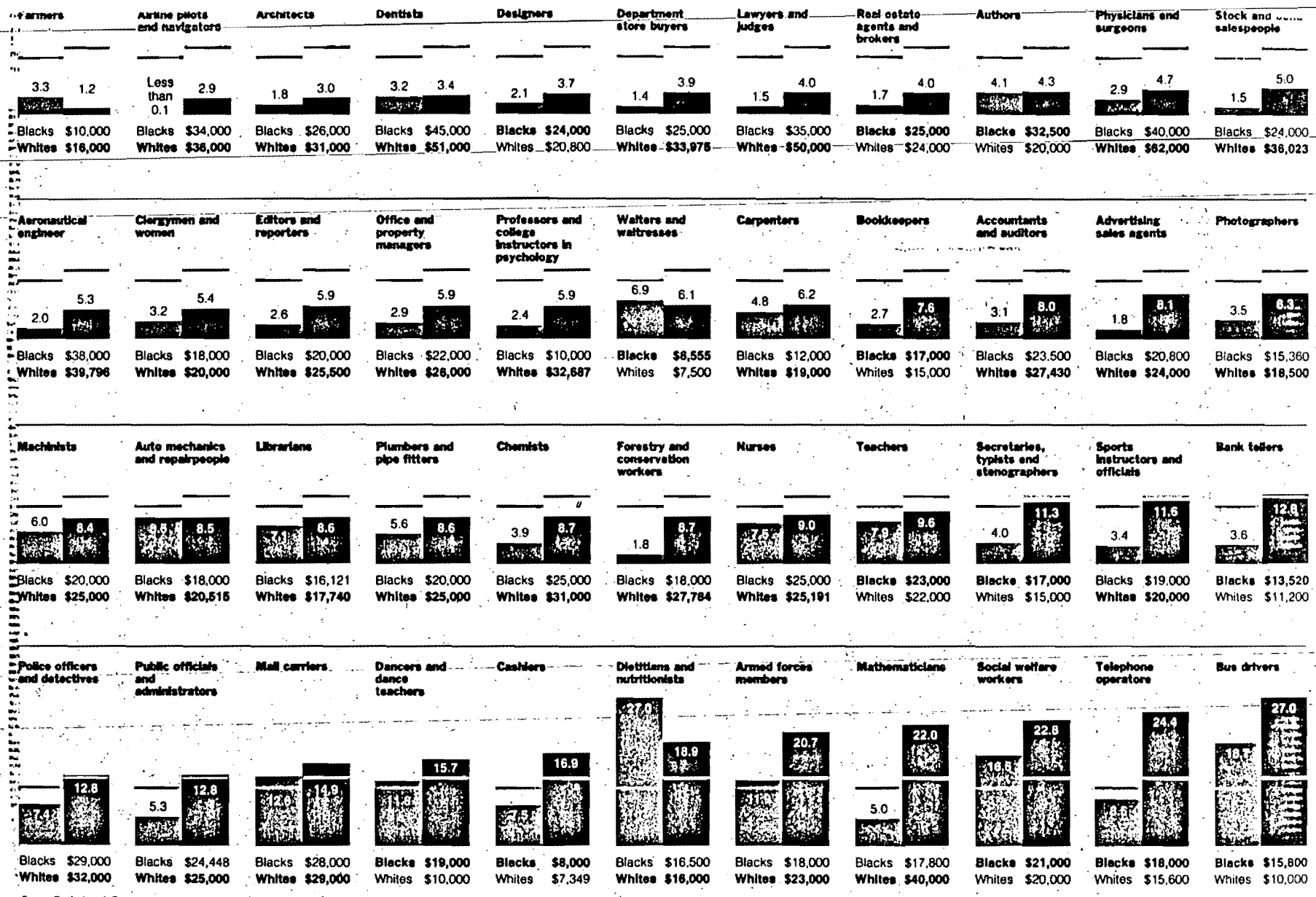

Source: Dr. Andrew A. Beveridge, Sociology Department, Queens College

The New York Times

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Dreaming of America

Black and White, Career by Career: How Younger Workers Compare

Some were babies when Jackie Robinson joined the Dodgers, others were teething as the Voting Rights Act was signed, but all black children born in the second half of the 20th century were supposed to have greater opportunities than their parents did.

Having finished school and entered the workforce, those blacks born between 1946 and 1965 *have* made advancements in the workplace compared to workers in the same age group two decades earlier. But they still make less than white employees, on average, and have seen only small hiring increases in some of the most prestigious occupations.

Still, there is some good news. The arts have been especially welcoming, with black writers, dancers, artists, musicians and designers all having higher median incomes in 1989 than whites.

Salary parity has been reached in some jobs that have been historically held by women — earnings for black secretaries, teachers, telephone operators, cashiers and nurses are at or above the median earnings for whites.

And, despite redlining and other discriminatory practices that continue to keep blacks out of some housing markets, black real estate agents made more money than whites in 1989.

Key

For comparison, the lines show the percentage of the overall workforce aged 25 to 44 that was black.

Percentage of jobs in this occupation held by blacks.

Median annual earnings for workers in this occupation in 1989. The group in **bold** earned more.

Occupation

10.5% in 1970 — 12.3% in 1990

% 1970 — % 1990

Blacks $25,000
Whites $31,000

Data are from a computer analysis that was conducted for The New York Times by Dr. Andrew A. Beveridge of the sociology department at Queens College of the City University of New York. The figures are estimates based on recently restructured data from questionnaires completed by 1 in 100 households during the 1970 and 1990 Censuses.

The restructured data were created by Dr. Steven Ruggles in the history department at the University of Minnesota, who recoded the 1970 and 1990 occupational categories so that they would be comparable.

All analyses are based only upon black and white individuals (including people of Hispanic origin) who were employed at the time of the interview.

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cont'd

Voting Rights Law: A Chronology

1965 The Voting Rights Act becomes law. It has two principle provisions. Section 2 provides that "no voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race of color." Section 5 prohibits states and portions of states, in the South and elsewhere, from putting any new voting procedures, including new districts, into effect without first giving the Attorney General a chance to object or getting a ruling from Federal District Court in Washington that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

1966 The Supreme Court finds the law constitutional against a states'-rights challenge in South Carolina v. Katzenbach. "This may have been an uncommon exercise of Congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate," Chief Justice Earl Warren writes for the 8-to-1 majority.

1976 The Court applies Section 5 to a redistricting plan for the first time in Beer v. United States, finding that plans that improve representation for minorities generally cannot be found to violate the law, even if greater improvements might have been made. The 5-to-3 decision essentially makes the legal test whether a challenged plan leads to a "retrogression in the position of racial minorities."

1977 Without a majority opinion, a deeply split Court in United Jewish Organizations of Williamsburgh v. Carey suggests that using race to create districts with majorities of minority voters can withstand constitutional attack and that white voters generally cannot challenge such plans.

1980 In City of Mobile v. Bolden, the Court rules that Section 2 of the Voting Rights Act invalidates only those voting practices that were adopted for the purpose of discriminating. Practices that have only a discriminatory effect, as the at-large city commission challenged in that case, are beyond the section's intent, the 6-to-3 decision held.

1982 Congress amends Section 2 to overturn the Mobile decision, providing that a voting practice that "results in a denial or abridgement" of the right to vote can violate the law without proof of discriminatory intent. As part of a compromise, Congress also declares that the amended law gives no right to proportional representation on the basis of race.

1986 The Court interprets the new Section 2 for the first time in Thornburg v. Gingles, a deeply split decision without a majority opinion, demonstrating that the Justices are troubled by the amended section's contradictions. "There is an inherent tension between what Congress wished to do and what it wished to avoid," Justice Sandra Day O'Connor says in a concurring opinion.

1993 The Court rules in Shaw v. Reno, a 5-to-4 decision by Justice O'Connor, that districts drawn with such "bizarre" shapes that they are unexplainable on grounds other than race are unconstitutional unless they can be shown to be "narrowly tailored" to serve a "compelling state interest".

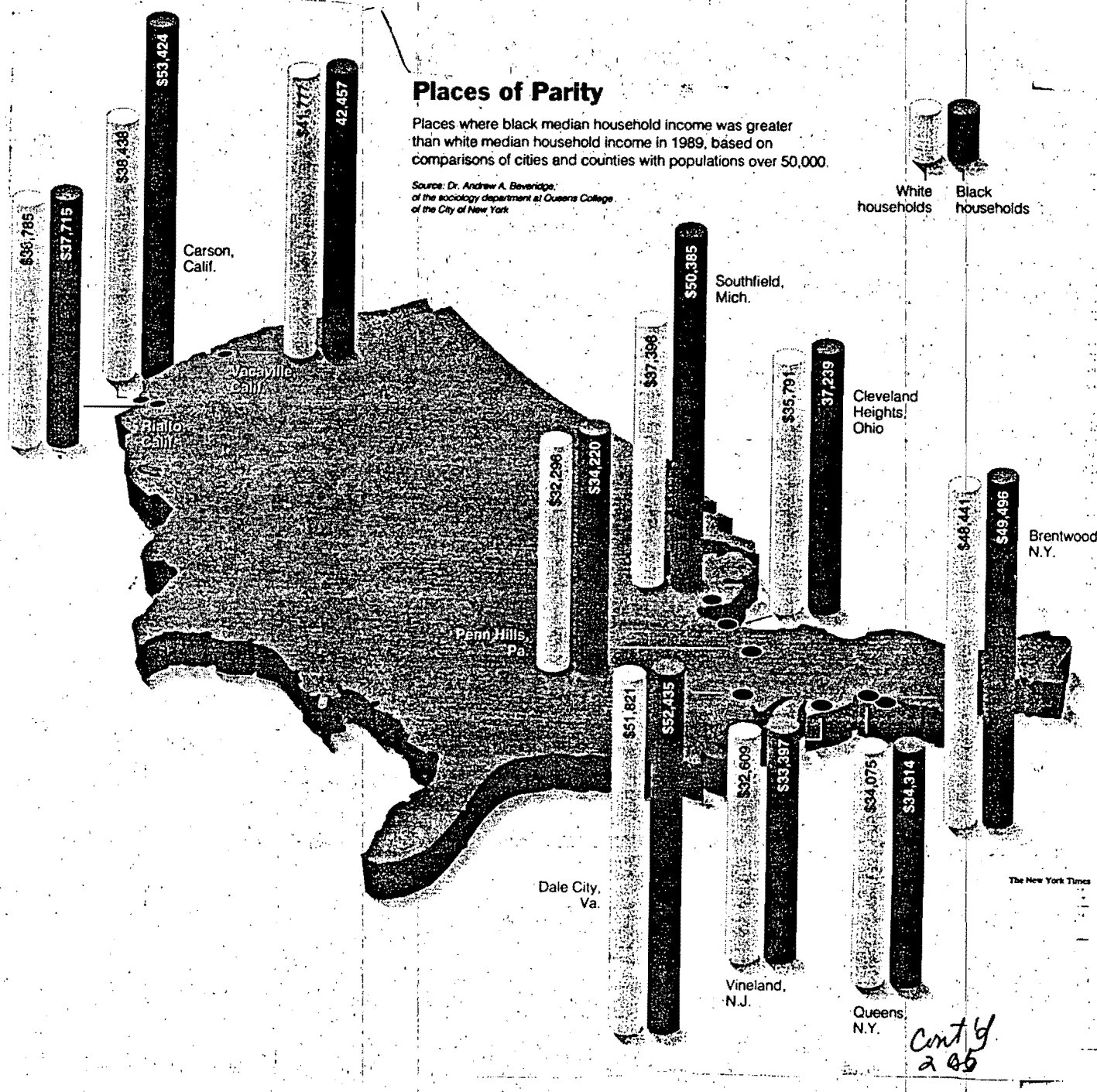
1994 Shaw v. Reno brings political turmoil across the South, where two dozen majority-black districts were drawn in the early 1990's, mostly after prodding from the Justice Department. Federal District Courts declare some districts unconstitutional in Texas, Louisiana, and Georgia; the North Carolina districts the Supreme Court found presumptively unconstitutional in Shaw v. Reno are upheld on reexamination by the District Court there.

1995 In Miller v. Johnson, a 5-to-4 decision by Justice Anthony M. Kennedy, the Supreme Court affirms the lower court's finding that Georgia's 11th Congressional District is unconstitutional; dismisses the Louisiana case on technical grounds; and agrees to hear the Texas and North Carolina cases in its new term that begins in October.

Places of Parity

Places where black median household income was greater than white median household income in 1989, based on comparisons of cities and counties with populations over 50,000.

Source: Dr. Andrew A. Beveridge, of the sociology department at Queens College of the City of New York



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The New York Times

DATE: 7/20/95
PAGE: B3

Hispanic Residents Vow to Fight for Carefully Drawn Congressional District

By JOE SEXTON

In the aftermath of a Supreme Court decision striking down a Georgia Congressional district that was drawn along racial lines, a fight is under way over the future of the largely Hispanic 12th district in New York City.

A suit was filed late last month in Brooklyn Federal Court seeking to abolish the district. And yesterday, dozens of residents of the district, which includes parts of three boroughs, staged a public protest supporting the current configuration and vowing not to give up their hard-won political gains.

"It seems that every time poor people accomplish something, it is taken from them," said Elisa Torres, a retired social worker from the Williamsburg section of Brooklyn. "We're going backward again, and losing the 12th C.D. would be another huge step in that direction."

The 12th Congressional District — a strangely shaped, cobbled-together collection of neighborhoods encompassing parts of Queens, Brooklyn and the Lower East Side of Manhattan — was drawn in 1992 in an effort to create a Hispanic district, and Nydia M. Velazquez, a Puerto Rican woman, was elected to office.

But late last month, a suit was filed in Federal Court in Brooklyn asking that the 12th District be abolished because it had been expressly constructed along racial lines. Just two days later, the Supreme Court ruled that a Georgia Congressional district was unconstitutional because it had been drawn using race as a "predominant factor."

The New York lawsuit lists Angel Diaz, the Republican candidate who lost to Ms. Velazquez in 1992, and another Puerto Rican resident of the district as plaintiffs. It is being financed by the Campaign for a Color-Blind America, a Texas-based organization that has assisted in a handful of legal challenges to districts drawn in order to increase minority representation in Congress.

"I was expecting this to happen, but I was not expecting a Latino to be one of the plaintiffs," Representative Velazquez said of the lawsuit. "To me, it is one in a long chain of events connected with right-wing, conservative forces that want to dilute the power of people of color in this country."

Edward Blum, chairman of the Campaign for a Color-Blind America, said the organization was a multiracial, multiethnic group of scholars and lawyers whose sole aim was to eliminate race as the decisive component in dividing up the country's voters.

"Racial classifications for the purposes of drawing districts is inherently evil," Mr. Blum said in a telephone interview from his office in Houston. Mr. Blum said his organization had been approached by Reynaldo Coholo, a Brooklyn resident active in Hispanic politics in the city, and asked to help. But in an interview, Mr. Diaz said he, in fact, had initiated the request for legal assistance in mounting the lawsuit.

"It was my idea from Day 1," said Mr. Diaz, who works as a finance officer at Woodhull Medical and Mental Health Center in Brooklyn. "I don't care what the people in the district feel. I care about reality. The reality is that there doesn't have to be a Hispanic member of Congress for Hispanic people to get good representation. If I had won, it would still be wrong."

Political leaders and legal scholars have generally agreed that the Supreme Court's decision earlier this month left wide open the question of the future of other Congressional districts that are under challenge. Even while striking down the Georgia district, the Court approved without comment a California plan that purposely created black- and Hispanic-majority districts. The Court is expected to rule on two other redistricting cases this fall, cases that could have a direct impact on the fate of the city's 12th district.

"I can't speak for the motivation behind the suit, but the full legal story about what the standards for drawing districts has yet to be written," said Arthur Baer, a lawyer with the Puerto Rican Legal and Educational Defense Fund. "I think the people of the 12th C.D. should be confident they will prevail."

There appears to be much about both the creation of the 12th district and the legal challenge to it that distinguishes it from the Georgia case. The 12th District was crafted by a state court, and approved by both the Legislature and the United States Department of Justice. Further, that the two plaintiffs are Hispanic raises the possibility that the courts might find they lack the standing to bring the case.

The residents of the 12th district who protested outside the courthouse offered statistics showing that the district, however oddly shaped to include Hispanic neighborhoods, is in the end far from exclusively made up of Hispanics. According to data compiled by the Institute for Puerto Rican Policy, nearly 30 percent of the registered voters in the 12th District are white, and 48.8 percent are Hispanic.

"Clearly, this is part of a national effort by the country's Republican and conservative movement," said Assembly Speaker Sheldon Silver, who is named as a defendant. "We intend to vigorously defend the case and see what happens."

Outside the courthouse, the residents of the 12th District said they would not to give up the political power for which they long fought.

"It's an immoral effort to strip people of their political right," said Jose Candelario, who works in an AIDS prevention program in Bushwick, Brooklyn. "The Republicans say we should go from dependency to self-sufficiency, and then they try and take away the very resources of political empowerment that might allow that self-sufficiency."

IN THE LAW

New EEOC Chairman Seeks More Funding

By Christy Harris
Federal Times Staff Writer

"Business is too good" at the Equal Employment Opportunity Commission, and the agency does not have the staff or funding to keep up with its growing workload, the new chairman said.

Gilbert Casellas, who came to EEOC last month, told reporters Oct. 26 the agency has asked the administration for a fiscal 1996 budget increase of 25 percent to 30 percent. He did not say how many more investigators and other employees that would allow.

EEOC has 92,396 charges awaiting investigation, including those filed by people in the private sector.

"We just were never adequately funded," Casellas said.

EEOC should be exempt from governmentwide work force reductions of more than 272,000 positions by 1999, he said.

"People are coming in the door at alarmingly high rates," Casellas said.

"We ought to be excused from that. We need everybody we have here."

The commission's Office of Federal Operations received 10,712 requests for hearings and 7,141 appeals in fiscal 1994.

"Unfortunately, the stature of the EEOC has diminished in the last few years, particularly as the case inventory has grown and the likelihood of a quick and fair resolution has decreased," Casellas said.

Doug Pensinger

Gil Casellas says the EEOC should be exempt from staff reductions.

EEOC's funding has increased every year since fiscal 1980. Congress appropriated $233 million for fiscal 1995. But staffing has fallen from 3,390 full-time equivalent positions in fiscal 1980 to 2,832 FTEs in fiscal 1994.

Casellas said he would try to find out where the money is going.

"I certainly don't think people are being overpaid," he said.

EEOC's inability to process cases quickly has led to the perception the agency is "not worth bothering with," he said, so the agency must regain "a sense of focus."

Casellas said he and his staff will review the way complaints are handled, and possibly change the process to speed it and reduce the backlog.

Policies and procedures that have become obstacles to EEOC's work must be eliminated, he said.

"It is imperative that we take a clean-sheet approach and re-evaluate how we do business," he said. "We must fix what is wrong and continue what is right."

Sen. Paul Simon, D-Ill., has been pushing EEOC to resolve its backlog and was critical of the long delay in appointing a chairman.

In a letter to Casellas after his confirmation, Simon referred to a joke he made during Casellas' hearing. Simon had said if any EEOC employees were not committed to their jobs and the agency's mission, maybe they could be transferred to the Pentagon.

Casellas said at the recent news conference he did not interpret Simon's letter to mean he should conduct a "witch hunt," or "litmus test."

If Congress decides to add discrimination on the basis of sexual orientation to EEOC's jurisdiction, Casellas said he would hope legislators also would give the agency more resources to handle the additional cases.

He said the same goes for another bill that would have taken investigations away from agencies and given the responsibility to EEOC.

Casellas said the 30th anniversary of the Civil Rights Act of 1964 is a "remarkable time" for him to be taking over at EEOC.

"I understand in a very real way the importance of the EEOC and its mission," he said.

"I am not sure that I would be standing here today were it not for the promises made by the Civil Rights Act.

"I am part of the generation that felt the last vestiges of segregation. I spent my first six years of education at a segregated school. I attended segregated movie theaters. I remember drinking from 'colored' water fountains," he said.

"I saw and experienced the effects of those indignities. I also saw how much talent we as a society did without."

EEOC enforces Title VII of the 1964 Civil Rights Act, which prohibits employment discriminiation based on race, color, religion, sex or national origin, and other laws prohibiting discrimination based on age or disability.

The inability to process cases quickly has led to the perception the agency is 'not worth bothering with.'

EEOC Chairman Gilbert Casellas

AT A GLANCE

The Backlogs

The new EEOC chairman blames a lack of resources for the agency's backlog of cases filed by federal employees.

Backlog of Hearings	Backlog of Appeals
FY92 — 3,982	FY92 — 2,029
FY93 — 3,991	FY93 — 2,900
FY94 — 5,177	FY94 — 4,363

Sex Harassment Charges Overturned

By Chet Bridger
Federal Times Staff Writer

A sexual harassment complaint developing at Cherry Point Marine Corps Air Station, N.C., has all the makings of a novel.

After a GS-6 secretary filed the complaint, base officials demoted the GM-15 civilian personnel director and fired the GM-14 deputy director.

Although he never touched the secretary or asked her for a date, the deputy director, Gerald Wingate, was charged with sexual harassment because he allegedly told the secretary about his romantic interest in her. The director, Gerald Johnson, was demoted for improperly handling the situation.

The two men appealed the Navy's disciplinary actions to the Merit Systems Protection Board, where an administrative judge recently ordered them reinstated. The judge said the woman's behavior was flirtatious, and questioned her credibility.

According to the decision, the secretary, Kathy Turney, shared with the two men an issue of *Cosmopolitan* magazine that contained an article on oral sex. She also let them borrow a videotape in which a Howard Stern interview discusses oral sex, according to the ruling.

Navy attorneys have filed a petition for review before the full MSPB. In the meantime, Turney has been transferred out of the civilian personnel office, and Johnson and Wingate are home indefinitely on paid administrative leave.

Johnson, with 27 years' federal service, said he is a victim of the Navy's ambition to erase the memory of the Tailhook convention scandal.

"I think the whole thing has been handled very poorly by the Department of Navy and the base. The philosophy is you're guilty until you're proven innocent," Johnson said.

"I believe that the Navy was looking for a case because of Tailhook and the past record with sexual harassment," he said.

"Somehow this became a target case."

Navy officials charge Wingate's behavior created a hostile work environment for Turney. Navy attorneys could not prove the "reasonable person" standard set in the Supreme Court's 1993 landmark case on sexual harassment, *Harris vs. Forklift Systems*, according to the MSPB judge.

"Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment — an environment that a reasonable person would find hostile or abusive — is beyond Title VII's purview," the Supreme Court ruled in *Harris*.

In the complaint, Turney said Wingate had several closed door meetings with her and spoke in a quiet, intimate tone. Wingate repeatedly professed to her that he was interested in one of his co-workers. During one closed door session, he told her, "you know what I want," Turney said.

Wingate also allegedly made off-duty telephone calls to Turney's friends to ask them about her love life, according to the complaint.

Wingate said the whole thing began when Turney started flirting with him. He sent a memo requesting advice from the employee assistance program early in the process.

The memo served as the "linchpin" in solving the credibility question, the judge said.

Wingate's closed door meetings with Turney were simply an attempt to determine Turney's true feelings toward him, the judge ruled.

"In light of [Turney's] actions, I find that a reasonable person would not consider [Wingate's] conversations with her to have created a hostile work environment," the judge found.

Gerald Johnson and Gerald Wingate vs. Navy, AT-0752-94-0599-I-1, AT-0752-94-0600-I-1, MSPB, Sept. 1, 1994.

IN BRIEF

Clinton Approves Sick Leave Changes

Employees will be able to use some sick leave to care for family members by the end of 1994.

President Clinton signed legislation Oct. 22 allowing use of up to 13 sick days annually to care for family members.

The law takes effect 60 days after enactment, so the new benefit should be available the last week of December.

Under the law, introduced by Del. Eleanor Holmes Norton, D-D.C., all employees could use up to five days, and some could use up to 13 days, depending on how much sick leave they have. An employee's remaining sick leave could not dip below 10 days.

Under the law, employees can use sick leave to care for a spouse, or spouse's parents; children, including adopted children; parents; brothers and sisters and their spouses, and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Letters to the Editor

Don't Be Dumb—Keep the CIA

On behalf of the Veterans of the Office of Strategic Services (OSS), I must take issue with Angelo Codevilla's Jan. 18 editorial-page article "Get Smart—Eliminate the CIA."

OSS veterans deeply believe the CIA is more critically needed now than when it was established. The OSS, the CIA's predecessor, was founded by President Roosevelt as a war measure, and its director was the legendary Gen. William J. (Wild Bill) Donovan. Unfortunately, it was summarily terminated by President Truman at the end of World War II in 1945. However, better minds soon prevailed, as leaders realized that a national peacetime intelligence organization, as envisioned by Gen. Donovan, was imperative. The CIA was created in July 1947.

The fact that mistakes have occurred since its inception is no warrant for its elimination. Certainly, the CIA must act to correct its past mistakes and reorganize as needed. But management is a separate issue from the need for central intelligence. In the words of Winston Churchill: "War and tyranny are still abroad in this haggard world." Until recent years the U.S. had one big enemy. Now, it's confronted with a multitude of potential enemies. Many of the latter are striving for nuclear power or access to chemical or biological weapons with which to blackmail both their neighbors and the nations of the West, particularly the U.S. It is only through the educated craft of intelligence—particularly the gathering of information and analyzing it—that we can gain the foreknowledge of potential danger.

It is noteworthy that Victor Sheymov, a former KGB agent who defected to the U.S., said, "The CIA is needed more than ever." In his recent book, "Tower of Secrets," he declared, "The position of the KGB has not diminished; it has increased. What's more, it is the only coherent institution in Russia now."

Further, the Veterans of OSS see the need for the original continuance of covert operations, or the so-called "cloak and dagger" school of intelligence. It is more important to know the views of informed enemy "insiders" than to know where the tanks are. We learned that the hard way in Iraq. And not to be overlooked is some form of an Official Secrets Act, as in Britain. Any neophyte knows that a report to a congressional committee may be a prelude to a headline in the morning newspapers.

The Veterans of OSS will continue to urge Congress to renew the mandate for a reorganized and revitalized CIA as a vital factor of direct necessity for the security of the United States.

GEOFFREY M.T. JONES
President
Veterans of OSS
New York

ADA Gives Us Our Full Civil Rights

On behalf of the tens of thousands of veterans with lifelong disabilities, I am concerned and troubled by your Jan. 6 editorial "Disabling Mandate."

The reality is that the veterans who sustained disabilities in World War II, Korea, Vietnam and the Gulf War came home to face architectural barriers that limited their ability to participate fully in American society. They, and tens of millions of others with disabilities, needed the Americans with Disabilities Act to gain their full civil rights.

Contrary to one of the mistaken premises in the editorial, Title II of the ADA—which requires state and local governments to ensure that individuals with disabilities are not excluded from services, programs or activities because buildings are inaccessible—does not require a public entity to take *any* action that would result in an undue burden.

Under Title II, state and local governments need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an existing facility. This concept, called "program access," was carefully crafted to provide states and towns with the flexibility to decide for themselves whether to renovate existing facilities or relocate specific programs and services so they can be used by all citizens.

Additionally, Title II's reasonable requirements mirror those contained in Section 504 of the Rehabilitation Act of 1973, which applies to all entities receiving any federal funds. Since virtually all state and local governments feed heartily from the federal trough, those same recipients have had 21 years to plan for and provide appropriate access for individuals with disabilities.

To date we are not aware of any state or locality which, after having made a good faith effort to comply with Title II, has a legitimate claim that full compliance would create an undue burden. We are aware of state and local governments that have let more than 20 years pass since the passage of Section 504 with little or no attempt at compliance, and still are acting as if Title II of the ADA doesn't exist.

JOHN C. BOLLINGER
Deputy Executive Director
Paralyzed Veterans of America
Washington

* * *

I am troubled by your mischaracterizations and cynical tone. The ADA is a critically important civil-rights statute based on the premise that disability is a natural part of the human experience and in no way diminishes the rights of individuals to live independently, pursue meaningful careers and enjoy full inclusion in the economic, political, cultural and educational mainstream of American society.

You imply that the ADA is excessive and unnecessary because, "[t]here is little question that most people would give generously to ease the way of the truly disabled into mainstream America." That statement fails to take into account the history of systemic and pervasive discrimination against people with disabilities in this country. Today, more than 20 years after enactment of the Rehabilitation Act and more than four years after passage of the ADA, people with disabilities continue to have the highest unemployment rates and the largest number of people living in poverty of any group in American society. And this is not because people with disabilities do not want to work. As employers who have hired people with disabilities know, people with disabilities want to work and are good employees. The ADA is not about charity—it's about good business.

PAUL STEVEN MILLER
Commissioner
U.S. Equal Employment
Opportunity Commission
Washington

Big Corporate Debt Issuance Expected This Week

By WILLIAM PESEK JR.
And SARAH BOWEN
Special to THE WALL STREET JOURNAL

NEW YORK – Bond prices ended little changed yesterday, as investors and traders girded for several key U.S. economic data releases in coming days.

Meanwhile, the corporate debt market braced for what may prove the largest issuance burst so far this year. Among issues expected are investment-grade offerings of $1 billion by **American Home Products** and $500 million by **Rockwell International**. In addition, **National Medical Enterprises** is planning a $1 billion high-yield offering, possibly next week.

In trading late yesterday, the price of the benchmark 30-year Treasury bond was unchanged at 99 14/32 to yield 7.66%.

Yesterday's activity was dominated by Wall Street dealers who were trying to distribute about $40 billion in government securities sold by the Treasury last week during its quarterly refunding. Many investors opted to stay out of the market ahead of key economic data releases, beginning today with retail sales for January. Consumer price and industrial production and capacity utilization data all are slated for release tomorrow.

Bond yields have fallen by more than ⅛ percentage point this year, reflecting the belief that the Federal Reserve's seven monetary tightenings during the last year will temper growth. Bond investors fear sustained economic growth because it typically results in a rise in the inflation rate, eroding the value of investments with a fixed rate of return, such as Treasury securities.

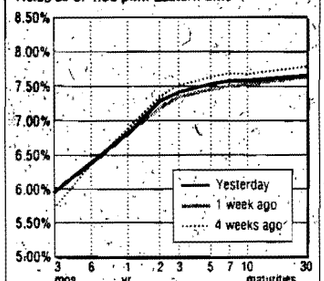
Investors are likely to pay close attention to the Commerce Department's retail sales release after a surprising 0.1% drop in December sales sparked a strong bond rally. "Last month's weak retail sales report was the initial harbinger of the belief that the economy is slowing," said Roland Lochoff, portfolio manager for Panagora Asset Management, Boston. However, the market wants further evidence of that phenomenon before extending its current rally, he said.

Retail sales are expected to have rebounded in January from their weakness late last year. Fourteen economists surveyed by Dow Jones Capital Markets Report on average forecast a sales increase of 0.3% for January, or a rise of 0.7% excluding the volatile auto sales component.

But even if this week's data suggest a slowing economy, the bond market's upside potential is limited, analysts and traders said. That's because dealers are likely to use any major price rises as opportunities to sell, said Michael Strauss, chief economist at Yamaichi International (America) Inc. "I don't see the market as having much to rejoice about right now," Mr. Strauss said. "The mood among dealers remains largely defensive."

Treasury Yield Curve

Yields as of 4:30 p.m. Eastern time



Source: Technical Data's Bond Data

YIELD COMPARISONS

Based on Merrill Lynch Bond Indexes, priced as of midafternoon Eastern time.

	2/13	2/10	52 Week High	52 Week Low
Corp.-Govt. Master	7.76%	7.77%	8.09%	5.74%
Treasury 1-10yr	7.39	7.41	7.79	4.91
10+ yr	7.89	7.90	8.36	6.60
Agencies 1-10yr	7.84	7.84	8.17	5.33
10+ yr	8.09	8.09	8.51	6.87
Corporate				
1-10 yr High Qlty	8.02	8.03	8.34	5.96
Med Qlty	8.33	8.34	8.65	6.27
10+ yr High Qlty	8.42	8.44	8.84	7.23
Med Qlty	8.83	8.84	9.24	7.56
Yankee bonds (1)	8.38	8.39	8.65	6.74
Current-coupon mortgages (2)				
GNMA 8.50%	8.69	8.71	9.13	6.71
FNMA 8.50%	8.70	8.72	9.04	6.70
FHLMC 8.50%	8.72	8.74	9.05	6.70
High-yield corporates	11.10	11.11	11.37	8.91
New tax-exempts				
7-12-yr G.O. (AA)	5.94	5.94	6.45	4.79
12-22-yr G.O. (AA)	6.09	6.12	6.69	5.15
22+yr revenue (A)	6.28	6.31	6.89	5.48

Note: High quality rated AAA-AA; medium quality A-BBB/Baa; high yield, BB/Ba-C.
(1) Dollar-denominated, SEC-registered bonds of foreign issuers sold in the U.S. (2) Reflects the 52-week high and low of mortgage-backed securities indexes rather than the individual securities shown.

Meanwhile, this week promises one of the largest volumes of new corporate debt issuance in recent weeks.

California-based **Rockwell** is slated to sell $300 million of three-year and $200 million of five-year notes through Morgan Stanley & Co. Rockwell is involved in the aerospace, electronics and automotive industries. Also, American Home Products, the drug and medical-supply concern, is expected to sell a total of $1 billion of five-year and 10-year notes through Goldman, Sachs & Co.

Late in the week, the city of Barcelona, Spain, is expected to sell $200 million of 10-year debt through Morgan Stanley, while **Midland Bank** PLC, the London-based banking-services concern, is expected to sell $150 million of noncumulative preferred debt through Merrill Lynch & Co.

Many investors have been eager for new corporate issues, as shown currently by historically narrow margins between yields of corporate issues and those of Treasurys. There hasn't been much debt sold by industrial companies recently, noted Kim Peters, head of corporate bond research at Street Research & Management Co., Boston. Thanks to strong market conditions, the transactions that are in the market right now, like American Home and Rockwell will see plenty of demand, Mr. Peters added.

In the high-yield market today or tomorrow, Houston-based **TransAmerican Refining** Corp. is expected to sell $300 million of debt in two parts through Jefferies & Co. The company, which is trying to raise money to reactivate a mothballed refinery, changed the terms of the offering again yesterday, adding step-down coupon provisions and a preferred share issue.

In the junk-bond market, National Medical Enterprises is expected to sell its $1 billion offering as early as next week. The transaction is slated to be $300 million of seven-year senior notes and $700 million of 10-year senior subordinated notes and will be sold through underwriters led by Donaldson, Lufkin & Jenrette Securities Corp.

Separately, trading was light to moderate in the junk-bond market, while most investment-grade issues ended unchanged.

However, GPA Delaware Inc.'s 8.75% guaranteed notes maturing in 1998 rose about two points to 78.5 on rumors that its parent, **GPA Group** Ltd., reached an agreement with investors to extend maturities on $1.6 billion of bank debt to September 1997 from September 1996. The aircraft-leasing company, based in Shannon, Ireland, still needs to complete necessary paper work, but an announcement is expected shortly, according to sources close to the company. A GPA spokesman declined to comment, as did officials at Morgan Stanley & Co., which is advising the company on the bank debt negotiations.

Prices on **Nextel Communications**' debt, meanwhile, rose by between two and three points after the company disclosed that it has hired Donaldson, Lufkin & Jenrette to assist with discussions with bondholders. Prices on the company's zero-coupon senior notes due 2004 rose to 40 from 37 and prices on the company's zero-coupon senior notes due 2003 rose to 43 from 40, a trader said.

Meanwhile, the Treasury sold $27.7 billion of three-month and six-month bills at average discount rates of 5.82% and 6.15%, respectively. Here are the details of the auctions:

Here are the details of yesterday's auction by the Treasury of 13-week and 26-week bills:

Rates are determined by the difference between the purchase price and face value. Thus, higher bidding narrows the investor's return while lower bidding widens it. The percentage rates are calculated on a 360-day year, while the coupon equivalent yield is based on a 365-day year.

	13-Week	26-Week
Applications	$55,089,993,000	$53,481,608,000
Accepted bids	$13,886,344,000	$13,810,952,000
Accepted at low price	15%	35%
Accepted noncompet'iv	$1,485,586,000	$1,534,289,000
Average price (Rate)	98.529 (5.82%)	96.891(6.15%)
High price (Rate)	98.534 (5.80%)	96.901 (6.13%)
Low price (Rate)	98.526 (5.83%)	96.891 (6.15%)
Coupon equivalent	5.99%	6.44%
CUSIP number	912794S21	912794U51

Both issues are dated Feb. 16. The 13-week bills mature May 18, 1995, and the 26-week bills mature Aug. 17, 1995.

Municipal Bonds

The municipal-bond market was decidedly weaker, and news late in the trading session that a major player in the muni market was closing up shop didn't help matters.

Officials at CS First Boston confirmed late Monday it is exiting the muni-bond business. The CS Holding unit was the sixth-most-active underwriter of long-term issues in 1994, underwriting $9.39 billion in issues. That was more volume than municipal-market stalwarts like **Bear Stearns** Cos., Morgan Stanley and J.P. Morgan Securities each generated.

But as overall municipal market issuance fell 45% in 1994, First Boston's volume fell about 48%. It also fell from fifth to sixth place, and the number of issues underwritten fell to 131 from 192, according to data provided by Securities Data Inc.

Elsewhere, the muni cash market ended about ⅛ point lower in spots in quiet activity. Selling lists in the secondary market were quoted as high as $300 million.

Mortgage & Asset-Backed Securities

Mortgage-backed securities were a shade higher to unchanged amid extremely thin trading yesterday, traders said.

In the asset-backed securities sector, attention is focused on a large global offering from **First USA Bank**, according to traders and syndicate officials. The size of the issue, expected in the market next week, will be between $1 billion and $2 billion, said officials at Wall Street firms.

Demand remains strong for asset-backed securities as many investors continue to have a preference for short-duration assets in a choppy bond market.

In the mortgage-backed sector, about $200 million in bonds backed by adjustable-rate mortgage loans was offered by investors yesterday. The bonds were bid at aggressive levels, traders said.

–Tracy Sacco contributed to this article.

Stocks Finish Mixed as Bonds Are Unchanged

MONDAY'S MARKETS

By MICHAEL GONZALEZ
Staff Reporter of THE WALL STREET JOURNAL

Stock prices were mixed as investors mulled over Friday's inflation news and looked ahead to a torrent of new economic data this week. Bond prices were mostly unchanged while the dollar was mixed.

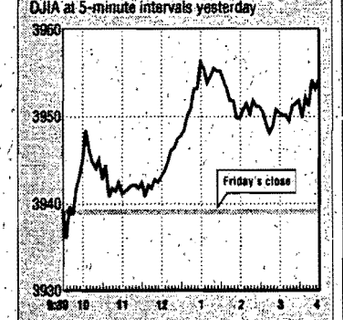
The Dow Jones Industrial Average rose 15.14 to 3954.21, edging closer to its 3978.36 record and the 4000 barrier. Standard & Poor's 500-stock index broke through its record of 482.00 in intraday trading before closing at 481.65, up 0.19. The New York Stock Exchange Composite Index advanced 0.05 to 261.85 and the Nasdaq Composite Index gave back some of its recent gains, shedding 1.01 to 789.42.

Ned Riley, chief investment officer at Bank of Boston, said investors had reassessed the January producer price index figures released Friday and now see low inflation ahead. "People are also anticipating fairly benign figures this week," he said.

The Commerce Department will release its report on retail sales for January this morning, and the Federal Reserve will report on industrial production and capacity utilization tomorrow, the same day the Labor Department is to release the consumer price index for January. Finally, the Commerce Department will release its housing starts and building permits report for January on Thursday.

The Dow's Performance

DJIA at 5-minute intervals yesterday



Source: Telerate TeleTrac

"Right now investors see ahead an ideal scenario of low growth and low inflation," said Mr. Riley.

Eugene Sherman, director of research at M.A. Schapiro & Co., said bond traders had also taken a second look at Friday's producer price data and remain worried that inflation could eventually pose a problem.

World-wide, stock prices fell in dollar terms. The Dow Jones World Stock Index lost 0.22 to 113.13.

In major market action:

Stock prices were mixed. Volume totaled about 255.1 million shares on the New York Stock Exchange, where 1,144 issues advanced and 1,090 issues declined.

Bond prices were mostly unchanged. The Treasury's benchmark 30-year bond was unchanged to yield 7.66%.

The dollar was mixed. In late New York trading, the currency was quoted at 1.5270 marks and 98.73 yen, compared with 1.5190 marks and 98.90 yen on Friday.

The Cisneros Strategy

Following the Nov. 8 elections, Henry Cisneros, the secretary of Housing and Urban Development, sent the following memo to President Clinton, offering advice on how the Democrats could rebound. The memo, in the form of two charts (artwork has been added), is an effort to modernize the Democratic Party.

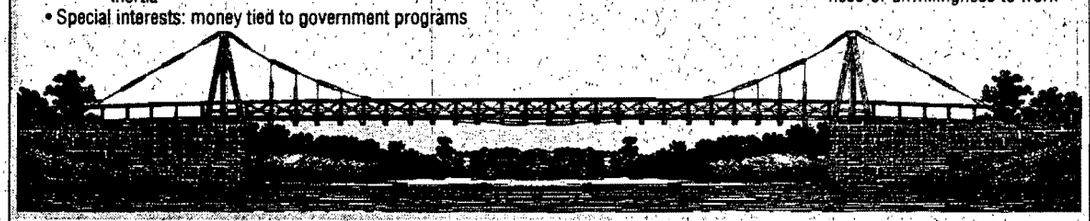
In the top chart, Mr. Cisneros begins, in the left column, by identifying how core Democratic voters are perceived ("Our Trapped Base"). On the right, he identifies how upwardly mobile Americans think about the world in the age of personal computers ("New Attitudes in the PC Age"). The center column is an attempt to highlight themes that will help Democrats bridge the gap between their old base and the new attitudes.

Below, Mr. Cisneros spells out policy implications. The column on the left identifies old Democratic methods, the column on the right new Democratic methods. Separately, Mr. Cisneros wrote, "Bureaucratic models of government cannot do it. The president must err on the side of decentralized, smaller scale, entrepreneurial approaches that provide opportunity for our base but which catch the wave of new public expectations and attitudes."

OUR TRAPPED BASE
- Older new-dealers
- Growing minority population
  - isolated underclass
  - chaotic schools, undertrained
  - underemployed, unemployed
  - separatist messages
- Labor
  - declining industrial base
  - angry
- Special cases: disabled, AIDS
- Government culture
  - big bureaucracy
  - nonsensical rules, labyrinth
  - top-down attitudes, prescriptive
  - massive wastes of money
  - untrusting of local folks, business
  - inertia
- Special interests: money tied to government programs

BRIDGE VALUES
- American themes:
  - The nation, fair play, justice for all
  - Opportunity and hopefulness
- Families and children
- Decency; respect for norms
- Reciprocity: work for benefits
- Anti-violence, anti-crime
- Less overt segmentation of Americans by class, political groupings
- Entrepreneurial government
- Privatization with accountability
- Smaller scale responses
- Decentralization: reliance on local answers
- Competence

NEW ATTITUDES IN THE PC AGE
- Young professionals
- Highly informed, educated
- Entrepreneurial, lean organizations
- Non-ideological but individualistic; even self-centered
- Fast-paced, impatient: place high value on time, efficiency
- Demanding, result-oriented
- Short attention span; news cycle is hard to absorb
- Globally aware
- Ruthless attitudes:
  - video game "zap" mentality
  - business judgments
- Disdainful of people getting a "free ride" because of unpreparedness or unwillingness to work



FROM (BUSINESS AS WE HAVE CONDUCTED IT)	TO (A NEW LANGUAGE THAT EMBODIES THE "BRIDGE VALUES")
• Federal targeted money for education	• Charter Schools with performance accountability
• Complicated government-led, large-scale health care systems	• Incremental health care reform wih market incentives
• Governmental investment strategies-industrial policies	• Middle class/capital gains tax cuts
• Federal role with waivers	• Clinton Federalism: decentralize to the states with performance responsibility
• FHA, FAA, FmHA, SBA insurance programs, retirement programs, Commerce's service functions as government agencies	• Convert Federal agencies to corporate models, (government-sponsored or owned enterprises)
• Regulatory mindset	• More use of Oversight Models: reformed CRA, GSEs; market-based pollution credits
• Collaboration, accommodation of the interests	• Real political reform
• Industrial policies/investment targets	• Financing partnerships, i.e., for infrastructure
• Bureaucratic arrogance in centralized organizations	• More reliance on the non-profit and private sectors

News Flash! Clinton to Settle O.J. Case

By NEIL S. CUMSKY

One week after his failed attempt to negotiate an end to the baseball strike, President Clinton has met with representatives of both the prosecution and defense in the O.J. Simpson case.

White House Press Secretary Michael McCurry confirmed that the president yesterday canceled a scheduled meeting with Mexico's minister of finance, Guillermo Ortiz, in order to meet with the Simpson trial participants. According to Mr. McCurry, "The president believes that the level of public interest in the Simpson case has reached the point where the case is of vital national concern. Moreover, President Clinton believes that, given the opportunity to meet personally with the lawyers, he will be able to propose an amicable solution which will make everybody happy."

The Simpson meeting took place at noon yesterday in the Oval Office. The participants included defense lawyers Johnnie Cochran and Robert Shapiro and prosecutors Chris Darden and Marcia Clark. Messrs. Cochran, Shapiro and Darden were invited to the meeting by White House Chief of Staff Leon Panetta, while Ms. Clark was told of the president's interest by a former Arkansas state trooper. Defense lawyer Alan Dershowitz also attended, as an uninvited guest.

The president's meeting with the Simpson protagonists was almost canceled at the last minute yesterday, after the president informed both the defense and the prosecution attorneys that he wished for Commerce Secretary Ron Brown to participate in the discussions. Sources said the president was informed by Ms. Clark that Mr. Brown's participation might be improper since the commerce secretary was already serving as a paid consultant to the prosecution team. According to these sources, the president did not express surprise at this revelation, but he was somewhat taken aback when defense attorney Robert Shapiro then admitted that he and Mr. Brown together purchased a men's clothing store in September 1994. Nevertheless, the meeting proceeded as scheduled after the president decided that Mr. Brown's involvement with each side was not improper.

Mr. Clinton opened the substantive discussion by telling each side that he was prepared to take action if the case was not resolved by his self-imposed deadline of 3:15 p.m. (EST) on Friday, Feb. 17. The president threatened both sides with sanctions if they didn't reach an agreement.

To the defense attorneys, Mr. Clinton threatened to submit legislation to Congress that would restrict the amount of coverage that any television network could devote to the trial to a total of eight hours a day. Turning to the prosecution team, the president threatened that he would appoint former New York Gov. Mario Cuomo to the Los Angeles County Superior Court to replace Judge Lance Ito on the Simpson case. (Mr. Cuomo reportedly has overcome his previous reluctance to accept a judicial appointment.)

Typical of his negotiating style, President Clinton also offered inducements to each side to settle the matter. To the defense team, he said he would offer assistance in setting up a fund to defray Mr. Simpson's legal expenses. The president reportedly pledged to "make our staff available to you and to give you the benefit of our extensive experience in this most sensitive area." The prosecution received a promise from the president of federal funding for new audio-visual equipment.

Other details of the "Clinton Plan" to settle the Simpson case still have not been released by the White House. In fact, according to Mr. McCurry, the administration has not finalized its blueprint. "We wanted to get things going before we actually had a firm plan," he explained. "That way, everybody can have input into the resolution."

Those familiar with the negotiations have reported that the prosecution initially pushed for a life sentence for Mr. Simpson, while the defense wanted the charges reduced to disturbing the peace, with a sentence of 50 hours of community service. President Clinton reportedly suggested a compromise under which Mr. Simpson would serve a maximum sentence of only 10 years but would have to spend a minimum of four hours each day viewing videotapes of Fed Chairman Alan Greenspan testifying before Congress. Both sides have raised the question of whether this would violate the constitutional prohibition on "cruel and unusual punishment," an issue now being reviewed by the solicitor general's office.

In the meantime, the president has continued his efforts to have the baseball season open on time, notwithstanding his failure to negotiate a truce between players and owners. Under the plan now being considered by Mr. Clinton, the season would open as scheduled with members of the Professional Air Traffic Controllers Organization serving as replacement players and being paid by the federal government in accordance with their previous salary levels.

Mr. Cumsky is an attorney in Princeton, N.J.

Carbide to Congress: You Can Do It

Business World

By Tim W. Ferguson

Notwithstanding all the libertarian backbenchers in the new Congress, the crucial decisions on budget cutting are likely to be made by "steady as you go" old hands. So, how about some advice from a chairman/CEO who, after 40 years with the same company, has managed to right its wayward course?

Robert D. Kennedy became the top executive at Union Carbide in 1986. At that point it was a $10 billion bushelbasket, making everything from sandwich wrap to flashlight batteries. By the end of last year, Mr. Kennedy had sold, spun or merged off more than half the company. The stock price, low enough to invite a takeover attempt in 1985, has been a Dow 30 star the last three years.

Keep in mind, the man is no radical. He's been watching the "incredibly, breathtakingly different" congressional action on C-SPAN and is worried the Republicans will get "overzealous and carried away." Sustained change requires reformers to stay in power, and he fears that abrupt repeal of decades of regulations could trigger a "backlash going all the way back to Rita Whateverhername [Lavelle of EPA] in the Reagan administration."

Okay, we won't find the 62-year-old Mr. Kennedy at the barricades. A balanced-budget requirement, now tottering in the Senate, is "pretty good policy," he thinks, but people should know what's required to live within the limits. At Carbide, "we told folks up front that we had to look at the work process, that the result would be fewer people" to handle the load. About 12,000 work for the chemical-products concern that as a conglomerate employed 110,000.

He's not urging that all have a "right to know" the effects of deficit cutting before it begins, Mr. Kennedy says, but to change behavior a country, like a company, needs consensus that "if we don't do something, here's the likely outcome." As a corporate blueblood, he defers to Warren Rudman, Paul Tsongas and Pete Peterson there.

Although admonishing me right off that business and government aren't neatly comparable, Mr. Kennedy played along with the theme. One implication for fiscal policy to be drawn from company diets, he says, is that Washington can't keep increasing costs ahead of revenues: "We can't hit that cash-flow objective if every time we take on new customers, we boost inventory 2%."

Peter Drucker, a guru to many top managers, argues in February's Atlantic Monthly that Washington should abandon a few programs (foreign military aid), rethink others (VA hospitals) and re-engineer the rest, but that effective government and not less government should be the aim. That will disappoint some of his fans on these pages, but Mr. Kennedy, too, stresses performance.

The CEO touts "work process analysis" as a way to streamline production or service delivery while "empowering" the remaining employees to make the right calls. The old method of economizing was to tell division heads to cut 20% during a downturn, "which lasts until the next up cycle," Mr. Kennedy says. Now, "you get rid of the work first, and the downsizing will follow." Any number of consultants could show the feds how to do it.

But such a fix is especially difficult in government. The impediments go beyond the inhibitions felt in the private sector when supervisors and line staffers realize they are eliminating their own jobs. The incentive/threat of "going out of business" is distant, at least until we see more functions zeroed or contracted out. And Civil Service rules are less flexible than the toughest union when trying to keep and reward the better staffers.

Moreover, the directors of a public endeavor—that is, legislators—are even more distracted from the bottom line than some of the worst private-sector boards. You might say that elected representatives invented the "stakeholder" notion. Their respective constituencies are likely to be at cross-purposes with the overall goal of a lean, well-functioning government. This is one reason the Grace Commission, a serious attempt at reform in the early 1980s, met with only mixed success.

Robert D. Kennedy

The Grace goals also hit an ideological wall. The political world having divided itself into perpetual combat between backers of individual rights (or market freedom) and state power, neither side typically will trust the other to pursue what might seem to be mutually-desired objectives (such as civility, probity and prosperity), lest it move to advance an "agenda." So forget simply getting the best minds together to "reinvent" government.

This bundle of resistance is an obstacle to Mr. Kennedy's best suggestions. For example, he calls for devolving the front-line duty of regulating business conduct (which needs it, in his view) to technically proficient third parties. Reliance on private firms to review financial statements required under the nation's securities laws is a case of that. The accounting profession sets rules beyond what Washington requires, but in the end must satisfy the SEC. Couldn't a similar arrangement do for EPA, OSHA and so on?

Not without a struggle. The auditing protocol for the investment markets, though formalized during the politically-charged Great Depression, did not require the replacement of an existing bureaucracy. Neither power-conscious congressmen nor suspicious interest groups will want to give up "ins" they've got with current agencies.

Likewise, the record isn't so good for jettisoning arms of the government into quasi-public corporations where decisions could be made on a more prudential basis. In business, spinoffs work. At Carbide, "not being wet-nursed by mama corporation," as Mr. Kennedy puts it, has strengthened now-independent units "without exception." By contrast, the Postal Service epitomizes the failings of this approach in Washington. Nonetheless, the FAA and perhaps other agencies are due for the treatment.

Mr. Kennedy probably was right at the outset when he cautioned that business isn't necessarily a model for government. If so, however, that may just be cause for removing programs by their roots instead of relying on the managerial tune-ups or overhauls that have gotten corporate America back on track.

In any case, it's imperative to appreciate the danger of the status quo. The U.S. isn't facing imminent bankruptcy, as some have overstated, but its indulgences are a chronic risk to future living standards and financial independence. To Mr. Kennedy, this is as real a pickle as the one Carbide was in a decade ago.

When the action gets dull on C-SPAN, he flips over to PBS, where he's caught a series on Franklin Roosevelt. In the New Deal, hatched by this president "who didn't start out with great principles on how to solve the problem," Mr. Kennedy found an attitude that he'd apply to government in the 1990s: "Man, we are in trouble. Let's try something."

NATIONLINE

Illegal immigrant suit is dismissed in Calif.

California's lawsuit seeking $10 billion from the federal government for education, imprisonment and medical costs of illegal immigrants was dismissed Monday by a San Diego federal judge who said such disputes must be settled by Congress and the White House, not by the courts.

States with large illegal-immigrant populations say they have suffered because the federal government has failed in its duty to control the borders.

Judge Judith Keep said she sympathized with the state's financial burden caused by illegal immigration, and said she is convinced Gov. Pete Wilson and state officials are motivated solely by financial considerations, not racism as some critics have charged.

AP

WILSON: Vows Supreme Court appeal

Wilson vowed to appeal to the U.S. Supreme Court and said, "Californians should not give up hope."

A similar suit by Florida was dismissed late last year, and the federal judge considering a Texas lawsuit has said he intends to dismiss it. Similar suits by Arizona, New Jersey and New York are pending. — *Marla Puente*

TO TESTIFY: Colin Ferguson, who has pleaded innocent to the 1993 shooting rampage on a Long Island Rail Road commuter train that left six dead and 19 injured, testifies today at his murder trial in Mineola, N.Y. A dozen survivors named Ferguson, a black Jamaica immigrant, as the gunman. Ferguson, who is his own attorney, says a white man stole his gun and is responsible for the Dec. 7 shootings.

AVALANCHE DANGER: A severe winter storm dumped up to 5 feet of snow in the Rockies, triggering avalanches that killed one skier in Colorado and one in Utah. A third was missing in Winter Park, Colo. New storm warnings are in effect for parts of Colorado through today. Also, heavy snow along lakes Erie and Ontario stranded motorists and closed schools in western New York state.

RAIL TROUBLES: A projected loss of $1 billion by 2001 will hurt Amtrak's ability to continue its 25,000-mile nationwide system without "significant increases in passenger revenues or subsidies," the General Accounting Office told a House hearing. Amtrak spokesman Cliff Black said the rail service will be about $200 million short this year, but is implementing a program to save $350 million annually.

NEW SMOG SOURCE: Urban smog is a complex problem that may be caused in part by trees and other natural vegetation, government scientists said. They have found that chemicals emitted by vegetation react with sunlight and other compounds to form ozone, a key component of urban smog. Scientists began to suspect natural sources because tree-covered cities such as Atlanta and Nashville were having difficulty meeting federal air-quality standards even after instituting stringent new pollution regulations.

AP

IVAN: Animal magnetism?

NO LOVING: Ivan the gorilla won't be getting any Valentines today. Zoo Atlanta officials placed the 30-year-old primate in a "howdy cage" where he beat his chest, grunted and strutted, trying to woo his designated mate, Molly, 26. She acted as if she couldn't care less. "It's sort of like people, it's chemistry for them, too," says zoo spokeswoman Carol Flammer. Ivan spent 27 of his 30 years in a cage at the B&I shopping mall in Tacoma, Wash.

CAR SEAT SAFETY: The National Highway Traffic Safety Administration appointed a panel to address the problem of incorrectly installed child-safety seats. Officials say redesigned seat belts that more easily fit around adults and older children are too loose for the child seat. It's estimated that 3% of the 70,000 auto-related injuries to children ages 1-4 in 1993 resulted from improperly installed child seats. About 5 million child car seats are sold each year.

ALSO

▶ **MOVING ON:** Former Texas governor Ann Richards joined the Washington law firm of Verner, Liipfert, Bernhard, McPherson and Hand, which last week hired former Treasury secretary Lloyd Bentsen, a fellow Texan. Richards was defeated in November by George W. Bush, a son of former president George Bush.

▶ **COURT CAMERAS:** Federal judges should resurrect an experiment that allowed television coverage of civil cases in federal court, the American Bar Association said. In September, the Judicial Conference of the United States voted to end the experiment.

▶ **STRONG WIND:** A windstorm with gusts up to 61 mph damaged five jetliners parked at gates at Miami International Airport. No one was injured. A Tower Air 747 was spun 90 degrees and pushed into a jetway, damaging two engines. Eight gates also were damaged.

Court denies Baby Richard appeal

The adoptive parents of Baby Richard lost what could be their final appeal when the Supreme Court voted 7-2 not to block an Illinois ruling that the boy, now nearly 4, must be given to his biological father, whom he has never seen.

AP

KIRCHNER: Biological father close to getting custody.

Justices Sandra Day O'Connor and Stephen Breyer voted to grant the stay.

The adoptive parents, identified only as John and Jane Doe, are "very disappointed that the highest court in this country refused to help this child, but they are still hopeful," said their lawyer, Richard Lifshitz.

The couple have had Richard since he was 4 days old. The Illinois Supreme Court voided the adoption in June, saying his biological father, Otakar Kirchner, had been denied his parental rights.

The state's top court last month ordered that Richard be turned over to Kirchner. He and the mother, Daniela Janikova, were unmarried and estranged when Richard was born. She put the baby up for adoption and told Kirchner the boy was dead. He first sought custody 57 days later.

Written by Gary Fields. Contributing: Steve Timko, Shannon Tangonan and Jack Williams

Democrats: GOP welfare plan falls short

By Leslie Phillips
USA TODAY

As a House subcommittee plunged into the bare-knuckles battle of writing a GOP welfare-reform bill Monday, Democrats denounced the plan as too soft in its requirement that welfare recipients go to work.

In a marathon session, a Ways and Means subcommittee worked into the night to speed the bill through the legislative maze so the House can vote on it within 100 days of the start of the session, as Republican members promised in their Contract with America.

But Democratic objections made for slow going and portended battles ahead in the full committee and on the floor.

The GOP plan would end a 60-year-run of guaranteed welfare for anyone who meets eligibility requirements. Also, it would cap welfare funding at its 1994 level of $15.3 billion a year for five years.

It also would deny cash benefits to unwed teen mothers, legal immigrants who don't become citizens and additional children born to mothers already on welfare.

Democratic leaders say women who apply for Aid to Families with Dependent Children, the nation's largest cash welfare program, should be required to work or enroll in job training immediately — unless the women are disabled or new mothers.

By Joe Marquette, AP

LONG SESSION: Democrats slowed momentum of a welfare-reform bill in the House Ways and Means human resources subcommittee. Seated, from left: Dave Camp, R-Mich.; Clay Shaw Jr., R-Fla.; and Harold Ford, D-Tenn. Those standing are aides.

The Democrats say welfare mothers must get services that make their transition into the working world easier.

"I find it very difficult to support work without supporting health care and without supporting day care," said Rep. Charles Rangel, D-N.Y. "You can't just challenge someone to get a job. You have to help them get a job."

Subcommittee Chairman Clay Shaw Jr., R-Fla., agreed. He said another committee would design a $10 billion, five-year child-care package.

And he promised that a recipient who finds work and gets off welfare could continue free government health benefits for another year.

Then Shaw added: "I think we can toughen up on the work provisions."

But some Democrats still weren't satisfied.

The new Republican proposal, which includes controversial elements from the Contract with America, calls for 2% of people on welfare to be working by next year and 20% by 2003.

But Democrats say current programs would put more adults to work. Health and Human Services Assistant Secretary Wendell Primus projected that 11% of adults on welfare will be in work programs by next year.

"We believe the current law works in training and education, and that's why we want to expand on it," he said.

Democrats say the Republican plan does no more than the administration has already proposed and doesn't force welfare recipients into jobs:

▶ It calls for requiring a welfare recipient to take a job within two years of starting to collect benefits, as President Clinton proposed last year.

▶ It would permit states to design their own work or job training programs.

▶ There are no sanctions if states fail or neglect to move recipients into work.

"It's a sham," said Rep. Sander Levin, D-Mich. "What you're doing is putting together a bill that has a mandate that's a fig leaf."

Shaw said he expected to finish writing the welfare bill and send it to the full committee by the end of the week.

Effects of proposed changes

House Republicans propose to change the way the federal government distributes Aid to Families with Dependent Children, the nation's top welfare program. The Clinton administration's analysis of the states losing or gaining the most, in millions of dollars, and percentage change:

State	1996 grant	1994 grant	% change
BIGGEST LOSERS			
Idaho	$25	$30	–16%
Indiana	$172	$202	–15%
New Hampshire	$33	$38	–14%
Nevada	$28	$33	–15%
New Mexico	$95	$116	–18%
BIGGEST WINNERS			
Kentucky	$191	$168	14%
Maine	$87	$73	19%
Michigan	$842	$744	13%
Mississippi	$87	$77	14%
Wyoming	$23	$20	14%

Source: Health and Human Services Department. Note: New Jersey was not included in the study.

Dems put in a plug for health care

By Richard Wolf
USA TODAY

Democrats Monday challenged the new Republican majority in Congress to revive the health-care reform issue.

Breaking with the Clinton administration's plea last year to overhaul private health care, Senate Democrats said they would settle for far less.

But Republicans, busy with budget, crime and welfare legislation, have not made health care a focus this year.

"It's not addressed in the Contract with America, and no legislation has yet been introduced," said Senate Minority Leader Tom Daschle, D-S.D.

Senate Republicans have set up a task force to study legislation. House Republicans have promised action after their 100-day push on other issues.

Democrats don't want to wait. Their legislation would:

▶ Guarantee workers keep insurance when changing jobs.

▶ Prohibit denial of coverage for pre-existing conditions.

▶ Give tax breaks to small businesses and self-employed.

▶ Aid low-income children, jobless workers and those caring for the disabled at home.

A key battleground: how to pay for reforms. Republicans are planning major savings in Medicare and Medicaid to help in their push to balance the federal budget and cut taxes.

In 1994, "We almost came to blows over health care," Clinton recalled in his State of the Union message. This year, he urged lawmakers to "work together on this. It is too important for politics as usual."

Republicans appear willing:

▶ House Speaker Newt Gingrich has floated the idea of passing "a series of building blocks" for reform by summer.

▶ Sen. Robert Bennett, R-Utah, chairman of a Senate GOP task force on the issue, said, "We intend to propose action in this Congress."

Employers already have shifted many workers into health maintenance organizations or other forms of "managed care." Result: Average spending on health benefits fell by 1.1% in 1994, consultants Foster Higgins said Monday.

By Tim Dillon, USA TODAY

DASCHLE: Senate minority leader says the health care problem hasn't gone away.

Jessica Mathews

The 'Waste, Fraud and Abuse' Fraud

Hypocrisy and doublethink are now so deeply layered over the question of how to balance the federal budget that they're taken for granted. Hardly anyone even notices anymore. An internal memorandum—recently leaked and widely reprinted—advising Republican members of Congress on how to address budget issues had this to say about what Americans think: "The public does not want to pay higher taxes or see their services cut, but the vast majority are prepared to make sacrifices." Right.

Did the memo go on to explain how to deal with the contradiction or even acknowledge its presence? No. It offered verbal fantasies members of Congress can use to cater to it. For example,". . . be ready with assurances that any "truly important" program will be maintained even while entire departments are being eliminated." (Run, perhaps, by the tooth fairy.) Or, that eliminating the National Endowment for the Arts will be no problem "unless museums are forced to close."

Pollster Frank Luntz, the memo's author, did at least explain why the public thinks it can have this cake and eat it. That's because, Americans "believe overwhelmingly that the budget can be balanced just by cutting out the waste, fraud and abuse." They believe it because politicians have been telling them so for years. Now they'll punish with early retirement anyone honest enough to admit that all along it's been a lie.

And so their elected representatives feel forced to bow once again before the altar they've erected to "waste, fraud and abuse." When they fail, as they must, to balance the budget that way, the cynicism that poisons Americans' feelings about their government and makes it so hard for even a truthful politician to be believed, deepens.

Here's what Luntz's recommendations sound like in practice, in this case in the words of Sen. Orrin Hatch (R-Utah).

"We've got to cut the waste. We've got to cut the fat, and we've got to do it with a discipline that only the balanced budget amendment will give us." He does not attempt to explain why, if it's just waste and fat we're after, which should be pretty easy, we need go to the extreme of amending the Constitution. Asked who back home would be hurt by the deep cuts needed to eliminate the deficit, Hatch sticks with the fantasy: "I think almost everybody in Utah would gain."

The truth is that they'll hurt, at least in the short and medium run. To see why take a box of kitchen matches, count out 160 and spread them on a table. Assign each a value of $10 billion, and you've got the federal budget. Now separate a pile of 35 (Social Security) and another of 26 (interest on the debt), and push them off to the side, out of reach.

Next take 27 (Medicare and Medicaid) and 18 (pensions, unemployment compensation, retirement and disability benefits, food stamps, welfare, student loans, agricultural subsidies, the earned-income tax credit and other so-called mandatory programs) and put these two piles within reach, but just barely.

Now count out 26 (defense), two (not a typo—international spending for everything from controlling nuclear proliferation and drugs to foreign aid and Middle East diplomacy) and 26 (domestic discretionary programs—everything else the federal government does from running the FBI to building highways). Put these three piles front and center. Remember that without any tax cuts balancing the budget requires eliminating 20 of these matchsticks, and you've got a pretty good idea of the problem.

There are 99 matchsticks at least theoretically within political reach. Assume, boldly, that 10 percent of the activities they represent is "waste, fraud and abuse," and you still must find 10 matchsticks to eliminate.

The first thing you'll notice is that the proposed cuts over which so much blood is being spilt will do you almost no good. They are not really about saving money. Eliminating the Arts and Humanities Endowments and the Corporation for Public Broadcasting, for example, would save one-fifteenth of a matchstick. Zeroing out international peacekeeping would save a bit more—one-fourteenth of a stick. Ending all aid to poor countries—eliminating AID—would save one-fifth of a matchstick. What about really drastic steps? Shutting down the State Department, closing every U.S. embassy abroad, ending all contributions to international agencies and turning away from every American interest and responsibility in the world would save two of the needed 10 matchsticks.

The bottom line is that if one could root out $100 billion of fat there would remain the job of cutting an equal amount of muscle and bone. The Republican tax cut would make the task 20 matchsticks harder over five years (and 50 more in the next five). Clinton's me-too plan would add six sticks in five years. Remember too that the longer balancing is postponed the faster the 26 matchstick interest pile will grow.

What's to be done? Bringing Social Security back within reach is part of the answer. Slowly raising the retirement age to reflect much improved health and life expectancy would make a big difference. Truth-telling—perhaps a lot of voters armed with matchsticks—would help a lot more. We have met the enemy in this struggle. It isn't lobbyists or special interest groups, but all of us. Balancing the budget will require sacrifices—higher taxes or fewer services. Amending the Constitution may or may not make it happen, but it won't make it any the less painful.

The writer is a senior fellow on the Council on Foreign Relations.

THE WASHINGTON POST

MONDAY, FEBRUARY 13, 1995

PHOTOCOPY PRESERVATION

THE WASHINGTON POST
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The Check Is on the Mail

EVER SINCE the Great Mail Dig of '94—when teams of burrowers found lodes of ancient mail in trailers and similar near-flung corners of area post offices—the U.S. Postal Service has been running checks on its deliveries in this region in hopes of lifting the capital area's distinction of having the worst mail service in the land. But the findings at this point are not exactly heartening. In terms of customers' perception—never your most accurate gauge, but nonetheless pertinent—District residents rank their service last in customer satisfaction among 170 metropolitan regions.

The Postal Service—and more than a few customers—can point to some improvement in overnight deliveries in this region, but they have a long way to go before any awards are given out. Overnight delivery in the area has continued to fall behind the national average of 84 percent of all local first-class letters being delivered the next day. For the quarter that ended Dec. 9, 73 percent of the test letters dropped in collection boxes in the District were delivered the next day. That is up 68 percent from the same period of 1993—which shows how awful it was then.

Postal officials note that better days should be coming when a new mail facility is completed at National Airport. The current facility is too small and obsolete to handle the region's mail, they add, and some of it has had to be diverted to Dulles and BWI. In the meantime, the system needs all the monitoring the agency can conduct and a sympathetic ear for the customers whose personal complaints count more to them than any general progress statistics. When it comes to people and businesses and their mail, no one wants to hear that "they just don't get it." That's the problem.

Casinos in Maryland: The Stakes

THE HIGH-ROLLERS of professional gambling are flashing their bankrolls around Annapolis with the help of lobbyists eager to entice Maryland into the big-time casino business. The appeal of this industry is as seductive as its history is seamy. The upfront enticement is big bucks in revenues, to which other states can attest. But before any more legislators buy into casino gambling as the economic salvation of the Free State, they should pay close attention to the arguments of opponents—whose concerns are both varied and strong but whose lobbying budgets are microscopic in comparison to the out-of-state operations pressing on the legislature for permission to move in.

The issue is not gambling in general, but the kind of gambling that pervaded an era of corruption in Maryland that took years to wipe out. State-controlled lotteries and off-track as well as track-side betting have won acceptance in plenty of states and have become significant sources of government revenues, and it has been shown that these activities can be operated without corruption. Still disturbingly unclear, however, is whether the casino gambling-house activities can be insulated sufficiently from the notorious, unsavory activities that have a way of moving in on these operations.

Even if casinos—floating or not—proved squeaky clean, there are other large questions about what kind of state Maryland chooses to be and what the impact would be on existing businesses. Would there be a connection with crimes other than corruption? Would it drive restaurants and hotels out of business? Would it wreck Maryland's historic standing in horse racing?

Del. Sheila Hixson of Montgomery County has introduced a bill that would establish a state commission on riverboat gaming that could license up to 15 floating casinos—four docked in Baltimore City, and no more than two in any single county. There are no limits specified on either the types of gambling or the maximum stakes. Other proposals being drafted by lobbyists would allow casinos on land.

Atlantic City may not be the perfect example of what can happen, but it bears noting that in the first four years after casinos arrived there, the number of retail businesses in the city declined by one-third. Opponents of the Maryland bills add that the number of restaurants dropped from 243 in 1977 to 146, largely because tourists spent their dollars in casinos and casino-owned restaurants and gift shops. That revenue still comes in, but many locally owned businesses were driven out. Lottery revenues tend to go down, too, and with them some of the business enjoyed by existing retail stores participating in the lottery. There is a question also about how many other kinds of business may be scared away from coming into the state.

Maryland House Speaker Casper R. Taylor Jr. has said the legislature probably won't bless the casino bills this year, but may approve a study commission. That's a prudent approach, and if a thorough report on the impact of this kind of gambling is done, the stakes may well prove too great to wager.

PHOTOCOPY
PRESERVATION

THE NEW YORK TIMES
TUESDAY, FEBRUARY 14, 1995

Victor and Vanquished Mourn Dresden's War Dead

By ALAN COWELL
Special to The New York Times

DRESDEN, Germany, Feb. 13 — With candlelight and church bells, requiem and prayer, Dresden tonight observed the 50th anniversary of its wartime destruction by British and American bombers, an occasion that led the Germans to ask if they were victims too.

The ceremonies here, on a cool night at a bend in the River Elbe, were the most elaborate Germany has arranged to commemorate a war in which its troops, tanks and airplanes were finally vanquished after spreading destruction across Europe and overseeing the Holocaust.

Tonight's observance came at a time when Germany's generations have turned, and many of those who manage the economy that again makes it Europe's giant have no direct recollection of Nazism or its horrors. Not only that, Dresden itself stood and fell as an emblem of a ruthless Allied air campaign to terrorize civilians and thereby break the will to fight.

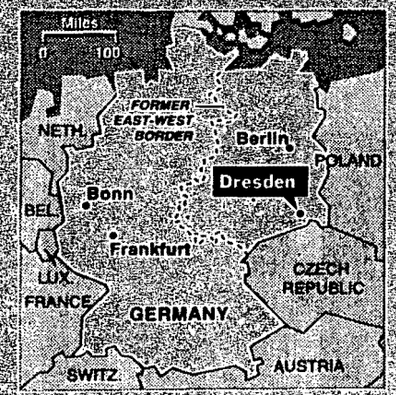
On the night of Feb. 13, 1945, when the first of two waves of British Lancaster bombers rumbled over Dresden, the city was virtually defenseless against air attack and its streets and schools were packed with refugees streaming west before the Soviet army's advance.

The British target area was the city center, away from any military installations. American B-17 Flying Fortresses flew a third attack on Feb. 14, 1945. The death toll is estimated at 35,000.

Dresden, thus, has a particular symbolism for many Germans and, in an address today to mark the occasion, President Roman Herzog, whose position is largely ceremonial but whose words carry moral weight, sought to define a way in which Germans might honor their own dead without being accused of using the memory to minimize the atrocities committed in their name.

"No one wants to offset the wrongs committed by Germans in the Nazi state against anything else," he declared in the keynote address of the day's commemorations.

Even before he spoke in the Communist-era Kulturpalast, a huge auditorium here, a brief scuffle broke out as older people tried to restrain a handful of youthful protesters who unfurled a banner declaring, "Perpetrators are not victims." Protesters made a similar demonstration when Chancellor Helmut Kohl attended a Catholic Church service here last night.



The New York Times

Fifty years later, the leveling of Dresden brings painful memories.

President Herzog, however, rejected the notion that he was seeking to blur the distinction. "We object to our mourning being seen as an attempt to square the suffering of the crimes committed by Germans against people of other nations and against fellow countrymen with the suffering of German victims of war and expulsion."

But he appealed to Bonn's allies to see finer shadings in the Germans' wartime experience. "Together we want to face up to the past, both where Germans were the perpetrators and where they were the victims."

"If one looks at history merely in terms of states and nations, the settlement of accounts seems simple: the Germans started the war and just punishment was meted out to them for doing so," he said.

"But this is too simplistic a view," he added. "Only if one imagines all those different people who must have died in that night of destruction does the human tragedy of modern warfare become fully apparent."

"There were dyed-in-the-wool Nazis. There were Gestapo officers who drew up the lists for the deportation of Jews. There were the Jews on these lists. There were people who rejoiced when the war broke out, but also those who had cried and could do nothing, because they had not resisted at the outset."

The brief protest before the President's address was unexpected because the police had promised tight security arrangements to prevent protesters from using the ceremonies as a platform.

Before today's ceremonies, the police detained Günther Deckert, head of the neo-Nazi National Democratic Party, when they discovered him heading towards Dresden with a group of supporters. All political demonstrations were banned during the observance.

It was, thus, a quiet and somber day, when victor and vanquished joined in expressions of sorrowful respect that, on the allied side at least, amounted to less than an apology.

Gen. John M. Shalikashvili, Chairman of the Joint Chiefs of Staff, joined his German and British military counterparts and the Duke of Kent, representing Queen Elizabeth II, to lay wreaths at a vast cemetery called Heidefriedhof, where many of the dead from 50 years ago are buried.

A monument there said: "How many died, no one knows for sure."

At an ecumenical church service tonight, Germans were led in prayers to atone for the Holocaust, joining in the words: "Father, forgive us."

Then, tonight, at 9:45 P.M. — the moment when the first bombs came — more than 100 church bells began to peal their own requiem, and thousands of people made their way, bearing flickering candles, to the Frauenkirche, the only one of Dresden's great buildings still in total ruins from the night, 50 years ago, when the bombs struck it.

"My generation was not in the war," said Michael Nagel, a 17-year-old mechanic who was one of many young people who gathered there. "But we know it was absolutely bad. This will not be forgotten for decades."

PHOTOCOPY PRESERVATION

Mystery of the Missing Haitian Bully

By LARRY ROHTER
Special to The New York Times

PORT-AU-PRINCE, Haiti, Feb. 13 — In what American officials describe as an embarrassing but innocent bureaucratic blunder, the leader of Haiti's most notorious paramilitary group was permitted to enter the United States on a tourist visa late last year, and has now dropped from sight.

The whereabouts of Emmanuel Constant, founder of the militia known as the Front for the Advancement and Progress of Haiti, or Fraph, were a mystery since December, when he twice ignored a summons to testify at a judicial investigation of his group's role in the killing, kidnapping, rape and torture of thousands of supporters of President Jean-Bertrand Aristide.

Immigration officials said Mr. Constant entered the United States at San Juan, Puerto Rico, on Christmas Eve. Last month, newspapers published by Haitian exiles and Creole-language radio stations in the United States reported sightings of the Fraph leader in Washington, but American officials scoffed at the stories at the time.

The American Government's disclosure, made on Friday by officials in Washington, provoked skepticism and anger as the news spread among Haitians today.

"I don't know if there was a conspiracy, but all of a sudden, one day we hear that Constant is in the States," said Necker Dessables, director of the Commission for Justice and Peace, a human rights group affiliated with the Roman Catholic Church. "I don't think the American Government has the political will to arrest those who are really responsible" for the human rights abuses that occurred after President Aristide was overthrown in a military coup in 1991.

A spokesman for the American Embassy here, Stanley Schrager, said the Immigration and Naturalization Service now had orders to revoke Mr. Constant's visa, and added that the United States was also "looking to see what other action we can take." But he acknowledged that American authorities had no idea where he was. To deport him or hand him over to the Haitian Government, "we have to find him first," Mr. Schrager said.

Last October, shortly after 20,000 American soldiers landed here to restore Mr. Aristide to power, the press reported that Mr. Constant had long been an informer for the Central Intelligence Agency. American troops raided Fraph headquarters here on Oct. 3. The troops found photographs of mutilated bodies taped to the walls and arrested a score of Fraph members and sympathizers, but they made no effort to take Mr. Constant into custody.

American officials here have refused to confirm or deny reports of Mr. Constant's relationship with intelligence agencies. But when asked about the matter at a news conference here in October, Secretary of State Warren Christopher replied that "over the years the United States has frequently tried to get information from some people who we wouldn't want to be partners with," and suggested that Mr. Constant's case was "in that category."

A notorious Haitian was (inadvertently?) let into th U.S.

The Haitian Government estimates that about 5,000 people were killed during the three years after President Aristide's ouster on Sept. 30, 1991, the majority by paramilitary groups armed and financed by the Haitian military. Mr. Constant's group was the largest and most powerful officially sanctioned death squad, working closely with the military across Haiti.

Mr. Constant, 38, a former diplomat, is the son of a military officer who led the Haitian armed forces under President François Duvalier. Even before Fraph embarked on a wave of terror in 1993, he boasted of American connections and managed to convince many Haitians that the United States would protect him.

"Constant was an American intelligence asset for a long time," an adviser to President Aristide said today. "Of that there can be no doubt. So it is natural for people to think that his sudden appearance in the United States was not an accident."

American officials dismissed that notion today. "The suggestion that the United States had anything to do with spiriting him out of this country or knowingly allowing him to enter the United States is false," Mr. Schrager said.

He said Mr. Constant had originally been issued a multiple-entry tourist visa in 1991, a visa that was later invalidated when the United States imposed economic sanctions on the military government. When President Aristide resumed office on Oct. 15, the embassy spokesman said the sanctions were lifted and the suspended visa was automatically revalidated.

This afternoon, a Justice Ministry official said the Haitian Government was looking into whether it would be legally possible to gain custody of Mr. Constant if the American authorities found him.

Mexican Army Restricting Access to Rebel Zone

By ANTHONY DePALMA
Special to The New York Times

SAN CRISTÓBAL DE LAS CASAS, Mexico, Feb. 13 — As the Mexican Army advances deeper into the dense forests of southern Mexico in pursuit of fleeing rebels, the military insists it is operating strictly within the law.

But since the military action ordered by President Ernesto Zedillo Ponce de León began in the southern state of Chiapas on Friday, the army has routinely restricted access to the zone of conflict, making it impossible to verify reports from people identifying themselves as Indian rebels that the army has dropped bombs on at least two villages. The reports led the International Red Cross to pull its medical staff out of the area, the army controls.

Amnesty International and other human rights groups criticized the Mexican Army last year for some brutal actions against civilians after the Jan. 1, 1994, attacks by Zapatista rebels on four towns in Chiapas.

"If there's nothing to hide, if there's nothing really going on inside like they say, people should be allowed to pass," said Thomas Hansen, an American who is in Chiapas on behalf of Pastors for Peace, an international organization. He said his group was turned away at military checkpoints.

Since thousands of troops and hundreds of helicopters, tanks and armored vehicles crossed into territory that has been controlled by the Zapatista National Liberation Army for more than a year, the Government has allowed in only a handful of reporters, carefully supervised.

The first group was taken in Sunday by helicopters that landed at Guadalupe Tepeyac, once a rebel command center. However, by that time everyone in the village had abandoned their homes and there was no one there but soldiers to confirm the official explanation that the village had been taken "without a shot."

Reporters trying to enter the area have been turned away at military roadblocks in an area that widens daily. At one checkpoint outside Las Margaritas, a town about 50 miles southeast of here, a group of reporters pushed through a checkpoint on a public road and refused to leave, telling the soldiers that such limitations violated Mexico's Constitution.

The soldiers first said they were protecting the safety of reporters. But then a ranking officer who would not give his name and whose name tag was hidden by a bulletproof vest put the issue in different perspective.

Mexico's military is accused of bombing two villages.

"So what if it goes against the law," he said. "Tell me one place in the world where laws are not broken to achieve something else."

At that same checkpoint, Claudio Baranzini, chief of the International Red Cross mission in Chiapas, was stopped on Friday. He said he was trying to reach his staff at the federal hospital in Guadalupe Tepeyac, which had just been taken over by the Mexican Army. He said he had not received any reports of shooting during the takeover, but he was worried about the army's presence and the hundreds of local residents who had taken refuge inside the hospital.

Gen. Ramón Arrieta, who led the military advance, accused the Red Cross of being uncooperative and of forcing the 200 remaining residents to abandon the village, thus interfering with Mexico's internal affairs.

Mr. Baranzini acknowledged that it was within the army's right to want to take control of the hospital, which the Red Cross has helped run since shortly after the 1994 uprising by mostly Indian rebels. He denied that his staff had forced the towns people to leave.

He ordered remaining staff members to leave Guadalupe Tepeyac on Saturday because of the presence of the army, the absence of the towns people and "because there was a problem with the attitude of the army."

The army also apprehended two foreigners at the hospital and had them taken before the authorities. A spokesman for the Mexican Interior Ministry, Miguel González Compean, said the two men, Ruben Cardosa and Robert Treinan, both believed to be Americans, were detained for about six hours and then released without charges. He said their tourist visas had expired.

Officials denied charges made Sunday night by people who said they were Indian rebel leaders. They accused the army of bombing the villages of Morelia and La Garrucha on Friday and of killing children and beating women. The entire area has been closed, so any reports are difficult to verify.

In a statement Sunday night, Subcommander Marcos, the rebel leader, being pursued by the army, denied the President's allegation that he was a former college professor named Rafael Sebastián Guillén Vicente.

The rebel leader said Mexico had been pushed into virtual civil war by the United States as a condition for $50 billion in assistance announced two weeks ago by President Clinton.

This was the first statement from the rebel leader. General Arrieta said he assumed he had escaped into the forest.

PHOTOCOPY
PRESERVATION

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(5) Of the roughly 14 million recipients of Aid to Families with Dependent Children, roughly 9.5 million are children, and any welfare reform program must take account of the well-being of these children. This has become a liberal mantra, but the argument points in several directions at once. It is time, for example, to consider whether children in particularly dire circumstances would be better off if welfare checks went not directly to their mothers but to group homes where children and mothers could be cared for together, the mothers trained in skills they sorely lack and, where necessary, being treated for addiction. The misleading flap over "orphanages" has detracted from the study of reasonable alternatives for children who suffer terrible parental mistreatment and neglect. In other cases, the system could include strong incentives for teen mothers to stay at home with their parents. Mr. Shaw's proposal would "solve" the problem of teen pregnancy simply by cutting off funds to children born to mothers under the age of 18. Rep. Henry Hyde (R-Ill.) was exactly right in explaining why this idea is so wrong. "The children need clothing, shelter and nurture," Mr. Hyde said. "You don't want to reward promiscuous pregnancy, but on the other hand, you don't want to make the children suffer for the transgressions of the parents."

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(6) *Legal* immigrants should not be scapegoated as a way of saving money or financing reform. It *is* fair to ask more of the sponsors of elderly immigrants who arrive here late in life, often after their working years are over. But the wholesale abolition of programs for legal immigrants is both wrong and counterproductive—since state and city governments would end up picking up much of the slack.

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(7) Finally, there is a need for far greater candor about the racial dimensions of this issue. It's true that the underlying values in this debate—parental responsibility and self-reliance—know no racial or ethnic boundaries. It's also the case that far more *white* Americans are on welfare than the common run of the discussion would have you believe. At the same time, a disproportionate number of the people most likely to be affected by reform—especially reforms involving long-term recipients—are African American mothers and children. There is a danger here of a dishonest and divisive conversation, where all the public talk will be about "values" while the private mutterings—and perhaps also some of the political motivations—will carry the stain of racism. A false and patronizing sensitivity about racial issues should not block an honest assessment about what's wrong with welfare and what's wrong with the behavior of some who receive it. But African Americans have legitimate worries about the purposes and prospects of this endeavor. These anxieties will be eased only if welfare reform, in deed as well as word, becomes a genuine effort to lift up the poor and not a backdoor way of evading social and moral responsibilities.

The Washington Times

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PAGE: A16

MONA CHAREN

The child support trap

As the welfare reform debate heats up, a trap door lies hidden in the floor for unwary conservatives. It is called child support. During the 1992 presidential nominating conventions, both Republicans and Democrats vowed to get tough on "deadbeat dads." Liberal Democrats can be sure of getting approving nods from even the most conservative Republicans when they talk about "making the men pay." And during the past two decades, Congress has enacted three pieces of legislation to tackle the problem — the Child Support Enforcement Amendments of 1975, tougher restrictions in 1984, and the Family Support Act of 1988.

Republicans and Democrats alike strut their "toughness" on deadbeat dads. In Massachusetts, Republican Gov. William Weld introduced legislation that would permit state officials to revoke drivers' licenses, garnishee insurance checks, withhold professional and business licenses and, ultimately, jail fathers who fail to make child support payments.

It sounds good. Conservatives like the idea of forcing people to take responsibility for their actions and particularly for the children they bring into the world.

But by agreeing to place the focus of social policy on obtaining a check from an absent father, instead of on his active, ongoing participation in the business of being a parent, conservatives allow child support enforcement to be a distraction from the real problem —the epidemic of fatherlessness in America.

In his new book "Fatherless America," David Blankenhorn revisits congressional hearings on the subject of child support in 1986. Andrew J. Cherlin of Johns Hopkins University, testifying before the House Select Committee on Children, Youth and Families, argued that "the major problem the children have in a single family is not the lack of a male image but rather the lack of a male income."

That is the liberal position. The father is important and valuable to the family as a cash cow, nothing more. The truth, Mr. Blankenhorn maintains, is almost exactly the opposite. The father's income is clearly important to the family, but so is his moral strength, the role model he provides for his sons, the love and self-esteem he provides to his daughters, the security his presence imparts to every member of the family. A mountain of psychological and sociological data on the pathology that follows in the wake of illegitimate childbearing ought to close the discussion on whether the father is valuable only for his money.

By focusing our punitive attention on child support, Mr. Blankenhorn argues, we send the following message: "Do anything else you want; we don't mind. Don't get married if you don't want to. The same goes for the mother. The only rule is that the guy should make those payments. We do not care about the 'male image.' But we are serious about the 'male income.' "

Localities, states and the federal government now spend billions of dollars attempting to muscle fathers into supporting their children. The results are disappointing. Only about half of eligible women receive child support payments. Of those, the mean yearly allowance is $2,252. It costs about $8,000 per year to support a child under age 5. If the man was never married to the mother of his kids, it is extremely difficult to make him pay. While 77 percent of divorced mothers received payments in 1989, only 24 percent of never-married mothers did. And among the never-married mothers who did receive support, the amount was far lower than that for any other group of mothers.

Child support checks are no substitute for fathers. Moreover, conservatives ought to rethink the matter of awarding child support payments in the absence of legal marriage — and, by the same token, visitation rights by unmarried fathers. Marriage ought to be the only ticket to future claims —whether those claims are for cash or access to the children. Any other regime undermines the privileged status of marriage and further undermines the family.

Yes, divorced fathers should be legally liable to support their children financially. But the emphasis of both law and society ought to be on getting those fathers to stay home in the first place.

(Correction: In a recent column, I inadvertently misrepresented the typical distribution of newborn boys and girls. It is 105.5 males to 100 girls.)

Mona Charen is a nationally syndicated columnist.

The New York Times

DATE: 2-17-95
PAGE: A-18

Democratic Governors Oppose Plan Shifting Welfare to States

By ROBERT PEAR

WASHINGTON, Feb. 16 — Democratic governors said today that they opposed a bill devised by House Republicans to overhaul the nation's welfare programs. They asserted that it would undermine state efforts to help poor people.

House Democrats said they would draft their own alternative, different from the Republican bill and from one proposed last year by President Clinton.

Gov. Mel Carnahan of Missouri, chairman of the Democratic Governors' Association, and Gov. Thomas R. Carper of Delaware, a Democrat, denounced the House Republicans' bill, which is generally supported by Republican governors.

Mr. Carper said, "The bill will undercut my own efforts to reform the welfare system in Delaware."

It would, he said, reduce the amount of Federal money provided to the states for cash assistance and for the protection of children who have been abused or neglected.

The Republican bill would eliminate a longstanding Federal requirement that states put up money of their own to match Federal welfare payments. Mr. Carnahan said this change was "not particularly good policy."

The governors also complained that the Republican bill would leave states exposed to severe fiscal hardship in a recession, and they said it would impose new mandates on the states to achieve conservative policy goals.

The Republicans' welfare bill, a keystone of their legislative agenda, would pare social welfare programs established over the last 60 years in favor of block grants that the states could spend as they wished to aid the poor.

The bill was approved by a House subcommittee on Wednesday. Under its provisions, the main cash assistance program would no longer be an entitlement available to everyone who met certain eligibility criteria. The Republican bill would prohibit the use of Federal money to provide cash assistance to unmarried mothers under the age of 18.

Trying to change a system that has evolved for 60 years.

Senator Daniel Patrick Moynihan, Democrat of New York, said the cash assistance program had roots in the Social Security Act of 1935. Of the Republican bill, he said: "This is not welfare reform. It is an attack on Social Security. I don't believe that either this Congress or this nation will support it. The answer to our problems is not to turn children out into the street."

On a related subject, the Acting Secretary of Agriculture, Richard Rominger, told Congress today that the Administration opposed the House Republicans' effort to replace the food stamp program, the school lunch program and other nutrition programs with a new block grant to the states. The Administration has made no such categorical statement opposing a block grant for the main cash assistance program, Aid to Families With Dependent Children, though it has objected to many details of that proposal.

Republican members of Congress said they were not impressed by the arguments of the Democratic governors. Representative E. Clay Shaw Jr., the Florida Republican who is chairman of the Ways and Means subcommittee, said Democrats on the panel had repeatedly suggested that governors could not be trusted to take care of their poor citizens.

"Listen to the inconsistency of this," Mr. Shaw said. "We have battled the Democrats for three days, trying to put much of this program down there at the state level, and the Democrats have fought us. If you look at their amendments, you'll see that they are trying to put straitjackets on the states. Then they march in a couple of governors who say that we're trying to manage them and putting too many strings on it. It's nuts."

Representative Mac Collins, Republican of Georgia, said it served the political interests of Democrats to keep poor people dependent on the Government.

"This is politics," Mr. Collins said. "We have a welfare system that has made a portion of our population dependent on the Federal Government, and that dependency has been very rewarding to the Democratic Party for quite some time. But it got so costly to the taxpayer that on Nov. 8 the politically incorrect working people of this country rose up and said, 'Enough is enough,' and they voted for change."

Democrats said the suggestion that they had purposely encouraged dependency was absurd. Representative Harold E. Ford, Democrat of Tennessee, said the Republicans were waging a "campaign of hate" against children.

Representative John Ensign, Republican of Nevada, said the Republicans were seeking "a cultural revolution to take back the morality that we have in this country, so it becomes unacceptable again to have kids out of wedlock."

"You are looking at 30 to 40 years of a system of Government programs that have helped create a moral decline in this country," Mr. Ensign said. "It is not going to turn around in one, two, three years. This has to take a complete cultural change."

The Washington Post

DATE: 2/17/95
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Democratic Governors Decry GOP Welfare Reform Plan

Democratic governors charged yesterday that the plan to turn over responsibility for welfare to the states that was approved by a House Ways and Means subcommittee Wednesday is heavier on cost reduction than welfare reform.

"Their very insistence on getting savings first is going to make their plan fail," said Missouri Gov. Mel Carnahan, chairman of the Democratic Governors' Association. Real welfare innovation, he said, only "realizes savings down the road."

Delaware Gov. Thomas R. Carper said the Republican plan "represents at least an $18 billion cost shift to the taxpayers in all of our states." He said the "rainy day" fund designed to help states hit by recession "ought to be called a 'rainy month' fund, because that's how long it would last." Rep. E. Clay Shaw Jr. (R-Fla), chairman of the Ways and Means subcommittee, in a counter news conference, said: "Everybody is trying to play the PR game, to do spin control. . . . The fact is the Democrats have no bill."

Rep. Michael A. "Mac" Collins (R-Ga.) said the issue was fundamentally political. "The current welfare system of dependency has been very rewarding for the Democrat Party for some time. Last November a political movement of working people of this country rose up and said they were tired" of working while others collected checks from the government, he said. "We're going to shift responsibility closer to where the people are who are paying the bills."

—Judith Havemann

Los Angeles Times

DATE: 1/18/95
PAGE: B3

Judge Cuts Legal Fees to Lawyers for Rodney King

■ Courts: He orders Los Angeles to pay $1.6 million to lawyers who helped the beating victim win a $3.8-million judgment against the city. They had asked a total of $4.4 million.

By JOHN L. MITCHELL
TIMES STAFF WRITER

The federal judge in Rodney G. King's successful lawsuit against the city of Los Angeles has ordered the city to pay nearly $1.6 million in legal fees to a variety of attorneys who represented King, attorneys disclosed Tuesday.

U.S. District Judge John G. Davies awarded King's team of more than a dozen lawyers considerably less than half of the $4.4 million they sought for representing him in the civil suit, which grew out of his 1991 beating at the hands of Los Angeles police officers. King won a judgment last year of $3.8 million.

The two most prominent King lawyers, Milton Grimes and Steven A. Lerman, were awarded barely one-fifth of the fees they sought.

The most common reasons used by Davis for disallowing claims by the lawyers were duplicative work, over-staffing and claims for the punitive phase of the civil trial, in which the jury ruled against King in his attempt to recover damages from some of the officers involved in the beating.

Davies was particularly critical of attorneys who sought reimbursement for representing King at news media events. Those appearances had nothing to do with "the purpose of obtaining a favorable result for Mr. King, but for their own benefit," the judge wrote in a 48-page decision.

"The judge kicked some of the lawyers in the butt," acknowledged one of the attorneys, John Burris, a civil rights specialist who sought $600,000 for representing King but was awarded only about $325,000 in Davies' ruling, issued Friday.

Davies awarded $456,000, the largest share of fees, to Grimes, who was King's lead attorney and represented him through the civil trial. Grimes had asked to be paid $2 million. Fees for Lerman, who currently represents King and handled his case before the trial, were set at $221,000, instead of the $1.2 million he sought. Another attorney, Federico Sayre, who specializes in medical malpractice, was awarded roughly $325,000; he had sought $600,000.

Davies refused to allow compensation for interviews with the media, appearances with King on the Oprah Winfrey and Phil Donahue television shows and Grimes' attendance at the premiere in Oakland of a three-hour movie about Malcolm X.

"Mr. King's lawyers and Mr. Lerman especially basked in the friendly glow of media attention" to promote themselves, Davies wrote. "It is inconceivable that the jury verdicts were related even in the remotest fashion to appearances by the lawyers on talk shows or by the media spin of Mr. King's trial lawyers."

Lerman said he was disappointed.

"The intensity of the media coverage created the need to work 24 hours a day," he said. "What I billed was just a small fraction of the time I spent. The entire world media looked to me to offer commentary on Rodney King as a person."

Burris, who did not submit bills to compensate him for time dealing with the news media, said he was not surprised by Davies' decision. However, he also was dismayed.

King's lawyers were automatically able to seek reimbursement from the city because under federal law, plaintiffs who prevail in civil rights cases are entitled to have legal fees paid by the defendants.

City officials, who had urged that their share of King's legal fees be limited to $1 million, characterized the plaintiff's attorney's initial claims as staggering. The city now has the option of appealing the judge's order, but that appears unlikely, officials said.

Davies' limitation of attorneys' fees may set the stage for a battle in which some of the lawyers attempt to seek further compensation from King's $3.8-million jury award, sources familiar with the case said.

King's decision to switch lawyers during the past three years created a crowd of sometimes competing attorneys.

Lerman was King's first attorney after an amateur video operator taped the infamous beating March 3, 1991, that catapulted King into the world spotlight. A Superior Court jury's announcement of not guilty verdicts on criminal charges against four LAPD officers in 1992 triggered the Los Angeles riots. In 1993, a federal court jury convicted two of the policemen, Sgt. Stacey C. Koon and Officer Laurence M. Powell, of criminally violating King's civil rights. They are serving prison sentences.

Lerman put together King's early medical evaluation and treatment team and laid the foundation for his lawsuit against the city. Then King fired Lerman and hired Grimes.

When numerous attempts at reaching an out-of-court settlement with the city proved unsuccessful, Grimes hired a team of nearly 20 lawyers, including Oakland attorney Burris and medical malpractice attorney Sayre. The change in legal teams and long delays led to increased costs.

After winning the civil suit, King fired Grimes, concerned that his multimillion-dollar court award could be eaten away by excessive bills from lawyers, doctors, private investigators and others. He rehired Lerman. Lerman said Tuesday that King has received part of the $3.8-million award but would not disclose the sum.

THE WALL STREET JOURNAL.

DATE: 1-18-9
PAGE: A-14

We Are All (Sniffle, Sniffle) Victims Now

By Paul Hollander

Last summer in Northampton, Mass., a woman was hit by a car, the passengers of which (she told the police) shouted anti-lesbian slurs at her while trying to run her down. A candlelight vigil was held, and a fund for victims of similar hate crimes was established.

About six weeks later witnesses came forward testifying that the victim of the hit-and-run was not subjected to any verbal abuse, and there was even some question as to whether she had been hit by a vehicle at all. Upon this revelation, it was reported, one of the organizers of the protests said that "she will still press to establish a fund for victims of hate crime. 'It's kind of naive to believe that something won't happen someday.' "

Not long after, in nearby Amherst, a 13-year-old black girl claimed that she had received racial threats and was later assaulted by two white students in a junior-high-school restroom. The NAACP called a meeting of parents and students to discuss "racism" in Amherst's schools. The day before the meeting was scheduled, however, investigators discovered that the girl's story was fabricated. The meeting went ahead as planned, of course. As the Daily Hampshire Gazette reported: "Speakers said the girl shouldn't be blamed, and that the incident serves as an opportunity to discuss the issue of race in the schools."

What is going on here? It may be recalled that in the much-publicized Tawana Brawley hoax, many justified their continuing indignation by noting that such a thing *could* have happened. Apparently the ideology of victimhood is so strong in the U.S. today that, not only does it induce people to claim victimhood where none exists, but it has created a climate in which such inventions, no matter how false, are seen as true on a higher level than "mere" facts.

Clearly during the past quarter-century there has been a spectacular expansion in the numbers of people claiming victimhood. If we add them all up—women, blacks, Hispanics, Native Americans, the disabled, homosexuals, AIDS victims, the homeless, the children of abusive parents, the overweight, etc.—it would emerge that not more than 15% of the population in the U.S. is free of the injuries of victimhood.

Why have so many Americans become disposed to assume the role of victim?

There are several explanations. The first is tangible economic benefit. "Affirmative action" has been transformed into widespread preferential treatment in schools and the workplace. As the claims of victimhood have mounted, preferential treatment has expanded to include many groups that were not part of the original affirmative-action idea.

With this expansion has come a new justification for preferential treatment. These days it is deemed necessary not merely as compensation for historic wrongs but as a precondition for achieving "diversity," now thought to be a good in itself. (Of course diversity never means diversity of opinion, political belief or class background.) Indeed, proof of tangible victimization has ceased to play a part in defining victim status.

Thus, a young and healthy black male, coming from a prosperous, well-educated upper-middle-class family, can claim victim status and will be treated as such in admission to an Ivy League college or when considered by a Wall Street law firm. Likewise any and all women—regardless of their socioeconomic status, education, professional skills and health—can count on federally mandated preferential treatment.

Tangible advantages, however, aren't the whole story behind the boom in victimization. It also arises from the way people think about themselves. Evidently huge numbers of Americans have come to believe that their lives are determined more by social and cultural forces than by personal effort. These forces, it is thought, relentlessly impinge on our lives and deprive us of choice and opportunity—in short, they victimize us.

When confronted with the variety of dissatisfactions that life entails, we often must choose between blaming ourselves or others. The "victimized" blame others as an act of self-definition. For them, others are the personification of impersonal social forces. Blaming them for life's difficulties is immensely reassuring.

The psychological benefits of certified victimhood go beyond even that. They include an automatic claim to a moral high ground. In short, the victim is always right. "Blaming the victim" (the title of an influential text in sociology) is considered unjust and irrational. Moreover, suffering and victimhood, in the Western moral-religious tradition, confer a measure of moral uplift and superiority.

A righteous anger (e.g., "outrage") is the preferred and rarely avoided outcome of the persistently fostered and strongly embraced victim identity. Socially sanctioned victimhood gives new license to the old pleasure of hating other people, of blaming others for our misfortunes and deprivations, especially when such hatred is linked to a good cause, to some notion of liberation.

The pursuit of victimhood confirms another fundamental human disposition: seeing the world as an area where the forces of easily discernible good and evil (victims and victimizers) collide. Obsessed with moral melodrama, the victim mindset is rarely concerned with the truth per se.

It is paradoxical that cultural trends and patterns of thinking that often wear the mantle of judiciousness and sophistication are nourished by such elemental, and sometimes dangerous, human impulses.

Mr. Hollander teaches sociology at the University of Massachusetts at Amherst. A new edition of his "Anti-Americanism" has just been published by Transaction.

Wall St. Journal

EEOC to Pare Down The Number of Cases It Selects to Investigate

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – The Equal Employment Opportunity Commission may become more selective in the cases it investigates, EEOC Chairman Gilbert Casellas said in an interview.

"We just can't do it all anymore," said Mr. Casellas, who became the EEOC's chairman three months ago. The commission now has the worst backlog in its history – some 97,000 cases.

To help get the backlog under control, Mr. Casellas created three task forces earlier this month. They will study ways to change the complaint process, the viability of alternative dispute resolution and the workings of state and local fair-employment-practice agencies.

Mr. Casellas questioned the workability of the commission's full-investigations policy, which pledges that the agency will thoroughly probe every complaint it receives. Given the flood of cases, he said, local agencies may be better off focusing on a smaller number of complaints.

The agency may streamline its process for issuing right-to-sue letters too, he said. If a worker hires an attorney to sue a company, then the EEOC probably shouldn't waste time investigating the case unless it presents a novel issue or could turn into a class-action suit, Mr. Casellas said.

Under the current process, he said, the EEOC in effect does free discovery work for private attorneys.

Mr. Casellas also dismissed the agency's full-remedies policy as "ridiculous." The policy now allows the EEOC to nix settlements between workers and their companies if it decides the voluntary agreements don't constitute a full remedy. It then can proceed to sue the company.

LABOR DEPT. HELD NOT LIABLE FOR BIAS
AGAINST HIV-POSITIVE JOB CORPS TRAINEE

A Job Corps trainee who tested positive for HIV is not entitled to damages from the Labor Department for alleged discrimination under Section 504 of the 1973 Rehabilitation Act, the U.S. Court of Appeals for the District of Columbia Circuit ruled *(Dorsey v. DOL,* CA DC, No. 93-5080, 12/16/94).

The federal government has not waived its sovereign immunity from private suits seeking damages under Section 504, the court said in a decision that puts it at odds with the Ninth Circuit's 1990 ruling in *Doe v. Attorney General* (941 F.2d 780).

In 1987, James Dorsey enrolled in a Job Corps center in Dayton, Ohio, and, during a mandatory medical examination, tested positive for HIV antibodies. In accordance with its policy at the time, the Job Corps expelled Dorsey from the program. Dorsey filed suit challenging his expulsion and, in January 1989, was notified that the Job Corps had revised its policy and that he would now be considered eligible for the program.

A Job Corps center in Morganfield, Ky., then accepted Dorsey's application to its culinary arts program. He requested a transfer back to the Dayton center, however, alleging that he was ridiculed by staffers and other enrollees at the Morganfield center when his HIV status became widely known. After re-enrolling in the Dayton center, Dorsey said he was harassed by fellow students after a faculty member disclosed he was HIV-positive.

The U.S. District Court for the District of Columbia dismissed Dorsey's request for declaratory and injunctive relief on grounds that it was moot, but initially held that the Rehabilitation Act permitted him to recover damages for emotional distress from the federal government. At the Labor Department's request, however, the court reconsidered its position and held that Section 504 did not waive the government's immunity from damages.

The Rehabilitation Act provides that remedies available under Title VI of the Civil Rights Act shall also be available "to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance." Dorsey therefore must establish not only that claimants may recover monetary relief in private Title VI actions, but can also do so against executive agencies despite sovereign immunity, the court said in a decision by Judge A. Raymond Randolph.

"Even if there is an implied right of private action for damages under Title VI, and thus under Section 504, it cannot exist as against the federal government," the court said. Citing the U.S. Supreme Court's 1992 decision *U.S. v. Nordic Village, Inc.* (112 S. Ct. 1011), the court said the federal government's waiver of sovereign immunity must be "unequivocally expressed" and the statutory provision containing the expression must "establish unambiguously that the waiver extends to monetary claims."

Since a Section 504 private right of action "for damages—against anyone—must be judicially implied from a statute silent on the subject, Dorsey is unable to point to any explicit language in the Rehabilitation Act (or in Title VI) waiving the government's sovereign immunity," the court determined. He therefore cannot prevail.

Judges Harry T. Edwards and Laurence H. Silberman joined in the opinion.

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CLINTON ADMINISTRATION OPEN TO MODIFYING
WELFARE REFORM BILL, BUT WORK REMAINS FOCUS

The Clinton administration is open to modifying its welfare reform legislation that stalled in the last Congress, but will not retreat from its aim to solve "the welfare crisis" by putting welfare recipients to work, Secretary of Health and Human Services Donna E. Shalala said Dec. 29.

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The New York Times

DATE: 1/18/9
PAGE: A3

Mexico Crisis Seen Spurring Flow of Aliens

Bailout Is Essential, Administration Says

By DAVID E. SANGER
Special to The New York Times

WASHINGTON, Jan. 17 — With its $40 billion rescue plan for Mexico running into opposition from members of President Clinton's own party, the Administration told leaders of Congress today that the number of illegal immigrants crossing the border into Texas and California would increase by 430,000 this year if the the Mexican financial crisis deepened.

That estimate would mean a rise of 30 percent over earlier projections of illegal 1995 border crossings, as Mexican workers are drawn to a dollar that has become 35 percent more valuable relative to the peso since the devaluation of the Mexican currency began just before Christmas.

But the numbers did little to quell growing objections to the bailout. The opposition is led by Democrats who were pressured to vote for the North American Free Trade Agreement in 1993 and who now say American taxpayer dollars should not be put at risk to bail out one of the country's economic competitors.

Under the President's plan, announced last week, the United States would offer Mexico loan guarantees of up to $40 billion, meaning that the Treasury would have to lay out money only if Mexico defaulted on any of its huge borrowings.

The Administration has declined to say how much of a fee, akin to an insurance premium, Mexico will be asked to pay the United States in return for the loan guarantees.

But participants in meetings that lawmakers held on Capitol Hill today with Treasury Secretary Robert E. Rubin and the chairman of the Federal Reserve, Alan Greenspan, said that to build support for the program, the Administration had set a steep price: about 8 percent of the amount of the loan guarantees. That means that if Mexico used the full guarantees, it would pay the United States Treasury about $3.2 billion, money the Government would pocket as a profit if the loans were repaid.

Mr. Clinton's plan was initially endorsed by top Republicans, led by the Senate majority leader, Bob Dole of Kansas. But today Mr. Dole seemed to back away, saying the President should not depend on Republicans to pass legislation authorizing the bailout program unless he could bring along Democrats.

"He needs to work within his party," Mr. Dole said. "We're not going to carry the whole load here and get hung out to dry."

The White House tried to minimize the depth of the opposition and said Mr. Clinton would probably meet with members of Congress on Wednesday to win support. The Administration hopes to bring the authorizing legislation to Congressional votes within a week or so, Administration officials said.

"The President is very encouraged by what he's heard from his Treasury Secretary about the discussions on the deal with members of Congress concerning the loan guarantee package," said Michael D. McCurry, the White House press secretary, who was traveling with Mr. Clinton in California. "They gave a very positive response. It's been very reassuring to the markets and financial experts. Conversations with the Government of Mexico have been very positive, and they understand that we are going to have some concerns that will be raised in the provision of these guarantees. Those discussions are proceeding."

But participants in today's meetings on Capitol Hill provided a less enthusiastic account. By this account, several Democratic lawmakers told Administration officials that they were unconvinced that the bailout would help anyone except wealthy investors who had bought Mexico's short-term Government bonds, which were used to cover the country's growing long-term debt.

"We must not be sending money to Mexico just to prop up a nation with the fastest-growing number of billionaires in the world," said Representative David E. Bonior of Michigan, the House Democratic whip.

Mr. Bonior has asked the Administration to establish much more stringent conditions for the loan guarantees, including promises by Mexico to buy more American products and an agreement that Mexican wages will be tied to increases in productivity, a step that the Mexican authorities fear would fuel inflation in their rapidly growing country.

The tensions the Administration faces within its own party were evident at one session today when Lawrence Summers, the Under Secretary of the Treasury, was asked why the United States was not demanding that Mexico put up collateral for its loan, in the form of shares in the nationally held oil company, Pemex, which is considered the crown jewel of the Mexican economy.

"The Government would fall," a participant in the meeting quoted Mr. Summers as responding.

The Washington Post

DATE: 1/18/94
PAGE: A10

GOP Wants Tighter Reins on Cuba

■ As the United States and Cuba prepare for immigration talks, newly empowered congressional Republicans are seeking to tighten the U.S. embargo against the island.

U.S. and Cuban officials will meet today in New York for the third in a series of talks on immigration issues. The talks have helped stabilize the immigration situation, which reached crisis proportions last summer when Cubans fled in droves aboard makeshift vessels.

The ability of the two sides to work out an agreement with a minimum of acrimony prompted speculation about a thaw in relations, but that possibility was clouded by the Republican congressional victories in November.

While sanctions against Cuba are more severe than any measures adopted against the Soviet Union during the Cold War, influential enemies of the Cuban revolution want to tighten the noose further.

Rep. Lincoln Diaz-Balart (R-Fla.) has introduced legislation to head off Cuba's admission to international financial institutions and to bar the U.S. purchase of sugar from countries that buy sugar from Cuba.

Diaz-Balart also wants to prohibit the U.S. admission of executives of any foreign company that invests in or purchases U.S. properties confiscated in Cuba. Other lawmakers are seeking ways to seize U.S. properties of such companies.

At the start of the revolution, Cuba seized without compensation U.S. properties then worth about $1.8 billion. The Clinton administration has not taken a stand on the various proposals to tighten sanctions.

— Associated Press

New Opportunities

Two ABA leaders rise to key positions at EEOC

BY JAMES PODGERS

Gilbert F. Casellas was not surprised to hear from Jamie Gorelick in March 1993, but he never figured that her call would lead him to the top post at the Equal Employment Opportunity Commission.

"I didn't really know who she was, except that she was connected to the ABA Litigation Section," Casellas says about the deputy attorney general of the U.S. Department of Justice. "I thought she was calling to ask me to be on a panel. When I called her back, I had no idea it would change my life."

Casellas was right—Gorelick's call had nothing to do with the ABA. Instead, she was calling as general counsel designate of the U.S. Department of Defense to ask him to take the post of general counsel to the Department of the Air Force.

At the time, Casellas, a partner at Montgomery, McCracken, Walker & Rhoads in Philadelphia, also was active at the ABA, serving on the Committee on Opportunities for Minorities in the Profession and representing the Hispanic National Bar Association in the House of Delegates.

Casellas agreed to take the Air Force post, and the Senate confirmed him in November 1993.

Confirmation Unanimous

But the appointment did not last long. Barely six months later, President Clinton nominated him to serve as chair of the EEOC. The Senate confirmed Casellas unanimously in September 1994.

On the same day, Paul M. Igasaki, another ABA veteran who was executive director of the Asian Law Caucus in San Francisco, was confirmed as EEOC vice chair.

Igasaki has served as co-chair of the Civil Rights and Equal Opportunity Committee of the Section of Individual Rights and Responsibilities, and he continues to serve on the Coordinating Committee on Immigration Law. In the early 1980s, Igasaki was a staff member in the Division for Legal Services.

Casellas and Igasaki will serve on the five-member commission and manage its supporting bureaucracy. The EEOC is an independent executive agency charged with hearing specific employment discrimination matters and developing policies to end discriminatory employment practices in the private and public sectors.

Gilbert F. Casellas (above); Paul M. Igasaki (left)

That is no small task, says Casellas, especially in light of the commission's load of more than 100,000 cases and what he acknowledges are some daunting internal problems.

The agency, which employs nearly 2,900 staff members in 50 offices around the country, has "every problem you can think of," says Casellas. These range from funding shortfalls and labor difficulties with its own employee union to case backlogs, a poor image and questions of whether the commission is really necessary.

"The truth," he adds, "is that this agency is filled with dedicated and talented people who want to do a good job, but who are saddled with insufficient resources and an inaccurate public perception."

While the commission's $233 million budget for fiscal 1995 (which started in October) is $3 million more than it received in 1994, Casellas points out that this year's allocation also is $12 million less than requested.

The EEOC may face some new challenges from a Republican-controlled Congress as well, but Casellas says his message will be to remind legislators that "the laws we enforce are the result of bipartisan efforts.

"Our laws are entitled to enforcement, just like any other laws. There is a link between economic security and equal opportunity," Casellas emphasizes.

Both Casellas and Igasaki credit their involvement in organized bar work with helping to position them for government posts. In addition to their ABA work, Casellas is a past president of the Hispanic National Bar Association, and Igasaki was a founder of the Chicago Asian Bar Association and active in the National Asian Pacific American Bar Association.

"All of those contacts made a difference," says Igasaki, whose ABA staff work was his "first chance to work on national policy issues at a national level."

But while praising the association for its leadership role in seeking greater diversity within the legal profession, both Casellas and Igasaki say the profession still has a long way to go.

The real challenge, says Casellas, is in private law firms, particularly larger firms. So far, their record "should be embarrassing," he notes. The law "is a huge industry. Any other industry of that size with the same lack of representation [of minorities] would be cause for outrage." ■

James Podgers, a lawyer, is an assistant editor of the ABA Journal.

ABAJ/LISA BERG AND ABAJ/DAVID WEINTRAUB

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for

January 7-9, 1995

"Good communication liberates us to do our job better."

Baltimore Jewish Times
12/30/94

663-7701

Fighting For Zien

EEOC takes up Orthodox woman's religious discrimination case.

ALAN H. FEILER ASSISTANT EDITOR

The local Equal Employment Opportunity Commission will represent an Orthodox Jewish woman in her discrimination case against her former Owings Mills employer. The case will be tried in federal court.

The Baltimore District EEOC filed a lawsuit Nov. 2 in U.S. District Court in Baltimore against Integrated Health Services Inc. for allegedly violating the civil rights of Leah M. Zien.

Mrs. Zien, 46, who worked as a regional manager for IHS's patient financial services from May 1991 to April 1992, "was refused reasonable accommodation to observe her religious beliefs and was harassed through taunts, threats, and further denial of reasonable accommodation when she complained of the discriminatory treatment," according to the EEOC court complaint.

The complaint states that Mrs. Zien was ordered to go on business trips by supervisors at the health services company that interfered with her Sabbath observance. She also was threatened with being discharged for looking "too Jewish" and taunted at a company lunch for not eating non-kosher food, according to the complaint.

In addition, the complaint states that IHS refused to accommodate Mrs. Zien's hearing impairment "in an attempt to hinder her job performance" and discharged her for complaining of discrimination.

Leah M. Zien: The EEOC will take her discrimination case against her former employer to federal court.

The EEOC demands that IHS institute policies and programs that provide employment opportunities for observant Jews, as well as eradicate previous discriminatory practices.

In addition, the complaint calls on the employer to provide compensation and back pay to Mrs. Zien for lost salary, medical expenses and emotional trauma. The suit does not seek an exact amount for a settlement.

Mrs. Zien originally filed a complaint with the EEOC against IHS in November 1991.

"This is a case that we found had merit and reasonable cause," said Debra Lawrence, an EEOC trial attorney. "We gave the defendant an opportunity to remedy [Mrs. Zien's] discrimination, and they didn't do that to the EEOC's or her satisfaction."

Ms. Lawrence said a trial date has not yet been scheduled. She said Senior District Court Judge Alexander Harvey II will preside in the case. The EEOC has requested a jury for the trial.

"I'm hoping the evidence we've gathered will demonstrate merit to [Mrs. Zien's] claim," Ms. Lawrence said. "We want to send a message out that religious discrimination will not be tolerated."

Dr. Robert N. Elkins, chairman and chief executive officer of IHS, refused to discuss the case with the BALTIMORE JEWISH TIMES. Charles Martel of Hunton and Williams, a Washington, D.C., law firm representing IHS in the case, refuted the discrimination charges.

"Some of the highest level managers with IHS are in fact Jewish, so the organization has no disposition against Jewish individuals," Mr. Martel said. "Mrs. Zien was not discriminated against in any respect. And the company intends to defend itself against the allegations raised in the lawsuit."

Mrs. Zien, who previously lived in the Park Heights area but moved to Madison, Wis., two years ago, said she plans to file her own federal lawsuit against IHS for religious discrimination in the near future.

"I'm very pleased to have an organization such as the EEOC behind the case and helping me with not only myself, but others in gaining the civil rights discussed in this lawsuit," Mrs. Zien said. "I'm fighting this battle for every Orthodox Jew placed in this situation." □

Wed., Jan. 11, 1995

THE WASHINGTON POST

Workplace May Be Focus of Immigration Control

White House Officials Consider Programs That Could Spawn Computerized National Registry

Roberto Suro
Washington Post Staff Writer

Senior White House officials yesterday began considering a proposal to combat illegal immigration at the workplace with programs that could lead to the creation of a computerized identification registry for the nation, administration officials said.

White House Chief of Staff Leon E. Panetta and other top advisers to President Clinton must determine whether the initiative, the result of months of work by an interagency group on immigration policy, fits into the president's overall political and legislative agendas, the officials said.

A decision is expected in time for the president's State of the Union address Jan. 24, and the presentation of the administration's budget for the 1996 fiscal year in early February. The outcome will influence how immigration develops as an issue in Congress and how it will color the preliminary rounds of the 1996 presidential race.

Instead of developing as a hot-button issue with the Republican takeover of Congress, administration officials said immigration policy appears to be a potential area of cooperation. They noted recent statements by Republican leaders in Congress promising a bipartisan approach to bills on immigration.

As presented at a White House meeting yesterday afternoon, the proposal envisions concentrating federal efforts in the workplace through more effective enforcement of the 1986 law prohibiting the employment of illegal immigrants. This contrasts with the focus on denying public services and benefits to the undocumented that was the strategy behind California's Proposition 187, according to administration officials.

At the core of the proposal, the officials said, is a spending initiative to clean up and modernize data bases maintained by the Immigration and Naturalization Service and the Social Security Administration. Both agencies have admitted that their computerized files are incomplete and outdated.

Administration officials said immigration policy appears to be a potential area of cooperation with Republicans in Congress.

Correcting those deficiencies is generally considered innocuous and worthy for its own sake. But proposals to create a new registry of approved workers and then require employers to check every new job applicant against it have been embroiled in controversy for years. For example, the Commission on Immigration Reform, headed by former Democratic representative Barbara Jordan of Texas drew opposition from ethnic groups, immigration advocates and some conservative Republicans when it proposed the immediate creation of such a registry last October.

The proposal under consideration at the White House takes a gradual approach to this volatile issue. Rather than mandate the creation of a workers' registry, the proposal suggests holding off a decision on whether to proceed with the registry until several years of work have gone into cleaning up the data bases, the officials said.

In the meantime, the proposal suggests extensive experimentation with enforcement techniques that could be used in tandem with the registry, the officials said—such as the development of more fraud-resistant identity documents and telephone verification systems for use by employers.

In the past, key Republican legislators on immigration policy have backed measures to create a worker-verification system to combat illegal immigration. As a result, administration officials said they expect little opposition in principle. If proposed by the president, the debate in Congress would likely focus on whether the plan is quick and aggressive enough. The Republicans then would bear the burden of arguing they had a more efficient option and could pay for it.

Extensive discussions have taken place with Jordan to win her approval of the proposal, and the officials said they now believe she will say it reflects the intent of her commission's recommendations.

Hispanic agents get court hearing on FBI bias claims

By Jacque Crouse
SAN ANTONIO EXPRESS-NEWS

SAN ANTONIO — A federal judge who ruled in 1988 that the FBI discriminated against Hispanic agents has ordered a hearing next week during which three of the agents say they will present evidence of continued retaliation against them for bringing the charges.

The FBI could be held in contempt if U.S. District Judge Lucius D. Bunton III decides it has violated his order.

Judge Bunton scheduled the Tuesday hearing in El Paso after a conference this week with lawyers representing both sides in the landmark case.

Former FBI Director William Sessions is expected to testify at the hearing in behalf of three Hispanic agents assigned to San Antonio's FBI field office, said Antonio Silva, the El Paso lawyer representing agents Gil Mireles, Art Vela and Bobby Montoya.

Mr. Sessions was chief U.S. district judge in San Antonio before President Reagan named him FBI director.

The San Antonio agents say the FBI has continued to retaliate against them since Judge Bunton's judgment ordering the bureau to end discrimination and improve treatment of Hispanic agents.

Mr. Sessions and government attorneys could not be reached for comment.

Judge Bunton, reached at his home, said five agents originally claimed they were victims of retaliation. He determined earlier that one of the agents did not have a legitimate claim.

Another, who will be allowed to present legal arguments during the hearing next week, was fired for what the FBI termed security reasons, Judge Bunton said.

In his 1988 decision, the judge agreed with 311 Hispanic agents who said they were discriminated against in hiring and promotion practices.

Mr. Silva said the three San Antonio agents have filed several equal-employment-opportunity complaints within the FBI since the lawsuit was settled.

Because of their complaints, Mr. Silva said, the three agents have been targeted by Office of Professional Responsibility investigations.

Before the lawsuit, Mr. Silva said, the three — now labeled by some as "troublemakers" — had spotless service records with the FBI.

Former FBI Director William Sessions, who was chief U.S. district judge in San Antonio before taking over the bureau, is expected to testify in behalf of the agents.

Mr. Sessions, Mr. Silva said, was badgered and drummed out of the FBI by the same faction that has discriminated against Hispanics and other agents who do not fit the "prototype" set in the FBI while J. Edgar Hoover ran the bureau.

"This is the Hoover clique that forced the director out," Mr. Silva said. "It is not only anti-Hispanic; it is anti-anything that does not fit the prototype of a white, Anglo-Saxon, male professional as an FBI agent."

He said that group within the FBI views minority agents as "less than agents" and has sought to remove them.

While some Hispanics have been promoted within the bureau, Mr. Silva said they are among those who have sided against the agents who filed the original class-action lawsuit charging discrimination.

Mr. Silva said an agent cannot be promoted while investigations by the Office of Professional Responsibility are under way.

The investigations, he added, have prevented the three agents from being considered for promotions for which they are qualified.

USA TODAY · WEDNESDAY, JANUARY 11, 1995

By Pat Sullivan, AP

JESSE JACKSON: Plans to start system rating colleges on their minority hiring.

Jackson to turn up pressure

SAN DIEGO — The Rev. Jesse Jackson's Rainbow Coalition, targeting a lack of minorities among college coaches and athletic administrators, hopes to complete a rating system of schools by late April.

"We must keep applying pressure and must apply it school-by-school and milieu-by-milieu," Jackson said Tuesday after a two-hour meeting with NCAA officials.

"Those schools that are fair should have the inside track on recruits. And (for) those that are not fair, students should be discouraged from going."

His "fairness index" will track minority hiring and athlete graduation rates, he said.

A recent NCAA study found that, while blacks made up a quarter of major college athletes a year ago, they accounted for fewer than 8% of all head coaches and 10% of athletic directors. Outside of predominantly black institutions, the percentage of both was 4%.

"We look at these reports," said Judith Albino, head of the NCAA Presidents Commission, "and we say, yes, there's still a big job to do."

— *Steve Wieberg*

THE WALL STREET JOURNAL

Budding Backlash?

Race, Sex Preferences Could Become Target In Voter Shift to Right

Some in GOP Plan Assault, And California May See A Grass-Roots Initiative

A Case Before Supreme Court

By PAUL M. BARRETT
And G. PASCAL ZACHARY
Staff Reporters of THE WALL STREET JOURNAL

Racial and gender set-aside programs, one of the civil-rights movement's most concrete — and controversial — achievements, may prove to be a casualty of the nation's lurch to the political right. And should that assault succeed, some predict it would be only a matter of time before the larger issue of workplace affirmative action is engulfed in a similar backlash.

Introduced more than 20 years ago with the support of Republican President Nixon, preferences now permeate federal spending on everything from highways and military supplies to computer and janitorial services. Federal agencies acting under racial mandates disburse more than $13 billion a year to thousands of mostly small minority-owned businesses employing hundreds of thousands.

But disdain for such preferences also permeates the political subconscious of a conservative Congress elected to a large extent on the votes of angry white men. Perhaps unsurprisingly, some GOP activists in Washington are pushing for legislation that would eliminate policies favoring minority companies seeking federal contracts, while Republican legislators are mulling a plan to attach riders to individual bills to ban racial preferences.

A Broad Front

At the same time, many of the forces that propelled California's Proposition 187 to a November victory are at play in an effort by two obscure California academics to put on the 1996 state ballot an initiative to bar the state and its contractors from parceling out jobs, promotions or contracts based on race or sex. Beyond that, the U.S. Supreme Court will hear arguments next week in a reverse-discrimination case that some legal experts believe will result in a ruling sharply limiting federal set-asides for minority businesses.

Suddenly, policies that liberals and many members of minority groups view as symbols of a national commitment to remedying past racism are under assault. "Doing away with federal affirmative action would be devastating," says Anthony Robinson, president of the Minority Business Enterprise Legal Defense and Education Fund in Washington. Predicting fierce liberal opposition to such a push, he warns, "You're talking about eliminating a lot of the progress we have made for some abstract notion of color neutrality."

With his veto power, President Clinton could still frustrate any attempt in Congress to roll back affirmative action — a veto that many conservatives would most certainly relish turning into a campaign issue in 1996. But the movement is more complicated than a liberal/conservative ideological split. Some blacks have long opposed affirmative action, arguing that such policies typically do little for the poor while calling into question legitimate minority achievement. And a growing number of intellectuals are beginning to wonder if criteria based on pure economic need might better serve minorities and women than preferences based on race and sex.

Whatever the case, there is nothing Mr. Clinton or liberal Democrats can do about what appears to be the grass-roots groundswell of white opposition to affirmative action, especially among white males.

"It really burns your butt," says Randy Pech, the man who brought the case currently before the Supreme Court. He sued the government after his firm lost a federal contract to install highway guardrails in Colorado to a Hispanic-run company with a higher bid. "We're a small family-owned company," he says. "We don't discriminate. Why should we be punished?"

Race and Economics

The November election sent a phalanx of conservatives to Congress and statehouses who feel the way Mr. Pech does. And the overwhelming passage of California's Proposition 187 also showed deep-seated frustration among white voters over an issue—illegal Mexican immigration—that, like affirmative action, has both racial and economic overtones. Now, a similar tide may be gathering for the California Civil Rights Initiative, which would bar state agencies, colleges or contractors doing business with the state from giving preferences to any individual or group based on race or sex.

"There is heavy sentiment for it," says Mervin Field, founder of the California Field Poll. He thinks it has a 50-50 chance of passing even if white women vote against it in droves, which he considers unlikely. The last time the Field Poll asked about affirmative action, in 1988, two-thirds of female respondents said they opposed preferences for women, not to mention minorities. Many women who considered themselves independents or Republicans voted for Proposition 187, which bars public education or nonemergency public health care for illegal immigrants. Though its implementation has been blocked by legal appeals, it is considered by some to be a litmus test of white feelings about racial matters.

Depending on how the question is

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Budding Backlash? Race, Sex Preferences May Come Under Fire as Some Republicans Plan an Assault

Continued From First Page

asked, national polls also show a modest majority opposing affirmative action. And minorities and women generally don't have any constitutional guarantees protecting government preferences based on race or sex. A successful assault on affirmative action in California could start a civil-rights counterrevolution, some suggest. "As California goes, so goes the nation; they're always in the lead," says Terry Eastland, a conservative legal analyst.

Such efforts may already be spreading. Says Grover Norquist, president of Americans for Tax Reform, a conservative group in Washington: "I think you'll see [anti-preference initiatives] on six state ballots in 1996."

Liberals and minority leaders are deeply alarmed over this backlash. They argue that while affirmative action has achieved large gains for minorities in blue-collar and government jobs, and for women in white-collar occupations and professional schools, women and minorities are still under-represented in many areas, particularly in small businesses and managerial positions.

'Horror Stories'

"Can we say at a given moment of time that enough has been done to rectify the disadvantages we've admitted to, and we're now going to be colorblind?" asks Herbert Sandler, chief executive officer of Golden West Financial Corp., a backer of Democratic politicians whose big thrift holding company is headquartered in predominantly black Oakland, Calif. "To this day, I hear horror stories of gender bias and racism, from people I trust."

Supporters of affirmative action and preferences predict a fierce fight in California and across the nation. "We think this is *the* fight for us over the next two years. We anticipate we will be reliving Prop. 187 with this," says Elizabeth Toledo, president of California's branch of the National Organization for Women. She says some programs are carried out "incorrectly or unfairly" and therefore "we may have a tough fight" defeating the initiative in California. But Ms. Toledo argues that white women have benefited from affirmative action more than minority women, and that support is broad.

Moreover, public-employee unions may represent a hard-to-dislodge bulwark of the affirmative-action edifice. Covering everything from teachers to postal workers to police, these unions either wholeheartedly back preferences for women and minorities or accept them as part of the permanent landscape. Any rollback effort would be met with stubborn opposition.

Quota Question

But support for affirmative action largely evaporates among whites when it is portrayed as a quota system that penalizes well-qualified whites. And fostering that quota perception is the aim of affirmative-action critics. Says John H. Bunzel, a research fellow at Stanford's Hoover Institution: "The whole argument about affirmative action today is perceived as one in which a quota mentality is at work."

Affirmative action wasn't initially intended to establish quotas. Starting in the 1960s, courts and administrative orders by Presidents Johnson and Nixon pressured federal agencies, private companies and municipalities to give preference to minorities, and later women, in hiring and promotions to remedy past bias. But later Supreme Court decisions allowed companies and universities, as well as public agencies, to favor "protected groups" without proof of prior discrimination.

Preference programs were adopted mainly by large institutions, such as Fortune 500 companies, colleges and government entities. Critics say that when managers were told that their own pay depended on meeting affirmative-action goals, they often took the easiest route by using de facto quota systems.

Many white males became convinced that quotas were in place, and their outrage has grown. Consider Ray Batz, a white 57-year-old firefighter in San Francisco, where the fire department has been under court order for more than a decade to hire more women and minorities.

Mr. Batz says he doesn't mind minorities and women receiving an extra boost to land a job – it is subsequent preferential treatment that angers him. "Some firefighters have been [promoted] four times," he asserts. "I don't think anyone needs four legs up. That's madness."

Support for preferences has also been undermined by some bureaucratic rules for determining who is eligible for protection. White males of Spanish descent qualify as protected Hispanics, but whites whose ancestors were from neighboring Portugal aren't. The daughter of a wealthy black dentist is eligible for preferences, but the daughter of an impoverished white sharecropper may not be.

Such inconsistencies have prompted some blacks to turn on affirmative action, arguing that equal opportunities, not equal results, are needed. Instead, "we've tried to cover up [discrimination] with preferences," says Shelby Steele, who has written a book criticizing affirmative action, which he says "has bred cynicism in people rather than racial good will. It has fostered backlash, divisiveness, even plain old racism."

In 1989, the Supreme Court ruled that state and local governments may not set aside contracts for minority-owned firms unless doing so directly remedies past discrimination that can be proved with concrete evidence. The ruling effectively nullified some 200 affirmative-action programs, although some have been revised and reactivated.

Case From Colorado

In a 1990 decision, the high court ruled 5-4 that Congress should have greater latitude than states or localities to use "benign" racial classifications. Now, Mr. Pech, the Colorado contractor, is asking the court to apply the tough constitutional standard to federal racial preferences – essentially, greatly narrowing the effect of the 1990 ruling.

His case is typical of how visceral the issue has become. His contracting concern submitted the low bid on a guardrail project – $102,000 – but the prime road contractor gave the business to a Hispanic-owned firm because the U.S. Transportation Department offered a financial incentive for hiring "disadvantaged" subcontractors (minorities are presumed to be disadvantaged under federal law).

"We can't afford to lose this kind of business," says Mr. Pech, whose Colorado Springs firm employs 10 to 25 people, depending on the season, and whose revenue last year was about $2.3 million.

Mr. Pech's timing may be fortuitous to his views. Four of the five members of the 1990 majority have since left the court; all four dissenters are still there, and Justice Clarence Thomas is an almost certain vote against affirmative action.

Meanwhile, some Republicans in and out of Congress are bent on capitalizing on the controversy. With encouragement from GOP lawmakers, former Reagan-administration lawyers are drafting legislation to eliminate policies favoring minority-owned companies seeking federal contracts. If such a bill succeeds, it would present a dilemma for President Clinton.

"A Clinton veto would set up racial quotas and set-asides as a major issue for 1996," says Clint Bolick, the lawyer leading the drafting of the bill. Sen. Phil Gramm of Texas, a likely GOP presidential contender, is expected to make opposition to racial preferences a major part of his campaign. "If Gramm makes it a campaign issue, it's going to be a tidal wave," Mr. Bolick says.

Mr. Bolick's group is also preparing a menu of more modest proposals, such as attaching "riders" to spending bills that bar agencies from using taxpayer money to favor one race over another. One likely target: Federal Communications Commission programs that help minorities and women acquire licenses for broadcasting and telecommunications services.

Prominent GOP theoretician William Kristol says that another approach being reviewed is holding a series of publicized hearings on Small Business Administration programs that funnel federal contracts to minorities. Such programs "are great candidates for show trials," Mr. Kristol says, "followed by executions."

But as with property-tax revolts and

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USA Today 11/1/95

393 Budding Backlash

term-limit campaigns, California voters might start the tidal wave themselves. The ballot initiative was conceived by Glynn Custred, a 55-year-old anthropology professor at the California State University at Hayward, and by 48-year-old Tom Wood, executive director of the California Association of Scholars, a conservative group of professors. But both fret that if the measure is hijacked by the right, it could do more damage than good.

"Unless you keep this on the highest moral plane, you can slip into something that would polarize [society] even more than the divisiveness and hate that programs are creating," Mr. Custred says.

While the initiative doesn't endorse it, Mr. Wood says he favors some alternative to affirmation action based solely on need and ignoring sex and race – at least for entry-level jobs and college admissions. Preferences based on race and sex, he says, are just counterproductive.

Even some minorities agree. "Affirmative action's day has come and gone," says Mr. Steele, the author. "Everything seems to point to that."

By Fred Mertz, AP

INITIATIVE AUTHORS: Professor Glynn Custred, left, and scholar Thomas Wood are the driving force behind the movement to overturn California affirmative action laws.

COVER STORY

Affirmative action next target in Calif.

Critic calls 'preferential treatment' for minorities, women 'vile and corrosive'

By Kevin Johnson
USA TODAY

California, scene of a political rumble over passage of the illegal immigrant law Proposition 187, is bracing for an even bigger aftershock.

In a state that long has been a springboard for national movements, a drive to dismantle affirmative action is rolling toward the 1996 ballot.

At issue: the California Civil Rights Initiative, which aims to overturn programs that give minorities and women preference for college admission, jobs, promotions and government contracts.

"I sense a revolution coming," says Santa Ana lawyer Milton Grimes, who represents Rodney King, a man who has become a symbol of racial tension in Los Angeles. "I think California is just an indicator of the social conflict going on throughout the country."

In fact, the U.S. Supreme Court also will be weighing in on affirmative action: Next week, it considers a case that some think could lead to a major reversal of the doctrine.

And California's proposed initiative — the subject of an angry protest in Los Angeles Tuesday — clearly is volatile enough to rock the USA's most populous state to its cultural and political foundations.

The state's latest revolution, like some of its previous ones, is being plotted from a makeshift headquarters in Berkeley, this time by a local scholar and a California State University professor who believe affirmative action guidelines granting preference to minorities and women promote reverse discrimination.

To its co-authors Thomas Wood and Glynn Custred, the initiative is nothing more than a return to the basic doctrine of the Civil Rights Act of 1964, which, Wood says, contradicts any notion that one group should get preference over another.

To the protesters who gathered Tuesday to fight it, and to people like the Rev. Zedar E. Broadous, it is a "call to battle."

Not only are the rights of minorities threatened, says Broadous, president of the San Fernando Valley NAACP, but the specter of the initiative further erodes California's reputation as a tolerant place for African-Americans, Hispanics, women and other groups to live and work.

Gov. Pete Wilson, whose successful re-election bid rode heavily on his support of Prop. 187 — which denies most state services to illegal immigrants — made a dramatic entrance into the fray when he recently announced his support for eliminating preference programs.

Although Wilson didn't specifically endorse the initiative, he was labeled by the Rev. Jesse Jackson as a "sophisticated version of Lester Maddox" — the segregationist ex-Georgia governor — for his stand.

Says Broadous: "It looks like white folks are doing the best they can to keep control of the state when it is clear that we live in a time when minorities are rising to power."

Although the campaign has touched sensitive political and cultural nerves inside and outside California, backers of the measure have escaped being labeled as extremists — so far — and are largely seen as activists who sense the public's call for affirmative action reform.

"Gov. Wilson is known for grabbing on to a train when it is rolling down the right track," says state Assemblyman Bernie Richter, a northern California Republican who is backing legislation to abolish state affirmative action programs.

"Affirmative action has become a vile and corrosive system that threatens to blow us asunder," the legislator says. "There are a lot of good people out there being denied promotions on the job, not becaus they are not qualified, but becaus

Cont'd 1+2

Affirmative action 'a ticking time bomb'

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Calif. voters mean business

California loves to vote.

Residents have taken concerns about such things as AIDS policy and English as an official language to the ballot box in hopes of affecting change when their elected representatives couldn't or wouldn't do it for them.

Between 1981 and 1990, California placed more citizen-initiated propositions on the ballot — 58 — than any of the 24 states that allow initiative voting, a study by the Public Affairs Research Institute of New Jersey found. During that time, it also passed more proposals — 27 — than any other.

The trend shows no sign of abating in the 1990s.

Last year, Californians overwhelmingly passed the anti-illegal immigrant Proposition 187 and a new movement toward abolishing affirmative action programs is gathering steam.

The state sealed its reputation for citizen-initiated measures in 1978 when voters marched to the polls with anti-tax crusader Howard Jarvis to pass the landmark Proposition 13.

Approved by an overwhelming majority, the initiative rolled back property taxes by 57% in California and focused national attention on the movement like few other political issues.

"It changed the way we do business in this state," says Shirley Washington, a spokeswoman for the California secretary of State.

A statewide ballot requires the signatures of 384,974 registered voters for an initiative that would enact a new law; 615,958 for amendments to existing law.

The signatures must be gathered in 150 days and validated within 131 days of an election.

Although it takes some energy to gather the signatures, "it only costs $200," says Washington. "There isn't that much to lose."

— Kevin Johnson

they are the wrong ethnicity or gender.... People know it's going on and we want it stopped."

That, in the nutshell, is the argument behind the voter drive.

Wood, who needs 615,000 signatures to get his initiative on the ballot — not that difficult by California standards — says his move has been misunderstood in some quarters as an attempt to wipe out civil rights legislation altogether.

"The passage of (the initiative) will not overturn any of the positive aspects of civil rights laws," he says. "What we're against is giving preferential treatment."

Nor, Thomas says, is the initiative seeking to restrict access to employment or education, a critical platform in early civil rights legislation.

"This is not an attack against people," he says.

What does the initiative say?

The gist of it says that California cannot use "race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group" for state jobs, education or contracts.

But Jackson, whose Rainbow Coalition is hosting strategy sessions against the proposal this week, doesn't see either the measure or its authors so benignly.

"There were plenty of Ph.D.s supporting apartheid in South Africa," he says.

Charles Geshekter, African history professor at California State University, Chico, and supporter of Richter's proposed state legislation, says the entire movement represents a key change in the public discussion.

"It used to be political suicide to say these things," Geshekter says, "but times have changed. ... The country seems to be shaking with this. I sense the whole concept of racial or gender preference is so unpopular that it's become a ticking time bomb."

Broadous and Jackson, however, see no compromise in the nearly identical proposals offered up by Richter's legislation and Wood and Custred's initiative.

"It will take time for minorities and women to find themselves on equal footing in the workplace and in the classroom," Broadous says, "and that time has not come."

Adds Jackson: "This is yet another effort to roll back the process of inclusion."

Political analysts already are suggesting it could be the defining issue of a presidential election year in a state crucial for both parties.

"This could drive a wedge right through the Democratic Party whose traditional constituency has been women, labor and minorities," says Sherry Bebitch-Jeffe of the Claremont Graduate School's Center for Politics and Economics. "It could force (Democrats) to choose among constituencies."

Like it or not, Bebitch-Jeffe says, the anti-affirmative action movement, coming after Prop. 187, will add to perception of California.

"The myth of California as the 'Golden State' is dead," she says. "There is a mean-spiritedness lingering out there.... We are still socially tolerant, but we have become more economically conservative, very skeptical of government and not willing to spend money on anybody else but ourselves."

DOCKET WATCH

BY TONY MAURO

It's the End of Affirmative Action Maybe.

The affirmative-action case of *Adarand Constructors v. Peña*, No. 93-1841, set for argument Jan. 17, could be the civil-rights case of the decade—or much ado about very little.

The case pits Adarand Constructors, a white-owned highway-construction firm from Colorado, against the Clinton administration, which is defending a race-conscious highway-funding program that Adarand claims cost it a contract.

But rarely have opposing sides in a case cast the issues in such different terms.

On one side will be William Perry Pendley, president and chief legal officer of the conservative Mountain States Legal Foundation, with an in-your-face argument on behalf of Adarand that the program at issue is race-conscious. As such, he will argue, the program is subject to strict scrutiny, and fails under that standard.

William Perry Pendley

On the other side, in something of a defensive crouch, will be Solicitor General Drew Days III, arguing that the program is not what it appears to be, is not primarily race-conscious, and isn't much worth fussing over.

The focus of the program, Days insists, is helping "disadvantaged" contractors regardless of race. The fact that minority-owned businesses are automatically regarded as disadvantaged, he says, is nonetheless a "rebuttable presumption" that Adarand never tried to rebut.

Days and other groups—notably, including the NAACP Legal Defense Fund—even go so far as to argue that Adarand does not have standing because the company cannot prove that the program caused it injury.

"The Court could uphold this progam and it wouldn't have much impact," says Stephen Ralston, senior staff attorney at the LDF. "It's not a set-aside program, it's not like *Fullilove*." He is referring, of course, to the minority set-aside public-works program challenged and upheld in 1980 in *Fullilove v. Klutznick*, 448 U.S. 448.

The fact that Days and the amicus groups on his side are trying so hard to portray the contracting program as something less than meets the eye—and less than *Fullilove*—probably reflects their concern over the Court's decision to take the case in the first place.

Looming over the civil-rights community is the arithmetic of the Supreme Court's last affirmative-action ruling, *Metro Broadcasting v. FCC*, 497 U.S. 547, Justice William Brennan Jr.'s final ruling, decided June 27, 1990. Of the five justices in the majority, only John Paul Stevens remains on the Court.

Dissenters Sandra Day O'Connor, Anthony Kennedy, Antonin Scalia, and William Rehnquist, have been joined on the right by Clarence Thomas at the very least. Other newcomers, David Souter, Ruth Ginsburg, and Stephen Breyer, may or may not all join Stevens on the side of affirmative action, but even if all of them do, they add up to only four.

So when the Court granted cert in *Adarand*, the unspoken message seemed clear to some.

"I doubt this will be the end of affirmative action, but if they were going to uphold *Fullilove* and *Metro Broadcasting*, it seems like they would not have taken the case," says Todd Welch, senior attorney at Mountain States. "There has not been another time in history when there has been such a significant shift in ideology on the Court."

That is why, Welch says, the government has undertaken what he calls a "last-gasp effort" to portray the highway program challenged in *Adarand* as unlike either *Fullilove* or *Metro*.

Days may be the best person for the job. It was he who argued the *Fullilove* case on behalf of the Carter administration when he headed the Civil Rights Division of the Justice Department.

The effort will be futile, says Welch, because "there is no question this is a race-based or race-conscious program." Though the program is framed in terms of benefiting disadvantaged businesses, "the government has presented no evidence that any white-owned companies are disadvantaged."

Welch notes that many of the amicus curiae groups on the government's side are business groups representing minorities.

"There isn't any United Association of Disadvantaged Businesses in there," Welch says.

On the *Adarand* side, several of the other conservative foundations are represented: Atlantic Legal Foundation, Pacific Legal Foundation, Washington Legal Foundation, and a chapter of the Federalist Society for good measure. Welch says there was little, if any, coordination between the groups.

Drew Days III

Civil-rights groups are trying not to think about what will happen if the highway program is struck down as a minority set-aside.

"It's hard to see how any program that even thinks about race could survive if that happens," says LDF's Ralston.

Docket notes: Robert McDuff of Jackson, Miss., had little time to prepare for his argument Jan. 10 in *Swint v. Chambers County Commission*. He was busy representing Jesse DeWayne Jacobs, the Texas death-row inmate who was executed after two eleventh-hour appeals were rejected by the Supreme Court last week. . . . Three assistants to the solicitor general, all former Court clerks, make their Supreme Court argument debuts this session: Paul Wolfson, Richard Bress, and Paul Engelmayer. . . . On Monday, Jan. 9, Deputy Solicitor General Lawrence Wallace steps to the podium for his 128th oral argument, surpassing the late Erwin Griswold's record of 127, and homing in on John W. Davis' 20th-century record of arguing 140 cases before the Supreme Court.

The Court's January calendar follows:

employment-to-population ratio remained unchanged in December at 58.7 percent.

Seasonally adjusted unemployment on a national basis decreased by 8,000 to 1,356,000, a smaller decrease than the 50,000 in November, 14,000 in October and 29,000 in September. With the December decrease, the number of unemployed was 212,000 lower than in December 1993.

The unemployment rate decreased in the following provinces in December: British Columbia, down 0.6 percentage point to 8.4 percent; Saskatchewan, down 0.4 to 6.1 percent; Ontario, down 0.3 to 8.4 percent; Nova Scotia, down 0.3 to 12.3 percent; Prince Edward Island, down 0.3 to 15.0 percent; Newfoundland, down 0.3 to 20.7 percent; New Brunswick, down 0.2 to 11.6 percent; and Manitoba, down 0.2 to 7.9 percent.

The unemployment rate increased in December in Quebec, up 0.7 percentage point to 12.1 percent, and in Alberta, up 0.2 to 7.6 percent.

Federal Employees

15,000 FEDERAL EMPLOYEES ACCEPTED BUYOUTS DURING FIRST SIX-MONTHS

At least 15,090 civilian federal employees took advantage of voluntary separation incentive payments or "buyouts" during the first six months they were offered by nondefense government agencies, the Office of Personnel Management reported Jan. 5.

The OPM report, which was sent to Congress, covered the period from March 30, 1994, the effective date of the law authorizing the buyouts—the Federal Workforce Restructuring Act—through Sept. 30, 1994. The law authorized federal departments and agencies to offer a buyout payment of up to $25,000 to employees who voluntarily retired, resigned, or took an early retirement (61 DLR A-5, 3/31/94).

OPM reported that 33 nondefense agencies reported using buyouts in fiscal 1994; 15 federal agencies did not offer buyouts.

Breakdown Of Data

According to OPM, 50 percent of federal civilian employees who received buyouts took regular retirement; 42.4 percent took early retirement; and 7.6 percent resigned. The average age of an employee taking regular optional retirement with a buyout was 59.9 years, OPM said, while those retiring early with a buyout averaged 54.1 years and those resigning with a buyout averaged 41.6 years of age.

The average grade of an employee taking regular optional retirement with a buyout was GS-11.6, OPM said, while those retiring early with a buyout had an average grade of GS-11.1 and those who resigned and took a buyout had an average of grade of GS-9. The average amount of the incentive payment for regular optional retirement was $24,436, according to OPM, while it was $24,861 for early retirements and $13,691 for resignations.

Males received 62.9 percent of the buyout payments; they represent 57.6 percent of the federal workforce. Females received 37.1 percent of the buyout payments. OPM said this is based on sample data covering 10,438 incentive payments. Also, minorities received 24.2 percent of the buyouts; they represent 27.7 percent of the federal workforce. Nonminorities received 75.8 percent of the buyouts.

Department of Defense agencies, which have had special statutory authority to offer buyouts since 1993, paid 21,837 buyouts in fiscal 1994, according to OPM.

Congress

GOP RULES CHANGES MAY LEAD TO COMMITTEE JURISDICTIONAL FIGHTS

The new Republican-controlled Congress may become embroiled in "massive jurisdictional fights" as a result of rules changes pushed by the Republican party, former congressional staff member Phyllis Borzi said Jan. 5.

It is unclear whether any jurisdictional changes passed by Congress last year will be relevant in the 104th Congress, said Borzi, who recently vacated the position she held for 16 years as majority pension and employee benefits counsel to the House Education and Labor Committee's Subcommittee on Labor-Management Relations. The Republican majority has since renamed the panels as the Committee on Economic and Educational Opportunities and the Subcommittee on Employer-Employee Relations.

This means that the congressional committees will begin business still "duking it out" over jurisdictional issues, Borzi said at a meeting sponsored by the Baltimore chapter of WEB Inc., a network of benefits professionals. In particular, she noted that Republicans have pushed through a rule in the House that prohibits legislation from being referred to more than one committee.

Under the new rule, when the primary House committee finishes with a bill, a secondary committee with a jurisdictional interest may have a say, Borzi said. Previously, committees in the House could have joint or concurrent jurisdiction over legislation.

A similar rule that operates in the Senate has caused some problems, Borzi remarked. For example, the Clinton administration's health care initia-

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tive was never introduced in its complete, original form in the Senate because of jurisdictional fights over which committee was primary, resulting in a proliferation of different bills.

"I will be very interested in seeing how this plays out" in the House, Borzi said, noting that the change could have potentially positive or negative implications. However, with the emphasis now being placed on the primary committee, she predicted "massive jurisdictional fights" even before a bill is introduced.

Borzi also noted that the Senate Labor Committee, chaired by Sen. Nancy Landon Kassebaum (R-Kan), will no longer have a labor subcommittee, so all issues relating to the Employee Retirement Income Security Act will be handled at the full committee level.

Agenda For First 100 Days

For the first 100 days, the 104th Congress is expected to consider legislation related to the Republican Contract With America, Borzi said. After that, Congress will probably turn its attention to incremental health care reform, she said.

Borzi, who worked with the Clinton administration on its universal health care initiative, said there are no incremental health insurance reforms that alone will resolve the nation's health care problems. States that have adopted incremental reforms have found that the cost of insurance for small firms increases as does the number of uninsured individuals, she said.

Borzi said congressional consideration of insurance reforms will raise the issue of ERISA waivers for states that want to enact their own health care reform measures. ERISA pre-empts all state laws as they relate to employee benefit plans.

This issue will present a political conundrum for the Republican party, Borzi predicted, because the business community does not favor ERISA waivers for states. At the same time, Congress will experience pressure from the states—including states with newly elected Republican governors—to help relieve them of the rising cost of uncompensated care through ERISA waivers, she said.

In other areas, Borzi said Congress is likely to extend the 25 percent health care deduction for the self-employed, expand eligibility for individual retirement accounts, and make cuts in the Medicare and Medicaid programs.

Congressional Revenue Search

As the new Congress searches for revenue to pay for its proposals, the tax-favored status of employee benefit plans will once again become a target, Borzi predicted. "It's hard to imagine there would be a major tax bill without the benefits community taking a hit," she said.

Commenting on past accomplishments, Borzi said the most significant employee benefits legislation passed by Congress last year was the Retirement Protection Act, signed by President Clinton Dec. 8 as part of the Uruguay Round of the General Agreement On Tariffs and Trade (235 DLR A-6, 12/9/94). The pension reforms, which require accelerated funding for underfunded pension plans, were strongly pursued by Clinton administration officials who worked with other federal agencies and the private sector to fashion a compromise. The reforms wound up being "more politically acceptable . . . than anything that had been proposed earlier," she said.

The most controversial provision included in the pension reforms involves changes in how to calculate a lump-sum retirement benefit, Borzi said. According to benefit consultants William M. Mercer Inc., use of the new interest rate mandated by GATT will cut the value of lump-sum distributions—especially for younger employees and for smaller distributions. The Internal Revenue Service just released the new mortality table to be used in calculating lump sums, she noted (2 DLR A-14, 1/4/95).

Pensions

PBGC REQUESTS OMB APPROVAL FOR CUSTOMER MAIL SURVEY PROJECT

The Pension Benefit Guaranty Corp. has asked the Office of Management and Budget to approve a new collection of information that would allow PBGC to conduct customer mail surveys. The agency request was published in the *Federal Register* Dec. 29 (59 FR 67354).

The survey, which would be authorized by OMB under the Paperwork Reduction Act, would help PBGC assess its effectiveness at serving pension plan participants and beneficiaries.

PBGC earlier sought and received OMB approval for a focus group meeting and used the customer data collected to formulate the mail survey questions.

On Dec. 29, PBGC also requested an extension of approval by OMB to continue collecting information that is vital to its pension insurance program. The agency asked OMB to extend approval for a collection of information regarding reporting requirements for terminated multiemployer pension plans covered by the Employee Retirement Income Security Act (59 FR 67352).

Under ERISA, a multiemployer plan that has terminated either by plan amendment or by mass withdrawal must file a notice of termination with

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EEOC News Clips

for

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Immigration

Fourth Circuit Revives Title VII Claim Even Though Applicant Lacked Green Card

By a divided vote, the U.S. Court of Appeals for the Fourth Circuit has reinstated the employment discrimination claim of a Nigerian national whose authorization to work in the United States had expired. The court held that the requirements of the 1986 Immigration Reform and Control Act do not supersede the requirements of Title VII of the 1964 Civil Rights Act (*Egbuna v. Time-Life Libraries Inc.*, CA 4, No. 95-2547, 9/13/96).

Work eligibility under IRCA is not a factor required in an employee's prima facie case under Title VII, the court said. IRCA makes it illegal to knowingly employ an unauthorized alien. According to the court, the employee's status as an undocumented worker can be raised as a legitimate reason rebutting the plaintiff's case or at the remedies stage.

A dissenting judge urged that the majority position is pointless because an alien without a green card is not qualified for employment. "I do not think that, merely because he is an alien, the immigration laws should be held subject to Title VII," said Judge Donald Russell.

Obiora Egbuna worked for Time-Life Libraries from June 1989 until April 1993, when he voluntarily resigned his job. He sought re-employment some two months later, but his authorization to work had expired during his initial period of employment. Time-Life offered to rehire him, but later withdrew the offer, citing Egbuna's supposed mishandling during he earlier tenure of a subordinate's complaint of sexual harassment against a co-worker.

Egbuna filed suit alleging that Time-Life refused to rehire him because of his cooperation with enforcement proceedings relating to the employee's sexual harassment complaint. Egbuna apparently corroborated some of the employee's charges against the co-worker.

In seeking the protections of Title VII, Egbuna relied on provisions barring discrimination against a job applicant "because he has opposed any practice" declared illegal by the legislation, or "because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. . . ."

Time-Life argued that Egbuna's claim must be cut off at the summary judgment stage because he could not be lawfully hired at a time when he lacked a valid green card.

EEOC Arguments Endorsed

Writing for the Fourth Circuit, Judge Sam J. Ervin endorsed friend-of-the-court arguments presented by the Equal Employment Opportunity Commission. Under the EEOC's approach, work authorization is not part of the prima facie case stage, but the employer may come forward with undocumented status at the second stage—as a nondiscriminatory motivation for its conduct. The applicant or employee would then be free to argue that this justification was a pretext for discrimination.

Ervin agreed that a proof scheme that would permit undocumented status to cut off a claim at the opening stage would insulate an employer based on information on which it did not rely. He found that under such a theory, Time-Life would be shielded from possible Title VII liability even if it did not know at the time that the employee was undocumented.

Noting that other courts have interpreted the Fair Labor Standards Act and the National Labor Relations Act in similar ways, Ervin compared undocumented status to after-acquired evidence as an attempted justification for a firing. It would be inappropriate, he said, for Time-Life to escape all liability for its possible Title VII violation because of Egbuna's undocumented status.

The court found that enforcement of the federal labor laws removes a possible economic incentive to hiring illegal workers and is therefore consistent with congressional intent expressed in IRCA.

Judge David C. Norton joined in the opinion.

(Text of the decision appears in Section E.).

Text

DECISION OF FOURTH CIRCUIT IN EGBUNA v. TIME-LIFE LIBRARIES

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-2547

OBIORA E. EGBUNA,
Plaintiff-Appellant,
v.
TIME-LIFE LIBRARIES, INCORPORATED,
Defendant-Appellee.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Amicus Curiae.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CA-95-197)

Argued: May 8, 1996

Decided: September 13, 1996

Before RUSSELL and ERVIN, Circuit Judges, and NORTON, United States District Judge for the District of South Carolina, sitting by designation.

Reversed and remanded by published opinion. Judge Ervin wrote the majority opinion, in which Judge Norton joined. Judge Russell wrote a dissenting opinion.

COUNSEL

ARGUED: John P. Racin, WEISSBRODT, RACIN & MIELKE, Washington, D.C., for Appellant. Samuel Alan Marcosson, Office of General Counsel, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Washington, D.C., for Amicus Curiae. Donald R. Livingston, AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P., Washington, D.C., for Appellee. ON BRIEF: Nina J. Ginsberg, DIMURO, GINSBERG & LIEBERMAN, P.C., Alexandria, Virginia, for Appellant. C. Gregory Stewart, General Counsel, Gwendolyn Young Reams, Associate General Counsel, Vincent J. Blackwood, Assistant General Counsel, Office of General Counsel, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Washington, D.C., for Amicus Curiae. Lawrence D. Levien, Neil J. Welch, Jr., Harry J. F. Korrell, AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P., Washington, D.C., for Appellee.

OPINION

ERVIN, Circuit Judge:

We must decide whether a Title VII plaintiff must demonstrate that he is eligible to work in the United States under the Immigration Reform and Control Act of 1986 to establish a prima facie case of employment discrimination. We find that work eligibility is not part of the prima facie case, and therefore reverse the district court's summary judgment.

I.

Appellant Obiora Egbuna, a Nigerian national, was employed by appellee Time-Life Libraries ("TLLI") from June 1989 until April 1993. When Egbuna was initially hired, he was authorized by the Immigration and Naturalization Service ("INS") to work in the United States. Harrison Jackson, a TLLI employee whom Egbuna supervised, reported to Egbuna that he had been sexually harassed by another employee; Egbuna cooperated with TLLI's internal investigation and corroborated some of Jackson's allegations. In April 1993, Egbuna voluntarily resigned from TLLI, but sought reemployment in June 1993. By this time, Egbuna's authorization to work in the United States had expired, and in fact had expired before the end of his prior employment with TLLI. Although the company apparently initially offered to rehire him, TLLI ultimately withdrew this offer, claiming that Egbuna had not followed company policy in reporting Jackson's complaints.

Egbuna sued TLLI, alleging that the company had refused to rehire him because of his participation in enforcement proceedings related to Jackson's complaints, in violation of Title VII, 42 U.S.C. § 2000e-3(a) (1988). The district court required Egbuna to prove that he was qualified for the position he sought in order to show that he was a victim of discrimination. Memorandum Opinion, *in* Joint Appendix at 93-94 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Because Egbuna lacked employment authorization (a "green card"), he could not show that he was qualified, the court found. Accordingly, the court granted summary judgment for TLLI. Egbuna timely filed his notice of appeal; Fourth Circuit jurisdiction thus lies under 28 U.S.C. § 1291.

II.

Summary judgments are reviewed *de novo* on appeal. *E.g.*, *Higgins v. E.I. Du Pont de Nemours & Co.*, 863 F.2d 1162, 1167 (4th Cir. 1988); *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1127-28 (4th Cir. 1987).

This appeal involves the interaction of two separate federal statutes. One is Title VII, which makes it unlawful to discriminate in employment. 42 U.S.C. § 2000e *et seq.* The second is the Immigration Reform and Control Act of 1986 ("IRCA"), which makes it illegal to knowingly employ an unauthorized alien. 8 U.S.C.A.§ 1324a(a)(1) (Supp. 1996). We must decide whether an undocumented alien—ineligible to work under the IRCA—may bring a Title VII action for failure to hire. This is a question of first impression in this circuit.

Egbuna sued TLLI under 42 U.S.C. § 2000e-3(a), which provides that it is an illegal employment practice to discriminate against an applicant for employment "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." This court has explained that the proof scheme set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973), applies in §

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2000e-3 retaliation claims.[1] *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985). First, the employee must make out a prima facie case of retaliation by showing three elements: "1) the employee engaged in protected activity; 2) the employer took adverse employment action against the employee; and 3) a causal connection existed between the protected activity and the adverse action."[2] *Id.* Once a prima facie case is established, the employer may proffer a legitimate, nondiscriminatory reason for its action, which rebuts the presumption of retaliation. *Id.* This shifts the burden back to the employee, who must show that the employer's reason is pretextual. *Id.*

TLLI concedes that Egbuna engaged in protected activity, and that it did not rehire him. Thus, Egbuna has met the first two requirements of a prima facie case. TLLI argues that the only issue at the summary judgment stage was "whether Egbuna, who could not have been hired by TLLI, can demonstrate a causal connection between the protected activity and TLLI's failure to employ him." *Id.* Egbuna argues that he has satisfied the minimal requirements of the prima facie case standard, including the third element, by alleging that "the Company declined to [rehire him] based solely upon his witness status."

As far as we can determine, only one other court has addressed the specific question before us here,[3] and that court held that unauthorized aliens are protected under Title VII despite the provisions of the IRCA. *EEOC v. Tortilleria "La Mejor"*, 758 F. Supp. 585, 593-94 (E.D. Cal. 1991). An undocumented-alien employee filed a Title VII sex discrimination claim. *Id.* at 586. The court found that Title VII applied to undocumented aliens, and noted that the EEOC has always so construed the statute. *Id.* at 589. The court then considered whether the enactment of the IRCA altered the scope of Title VII's protections, and concluded that "Congress did not intend that the IRCA amend or repeal any of the previously legislated protections of the federal labor and employment laws accorded to aliens, documented or undocumented, including the protections of Title VII." *Id.* at 592-94; *see also EEOC v. Hacienda Hotel*, 881 F.2d 1504, 1517 n.10 & n.11 (9th Cir. 1989) (assuming, without deciding, "that the undocumented workers in this case were entitled to the protections of Title VII," but noting that the IRCA "may well ... change[ ] the mix of policy considerations underlying the case law which supports our conclusion that undocumented employees may recover back pay in a Title VII action").

In a Fair Labor Standards Act ("FLSA") case, the Eleventh Circuit found that the IRCA did not effect the FLSA's application to undocumented aliens, in part based on the principle that "amendments by implication are disfavored." *Patel v. Quality Inn South*, 846 F.2d 700, 704-05 (11th Cir. 1988), *cert. denied*, 489 U.S. 1011 (1989). That court concluded that there was no policy conflict created by applying both statutes:

> Congress enacted the IRCA to reduce illegal immigration by eliminating employers' economic incentive to hire undocumented aliens. To achieve this objective the IRCA imposes an escalating series of sanctions on employers who hire such workers. *See* 8 U.S.C. § 1324a. The FLSA's coverage of undocumented workers has a similar effect in that it offsets what is perhaps the most attractive feature of such workers —their willingness to work for less than the minimum wage. If the FLSA did not cover undocumented aliens, employers would have an *incentive* to hire them. Employers might find it economically advantageous to hire and underpay undocumented workers and run the risk of sanctions under the IRCA.
>
> ... By reducing the incentive to hire such workers the FLSA's coverage of undocumented aliens helps discourage illegal immigration and is thus fully consistent with the objectives of the IRCA. We therefore conclude that undocumented aliens continue to be "employees" covered by the FLSA.

Id. at 705.

The crux of TLLI's argument rests on its claim that Egbuna was not qualified to work. The company argues that Egbuna's lack of work authorization rendered him unqualified, resulting in an inability to make a prima facie case of retaliatory failure to hire; therefore, TLLI argues, it need not make any showing of its motive as required by the second stage of the *McDonnell Douglas* framework. But Egbuna argues that this court "should reject[TLLI's] effort to shield its otherwise unlawful conduct by reference to immigration law that it knowingly violated for a period of forty months."[4]

Both Egbuna and the EEOC, as amicus curiae, argue that the trial court should not have made work authorization part of the prima facie case stage, but instead should have allowed TLLI to come forward with Egbuna's undocumented status at the second stage of the *McDonnell Douglas* paradigm, as the non-discriminatory motivation for its action. Then, Egbuna argues, he could at least demonstrate a material issue of fact as to whether TLLI's proffered justification was pretextual:

> The parties' long employment relationship, most of which occurred in violation of the IRCA, [and] the glowing recommendation for reemployment from the branch manager in July 1993 urging creation of a virtually unique position for appellant [ ] were adequate to put in issue both whether the Company would have employed appellant in violation of immigration law in July 1993 and whether in the circumstances the Company was likely to hold the position open pending appellant's receipt of work authorization.

The EEOC argues that ineligibility to work under the IRCA "represents a potential legitimate, non-discriminatory reason for an employment decision"—not a basis for exclusion from the protections of Title VII—and "is relevant if the employer actually relied on it in making the decision." Thus, work authorization should properly be considered not at the prima facie case stage, but rather at the second stage, "if and when the employer asserts it as the legitimate, non-discriminatory explanation for the decision." The plaintiff then has the opportunity to show that the employer's explanation is pretextual and that its actual motivation was discriminatory.

The district court's decision endorses a proof scheme that allows employers who have discriminated to be protected from their discrimination on the basis of information on which they did not rely. In other words, here TLLI really does not claim that it failed to rehire Egbuna because of his undocumented status, but it nonetheless is shielded from its possible Title VII violations because Egbuna turned out to be undocumented. This is contrary to the Supreme Court's decision in *McKennon v. Nashville Banner Publishing Co.*, 115 S. Ct. 879 (1995), in which the Court held that, when an employee is fired for an illegal reason (there a violation of the ADEA), after-acquired evidence of a legitimate basis for termination does not shield the employer for liability under the violated statute. *Id.* at 881.

This case involves two separate issues, despite TLLI's interest in collapsing the two. TLLI may very well have violated Title VII; and Obiora Egbuna did not have work authorization at the time he sought to be rehired by TLLI. Under the district court's ruling, TLLI would escape all liability for its possible Title VII violation because of Egbuna's undocumented status. That would be inappropriate. Instead, the parties should proceed through the *McDonnell Douglas* framework. TLLI may

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assert Egbuna's lack of work authorization as a legitimate non-discriminatory basis for its decision, and Egbuna may attempt to show that the asserted basis is pretextual.

III.

We believe that the legislative effort to fight employment discrimination by protecting those who make or support allegations of improper conduct is best served by holding that a Title VII claimant need not show work authorization as part of the prima facie case. This conclusion does no damage to the distinct legislative decision to proscribe the hiring of undocumented workers under the IRCA. As the Eleventh Circuit noted, uniform application of this nation's labor laws removes a possible economic incentive to hiring illegal workers. An applicant's lack of work authorization remains a relevant consideration; it may be proffered by an employer as the legitimate, non-discriminatory reason for its action, and it may ultimately be relevant to the question of remedies should a Title VII violation be established.[5]

We reverse the decision below and remand the case to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED

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[1] This is an unusual case in that Egbuna alleges that the failure to hire was retaliatory. Usually, someone who is not hired does not have a prior relationship with the employer and the refusal to hire is alleged to have been discriminatory rather than retaliatory.

[2] Although the *Ross* court explained that the illegal conduct must be the "but-for" cause of the challenged action in the retaliation context, the Civil Rights Act of 1991 amended Title VII to provide that a statutory violation has occurred if "race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice." 42 U.S.C.§ 2000e-2(m) (Supp. III 1991). The Civil Rights Act does not specifically address unlawful employment practices as defined by § 2000e-3(a), the statute under which Egbuna seeks recovery.

[3] Before the enactment of the IRCA, the Supreme Court acknowledged that Title VII protects aliens against discrimination. *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 95 (1973). In *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984), also decided before the IRCA, the Supreme Court held that undocumented aliens are considered "employees" within the definition of the National Labor Relations Act. *Id.* at 892 (1984). The *Sure-Tan* Court specifically noted that the Immigration and Nationality Act ("INA"), which regulated entry into the United States, did not make it "unlawful for an employer to hire an alien who is present or working in the United States without appropriate authorization." *Id* . at 892-93. Because the INA did not proscribe the relationship between employer and undocumentedalien employee, there was no conflict presented by applying both the INA and the NLRA. *Id.* at 893. In contrast to the INA, the IRCA prohibits employers from hiring employees without green cards, 8 U.S.C.A. § 1324a(a)(1), and requires verification of each potential employee's status, *id.* § 1324a(b).

[4] Under 8 U.S.C.A. § 1324a(a)(2), "[i]t is unlawful for a person or other entity, after hiring an alien for employment . . ., to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment."

[5] *See Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 889, 902-03 (1984) (reinstatement and backpay may not be appropriate for claimants who have been deported and therefore are not "available for work"). *Sure-Tan* would not necessarily dictate that Egbuna could not be reinstated or recover backpay, however, because he received work authorization only a short time after TLLI refused to rehire him. These factual questions are best left for the district court to consider on remand.

RUSSELL, Circuit Judge, dissenting:

I respectfully dissent to the panel's holding to remand this case so that the parties may litigate this question under the *McDonnell-Douglas* framework. Under that framework, an employee is not to be ordered employed unless he is qualified for the sought-after position. To be qualified, an alien must possess the requisite employment authorization. Egbuna is an alien without a green card. He therefore does not qualify for employment at Time-Life Libraries, Inc., and I do not think that, merely because he is an alien, the immigration laws should be held subject to Title VII.

End of Text

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GOP Cancels Conference on Immigration Bill

House and Senate Democrats Criticize Republican Handling of Controversial Legislation

By William Branigin
Washington Post Staff Writer

Beset by infighting in GOP ranks and mounting Democratic criticism, Republicans yesterday sought to break a long-running deadlock over revisions to major immigration legislation that passed the House and Senate with strong bipartisan support this spring.

After the continuing disarray prompted GOP leaders to abruptly postpone the scheduled start of a House-Senate conference to reconcile two versions of the bill, House Majority Leader Richard K. Armey (R-Tex.) hinted that Republicans might be willing to drop a controversial amendment that would allow states to deny free public education to newly enrolling illegal immigrant students, as long as President Clinton would sign the bill if they did.

"What we want is an immigration bill that can be signed into law," Armey told reporters. "We want to be sure that all the sound and fury regarding [the amendment] is not just a stalking horse for other provisions" that Clinton may oppose.

Armey made his remark after congressional Democrats blasted Republican handling of the legislation, charging that it has been stripped of provisions that address some of the real problems of illegal immigration and turned into a partisan campaign tool.

Signals of Republican willingness to resolve the impasse drew some skepticism from lawmakers in both parties who suspect that GOP leaders would prefer to kill the bill, thereby denying President Clinton another high-profile signing ceremony that might enhance his reelection campaign.

The delay "clearly indicates that the Republicans can't get their act together on an issue of critical concern," said Sen. Edward M. Kennedy (D-Mass.). He said some Republicans "want to have a bill that the president will veto" and are therefore fighting to preserve the controversial education amendment.

Sen. Alan K. Simpson (R-Wyo.), who sponsored the Senate version of the bill, seemed to agree, accusing unidentified fellow Republicans of "contriving a way to kill the bill."

The amendment, sponsored by Rep. Elton Gallegly (R-Calif.), has been denounced by the president as a measure that "would result in kicking children out of school and onto the streets." Clinton said in August that he would veto a bill containing it.

The measure's backers say a modified version of it would allow students in grades seven through 12 to complete high school and children in grades one through six to complete elementary school. Only when a child completed grade six would the provision apply, allowing a state to charge tuition for further public school education.

Democrats said this was still unacceptable. They said the estimated $5,000 to $6,000 a year tuition would be more than illegal immigrant families could afford.

A federal requirement to provide free public education to illegal immigrant children currently costs states an estimated $4 billion a year. California says it spends nearly half that amount annually to educate an estimated 380,000 illegal immigrant students.

In a news conference before the scheduled start of the immigration bill conference, several Democratic members of the conference committee from the House and Senate denounced other aspects of the Republican-revised legislation that they said had prompted them to oppose the entire package.

Rep. John Bryant, a conservative Texas Democrat who had co-sponsored the House bill with Rep. Lamar S. Smith (R-Tex.), charged that Republicans have "destroyed the bipartisan consensus" for the original legislation, which was aimed at cracking down on illegal immigration by strengthening the U.S. Border Patrol, stiffening penalties for document fraud, denying benefits to illegal aliens and developing a system for employers to verify the work eligibility of job applicants.

"Republicans have totally caved in to lobbyists for employers," Bryant said. "I'm very disappointed and frankly contemptuous of what the Republicans have done."

He and Kennedy said a Republican-drafted conference report had deleted a provision to provide the Labor Department with an additional 350 investigators to help crack down on employers who hire illegal workers. They also said language in the report would weaken a law that prohibits discrimination against legal workers who may look or sound foreign.

In addition, Democrats charged, provisions for a pilot employer verification program and for the creation of counterfeit-proof birth certificates and other frequently forged documents have been diluted.

The legislation "treats unscrupulous employers with kid gloves and treats kids with an iron fist," Kennedy said.

Other Democrats, including Sens. Paul Simon (Ill.) and Patrick J. Leahy (Vt.) and Reps. Barney Frank (Mass.) and Howard Berman (Calif.), criticized provisions that they said would make it more difficult for low-income Americans to bring immediate relatives into the United States, would make new welfare reforms even harsher for legal immigrants, and would toughen entry requirements for people seeking political asylum.

LOS ANGELES TIMES / WASHINGTON EDITION WEDNESDAY, SEPTEMBER 18, 199

GOP May Kill Immigration Bill's Option to Ban Public Schooling

By MARC LACEY
TIMES STAFF WRITER

WASHINGTON—With the bill to crack down on illegal immigration hanging in the balance, some congressional Republicans inched away from a controversial provision Tuesday aimed at allowing states to restrict public education among illegal immigrant students.

Although the situation remained in flux, the GOP lawmakers floated an alternative proposal calling for a yearlong government study on the impact of illegal immigrants in public schools, congressional aides said. School districts in states that opt to participate in the General Accounting Office study would be forced to determine the legal status of students as part of the review, the aides said.

The Republicans behind the study idea hope that the proposal would allow the illegal-immigration bill to proceed in the waning days of the 104th Congress and postpone debate on the public-schooling provision.

An effort by Rep. Elton Gallegly (R-Simi Valley) that began as an amendment that would have allowed states to ban illegal immigrants from public schools had brought the overall illegal immigration legislation to a screeching halt. Even after Gallegly recently weakened his proposal so that it would permit illegal immigrant children to continue in school if they pay tuition, the White House and congressional Democrats have remained firm in their opposition.

Some GOP leaders are insisting on pushing the public-school provision in hopes of prompting a threatened White House veto of the entire measure and helping Bob Dole's presidential campaign, especially in California. But others in the party contended that such a scheme would likely backfire and sink an important piece of legislation that enjoys bipartisan support.

"If we get [the public schooling proposal] out, we will pass a very strong, tough, sweeping bill," Sen. Alan K. Simpson (R-Wyo.) said Tuesday. He predicted that, otherwise, the bill would die.

With no clear strategy to unify them, Republicans abruptly canceled Tuesday's House-Senate conference committee meeting called to reconcile the differing versions of the legislation.

The proposed study by the General Accounting Office was just one idea discussed Tuesday in the office of House Speaker Newt Gingrich (R-Ga.), congressional sources said. Under that plan, Congress would be required to revisit the Gallegly public schooling ban in 1998 after the federal review.

Senate Majority Leader Trent Lott (R-Miss.) remained confident that a deal could be struck. "It's not dead," he said. "We may be rethinking our substance."

Other provisions in the immigration legislation include nearly doubling the number of Border Patrol agents, streamlining deportation procedures, increasing penalties for smugglers and document forgers and creating a pilot project to check the immigration status of new employees.

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Leading the News

Immigration

Talks On Immigration Bill Postponed As Republicans Revisit Education Issue

Differences of opinion among congressional Republicans over how to proceed with the pending immigration reform bill (HR 2202) resulted in a last-minute cancellation of a Sept. 17 scheduled meeting between House and Senate conferees.

The key issue—whether states may exclude children of illegal immigrants from their public education systems—continues to be a major sticking point despite efforts to soften the provision in the Republicans' proposed conference agreement. Despite what Senate Majority Leader Trent Lott (R-Miss) described as ongoing talks on the education issue, Sen. Alan Simpson (R-Wyo), chief sponsor of the Senate reform bill, declared the bill dead Sept. 17, blaming its demise on politics.

Modifications in the latest version of what is known as the "Gallegly amendment," after its sponsor Rep. Elton Gallegly (R-Calif), would have been accepted by every Republican conferee "at one point," Simpson said, but he added that recent political gamesmanship surrounding the bill assures defeat of a measure with any form of education restrictions. In remarks on the Senate floor Sept. 16, Simpson referred to reports that advisers to GOP presidential nominee Bob Dole are insisting on inclusion of the Gallegly amendment so that they can point to a filibuster or presidential veto as signs of Democrats' inaction on illegal immigration.

This is "childish logic" that is sure to backfire, he said. "Go home in October and tell voters a Republican Congress did nothing about illegal immigration in an election year."

There are six to 12 Senate Republicans "who will have nothing to do with the Gallegly amendment" and will join Democrats in filibustering a conference agreement that contains the education limits, Simpson told reporters Sept. 17. Simpson added that he will not negotiate on a bill that is "crafted for defeat" or sign a conference agreement "without bipartisan support."

Simpson, who is retiring from the Senate this year, did not deny allegations that Democrats were excluded from negotiations over differences between the two versions of the legislation, but said that Republicans had come up with a "good, strong bill," agreeing to 150 changes to the Senate bill and 120 to the House version.

GOP Leaders Remain Hopeful

Judiciary Committee Chairman Orrin Hatch (R-Utah) was more optimistic, however, saying, "I think we have a bill that would pass the Senate and House." Clinton "will be very hard-pressed" to veto the measure, particularly "if he wants to win California," Hatch said. "If the president vetoes a bill based on what we worked out on Gallegly up to today, he's in real trouble," he maintained.

Nonetheless, Hatch said that negotiations on the education issue continue, calling talks "very touchy, very technical right now." Hatch gave no indication when he will reschedule a meeting with other conferees, suggesting that Republicans need to regroup and make sure they are "together" on the bill.

House Majority Leader Richard Armey (R-Texas) said he expects conferees will meet soon and that the conference report will move quickly in the House. The ultimate objective, he said, is to have the immigration bill signed into law.

Armey added that he wants to know whether the Gallegly amendment is the only provision that will trigger a veto, citing an array of other concerns Democratic lawmakers have voiced with respect to the bill. "There is no indication from the White House that if you give him the bill without Gallegly, that he would sign it," Armey said.

Lott voiced a similar concern, saying the problem with the president is that "you never know what he will want next." Lott said he will continue to work on coming to an agreement on the measure despite uncertainty as to whether it will "satisfy the president."

Democrats Air Concerns

It is the administration's firm position that nothing related to the Gallegly issue will be acceptable on the immigration bill, according to Senate Minority Leader Tom Daschle (D-SD). "We can't reach a consensus on anything related to Gallegly," he said, adding that there are "more than enough votes" to prevent action on the bill.

"I don't care if you call it son of Gallegly, grandfather of Gallegly, brother or sister of Gallegly, it doesn't have a chance of being included in any bill that is going to be sent to the president," Daschle said. He also blamed postponement of the conferees' meeting on Republicans being "at odds among themselves" as to how to resolve the issue.

While the administration expressed concern with a handful of other issues the proposed GOP conference agreement raises, they do not "appear to be a significant impediment," Daschle said. He refused to specify what areas are posing problems, but said there "appears to be a willingness on both sides to try to deal with the issues."

However, a group of key Democrats involved with the legislation at the outset protested that the proposed Republican conference agreement is beyond repair. This bill "ducks the heart of the problem of illegal immigration by refusing to crack down on employers who hire illegal workers," Sen. Edward Kennedy (D-Mass), ranking Democrat on the Judiciary

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Immigration Subcommittee, said at a press conference. Under the agreement, an employer that knowingly and willfully hires 10 illegal workers will get off with "a slap on the wrist," while an American who brings his undocumented immigrant grandmother into the United States would face a minimum of three years in jail, Kennedy said.

Rep. John Bryant (D-Texas), ranking Democrat on the House Judiciary Immigration and Claims Subcommittee, complained that Republicans "totally caved into lobbyists for employers." All the provisions aimed at protecting American employees "have been taken out of the bill," he said.

Bryant specifically cited the refusal to accept language in the Senate bill that would increase the number of inspectors in the Labor Department's Wage and Hour Division. "If your goal is to catch illegal immigrants and remove them from country, why do you take 350 Wage and Hour investigators out of the bill," particularly when it has been consistently shown that employers that hire undocumented workers also violate the wage and hour laws.

Other complaints aired by Democrats at the press conference centered on the inadequacy of the voluntary employment verification pilots called for in the agreement; a new, stricter standard of proof required of job applicants who allege they were discriminated because they sound or look foreign; and the failure to create counterfeit-proof birth certificates and other documents illegal immigrants use to pass as legal workers.

(The employment provisions in the proposed conference agreement appear in Section E.)

—By *Deborah Billings*

EMPLOYMENT PROVISIONS IN PROPOSED REPUBLICAN CONFERENCE REPORT ADDRESSING HOUSE AND SENATE DIFFERENCES ON IMMIGRATION BILL (HR 2202)

TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

Subtitle A—Pilot Programs for Employment Eligibility Confirmation

SEC. 401. ESTABLISHMENT OF PROGRAMS.

(a) IN GENEAL.—The Attorney General shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Attorney General shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Attorney General shall terminate a pilot program at the end of the 4-year period beginning on the first day the pilot program is in effect.

(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Attorney General shall provide for the operation—

(1) of the basic pilot program (described in section 403(a)) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States;

(2) of the citizen attestation pilot program (described in section 403(b)) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A); and

(3) of the machine-readable-document pilot program (described in section 403(c)) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2).

(d) REFERENCES IN SUBTITLE.—In this subtitle—

(1) PILOT PROGRAM REFERENCES.—The terms "program" or "pilot program" refer to any of the 3 pilot programs provided for under this subtitle.

(2) CONFIRMATION SYSTEM.—The term "confirmation system" means the confirmation system established under section 404.

(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act.

(4) I-9 OR SIMILAR FORM.—The term "I-9 or similar form" means the form used for purposes of section 274A(b)(1)(A) or such other form as the Attorney General determines to be appropriate.

(5) LIMITED APPLICATION TO RECRUITERS AND REFERRERS.—Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

(6) UNITED STATES CITIZENSHIP.—The term "United States citizenship" includes United States nationality.

(7) STATE.—The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Attorney General may not require any person or other entity to participate in a pilot program.

(b) BENEFIT OR REBUTTABLE PRESUMPTION.—

(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

(2) CONSTRUCTION.—Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

(c) GENERAL TERMS OF ELECTIONS.—

(1) IN GENERAL.—an election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Attorney General shall specify. The Attorney General may not impose any fee as a condition of making an election or participating in a pilot program.

(2) Scope of Election.—

(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (during the period in which the election is in effect)—

(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program in operating, or)

(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Attorney General may permit a person to entity electing—

(i) the basic pilot program (described in section 403(a)) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating, or

(ii) the citizen attestation pilot program (described in 403(b)) or the machine-readable-document pilot program (described in section 403(c)) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2), respectively.

(3) ACCEPTANCE AND REJECTION OF ELECTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Attorney General shall accept all elections made under subsection (a).

(B) REJECTION OF ELECTION.—The Attorney Gener-

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al may reject an election by a person or other entity under this section or limit its applicability to certain States or places of hiring (or recruitment or referral) if the Attorney General has determined that there are insufficient resources to provide appropriate services under a pilot program for the person's or entity's hiring (or recruitment or referral) in any or all States or places of hiring.

(4) TERMINATION OF ELECTIONS.—The Attorney General may terminate an election by a person of other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Attorney General shall specify.

(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

(1) CONSULTATION.—The Attorney General shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

(2) PUBLICITY.—The Attorney General shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) of making an election under this section.

(3) ASSISTANCE THROUGH DISTRICT OFFICES.—The Attorney General shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

(e) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.—

(1) FEDERAL GOVERNMENT.—

(A) EXECUTIVE DEPARTMENTS.—

(i) IN GENERAL.—Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

(ii) ELECTION.—Subject to clause (iii), the Secretary of each such Department—

(I) shall elect the pilot program (or programs) in which the Department shall participate, and

(II) may limit the election to hiring occurring certain States (or geographic area) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

(iii) ROLE OF ATTORNEY GENERAL.—The Attorney General shall assist and coordinate elections under this subparagraph in such manner as assures that—

(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

(B) LEGISLATIVE BRANCH.—Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(c)(4) or section 274B(g) of the Immigration and Nationality Act may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual

(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

(f) CONSTRUCTION.—This subtitle shall not affect the authority of the Attorney General under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

(a) Basic Pilot Program.—A person or other entity that elects to participate in the basic pilot program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I-9 or similar form—

(A) The individual's social security account number, if the individual has been issued such a number, and,

(B) if the individual does not attest to United States citizenship under section 274(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Attorney General shall specify,

and shall retain the original form and make it available for inspection for the period and in the manner required of I-9 forms under section 274.A(b)(3).

(2) Presentation of Documentation.—

(A) In General.—The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

(i) A document referred to in section 274A(b) (1)(B)(ii) (as redesignated by section 412(a)) must be designated by the Attorney General as suitable for the purpose of identification in a pilot program

(ii) A document referred to m section 274A(b)(1)(D) must contain a photograph of the individual

(iii) The person or other entity, has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the whose identity and work eligibility is being confirmed.

(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.— If the Attorney General finds that a

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pilot program would reliably determine with respect an individual whether—

(i) the person with the identity claimed by the individual is authorized to work in the United States, and

(ii) the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Attorney General may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual's identity.

(3) SEEKING CONFIRMATION.—

(A) IN GENERAL.—The person or other entity shall make an inquiry, as provided in section 404(a)(1), using the confirmation system to seek confirmation of the identity and employment eligibility of an individual by not later than the end of 3 working days (as specified by the Attorney General) after the date of the hiring (or recruitment or referral, as the case may be).

(B) EXTENSION OF TIME PERIOD.—If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirmation system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the Inquiry on that day for the previous sentence to apply to such an inquiry.

(4) CONFIRMATION OR NONCONFIRMATION.—

(A) CONFIRMATION UPON INITIAL INQUIRY.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the confirmation system within the time period specified under section 404(b), the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

(i) NONCONFIRMATION.—If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the confirmation system within the time period specified under 404(b), the person or entity shall so inform the individual for whom the confirmation is sought.

(ii) NO CONTEST.—If the individual does not contest the nonconfirmation within the time period specified m section 404(c), the nonconfirmation shall be considered final. The person or entity shall then record on the I-9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

(iii) CONTEST.—If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(e). The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

(iv) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(e) regarding an individual, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

(C) CONSEQUENCES OF NONCONFIRMATION.—

(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Attorney General of such fact through the confirmation system or in such other manner as the Attorney General may specify.

(ii) FAILURE TO NOTIFY.—If the person or entity, fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the mounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

(iii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

(b) CITIZEN ATTESTATION PILOT PROGRAM.—

(1) IN GENERAL.—Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the basic pilot program under subsection (a).

(2) RESTRICTIONS.—

(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Attorney General may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

(i) contains a photograph of the individual involved, and

(ii) has been determined by the Attorney General to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION.—The Attorney General may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Attorney General determines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP.—In the case of a person or other entity hiring (or recruiting or

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referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I-9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3).

(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.—

(A) IN GENERAL.—In the case of a person or entity that elects, in a manner specified by the Attorney General consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

(B) REGISTRATION.—The Attorney General shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

(5) NONREVIEWABLE DETERMINATIONS.—The determinations of the Attorney General under paragraphs (2) and (4) are within the discretion of the Attorney General and are not subject to judicial or administrative review.

(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.—

(1) IN GENERAL.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the basic pilot program under subsection (a).

(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Attorney General may not provide for the operation of the machine-readable-document pilot program in a State unless driver's licenses and similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

(3) USE OF MACHINE—READABLE DOCUMENTS.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) IN GENERAL.—The Attorney General shall establish a pilot program confirmation system through which the Attorney General (or a designee of the Attorney General, which may be a nongovernmental entity)—

(1) responds to inquiries made by electing persons and other entities (included those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquiries as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Attorney General shall seek to establish such a system using one or more nongovernmental entities.

(b) INITIAL RESPONSE.—The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

(c) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Attorney General shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

(d) Design and Operation of System.—The confirmation system shall be designed and operated—

(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) consistent with insulating and protecting the privacy and security of the underlying information;

(2) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

(3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

(4) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

(A) the selective or unauthorized use of the system to verify eligibility;

(B) the use of the system prior to an offer of employment; or

(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

(e) Responsibilities of the Commissioner of Social Security.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for

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administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

(f) Responsibilities of the Commissioner of the Immigration and Naturalization Service.—As part of the part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

(g) UPDATING INFORMATION.—The Commissioners of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

(h) Limitation on Use of the Confirmation System and Any Related Systems.—

(1) In general.—Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under a pilot program.

(2) No national identification card.—Nothing in this subtitle shall be construed to authorize, directly, or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

SEC. 405. REPORTS.

The Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

(1) assess the degree of fraudulent attesting of United States citizenship,

(2) include recommendations on whether or not the pilot programs should be continued or modified, and

(3) assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

Subtitle B—Other Provisions Relating to Employer Sanctions

SEC. 411. LIMITING LIABILITY FOR CERTAIN TECHNICAL VIOLATIONS OF PAPERWORK REQUIREMENTS.

(a) In General.—Section 274A(b) (8 U.S.C. 1324a(b)) is amended by adding at the end the following new paragraph:

"(6) Good faith compliance.—

"(A) In general.—Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

"(B) Exception if failure to correct after notice.—Subparagraph (A) shall not apply if—

"(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

"(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the (date of the explanation) within which to correct the failure, and

"(iii) the person or entity, has not corrected the failure voluntarily within such period.

"(C) Exception for Pattern or Practice Violators.—Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).".

(b) Effective Date.—The amendment made by subsection (a) shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 412. PAPERWORK AND OTHER CHANGES IN THE EMPLOYER SANCTIONS PROGRAM.

(a) Reducing the Number of Documents Accepted for Employment Verification.—Section 274A(b)(1)(8 U.S.C. 1324a (b)(1)) is amended—

(1) in subparagraph (B)—

(A) by striking clauses (ii) through (iv),

(B) in clause (v), by striking "or other alien registration card, if the card" and inserting ", alien registration card, or other document designated by the Attorney General, if the document" and redesignating such clause as clause (ii), and

(C) in clause (ii), as so redesignated—

(i) in subclause (I), by striking "or" before "such other personal identifying information" and inserting "and",

(ii) by striking "and" at the end of subclause (I),

(iii) by striking the period at the end of subclause (II) and inserting ", and", and

(iv) by adding at the end the following new subclause:

"(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.";

(2) in subparagraph (C)—

(A) by adding "or" at the end of clause (i),

(B) by striking clause (ii), and

(C) by redesignating clause (iii) as clause (ii); and

(3) by adding at the end the following new subparagraph:

"(E) Authority to Prohibit use of Certain Documents.—If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.".

(b) Reduction of Paperwork for Certain Employees.—Section 274A(a) (8 U.S.C. 1324a(a)) is amended by adding at the end the following new paragraph:

"(6) Treatment of Documentation for Certain Employees.—

"(A) In General.—For purposes of this section, if—

"(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

"(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an

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agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

"(B) Period.—The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

"(C) Liability.—

"(i) In General.—If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

"(ii) Rebuttal of Presumption.—The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

"(iii) Exception.—Clause (i) shall not apply in any prosecution under subsection (f)(1).".

(c) Elimination of Dated Provisions.—Section 274A (8 U.S.C. 1324a) is amended by striking subsections (i) through (n).

(d) Clarification of Application to Federal Government.—Section 274A(a) (8 U.S.C. 1324a(a)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(7) Application to federal government.—For purposes of this section, the term 'entity' includes an entity in any branch of the Federal Government.".

(e) EFFECTIVE DATES.—

(1) The amendments made subsection (a) shall apply with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of the enactment of this Act) as the Attorney General shall designate.

(2) The amendment made by subsection (b) shall apply to individuals hired on or after 60 days after the date of the enactment of this Act.

(3) The amendment made by subsection (e) shall take effect on the date of the enactment of this Act.

(4) The amendment made by subsection (d) applies to hiring occurring before, on, or after the date of the enactment of this Act, but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act for such hiring occurring before such date.

SEC. 413. REPORT ON ADDITIONAL AUTHORITY OR RESOURCES NEEDED FOR ENFORCEMENT OF EMPLOYER SANCTIONS PROVISIONS.

(a) In General.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on any additional authority or resources needed—

(1) by the Immigration and Naturalization Service in order to enforce section 274A of the Immigration and Nationality Act, or

(2) by Federal agencies in order to carry out the Executive Order of February 13, 1996 (entitled "Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions") and to expand the restrictions in such order to cover agricultural subsidies, grants, job training programs, and other Federally subsidized assistance programs.

(b) Reference to Increased Authorization of Appropriations.—For provision increasing the authorization of appropriations for investigators for violations of sections 274 and 274A of the Immigration and Nationality Act, see section 131.

SEC. 414. REPORTS ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.

(a) In General.—Subsection (c) of section 290 (8 U.S.C. 1360) is amended to read as follows:

(c)(1) Not later than 3 months after the end of each fiscal year (beginning with fiscal year 1996), the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed, with respect to which, in such fiscal year, earnings were reported to the Social Security Administration.

"(2) If earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General.".

(b) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—The Commissioner of Social Security shall transmit to the Attorney General, by not later than 1 year after the date of the enactment of this Act, a report on the extent to which social security account numbers and cards are used by aliens for fraudulent purposes.

SEC. 415. AUTHORIZING MAINTENANCE OF CERTAIN INFORMATION ON ALIENS.

Section 264 (8 U.S.C. 1304) is amended by adding at the end the following new subsection.

"(f) Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien's social security account number for purposes of inclusion in any record of the alien maintained by the Attorney General or the Service.".

SEC. 416. SUBPOENA AUTHORITY.

Section 274A(e)(2) (8 U.S.C. 1324a(e)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ", and"; and

(B) and inserting ", and"; and

(3) by inserting after subparagraph (B) the following.

"(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).".

Subtitle C—Unfair Immigration-Related Employment Practices

SEC. 421. TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) In General.—Section 274B(a)(6) (8 U.S.C. 1324b(a)(6)) is amended—

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(1) by striking "For purposes of paragraph (1). a" and inserting "A"; and

(2) by striking "relating to the hiring of individuals" and inserting the following "if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)".

(b) Effective Date.—The amendments made by subsection (a) shall apply to requests made on or after the date of the amendment of this Act.

End of Text

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The Washington Times ★ WEDNESDAY, SEPTEMBER 18, 1996

GOP rift may sink immigration-reform bill

By Brian Blomquist
THE WASHINGTON TIMES

Divisions between congressional Republicans and Bob Dole's presidential campaign threaten to derail the first major overhaul of immigration legislation since 1990.

Mr. Dole's campaign wants to preserve language, authored by Rep. Elton Gallegly, California Republican, that would deny public education to children of illegal aliens. California voters were the first to ratify the concept when they overwhelmingly approved Proposition 187 in 1994.

Mr. Dole sees preserving the language as an important part of his campaign's strategy in California, a state with 54 electoral votes where President Clinton currently enjoys a sizable lead in the polls.

But congressional Republicans, sensing that Mr. Dole has lost ground in California, are now debating whether to delete the controversial language in exchange for a White House promise to sign the bill with no other changes.

The conflict has drawn a sharp rebuke from Sen. Alan K. Simpson, an architect of the bill and close friend of Mr. Dole's. The senator complained on the Senate floor Monday and again yesterday that Mr. Dole's advisers were blocking action on the bill to deny Mr. Clinton a legislative victory.

"I can't imagine anything more cynical than not . . . working for its passage on the basis that it is simply going to help the incumbent," said Mr. Simpson, Wyoming Republican, who is retiring this year. "I will not sit and participate in a process that was crafted only to fail and look good."

Mr. Simpson met last week with Mr. Dole's campaign manager, Scott Reed, and said he was asked to retain the Gallegly amendment —even if it meant sinking the bill.

Mr. Dole's press secretary, Nelson Warfield, has described as "weird" Mr. Simpson's repeated criticism of Mr. Dole's position on the immigration legislation.

The legislation would double border-patrol enforcement, increase workplace inspections, restrict public benefits to legal immigrants and launch a pilot project for verifying that job applicants are legal residents.

> *"I will not sit and participate in a process that was crafted only to fail and look good."*
> — *Sen. Alan Simpson*

House Speaker Newt Gingrich, Georgia Republican, has vowed that the House will not consider any illegal-immigration legislation that does not include the Gallegly amendment.

House Majority Leader Dick Armey, however, said yesterday that negotiations have begun to see if Mr. Clinton would sign the bill if the Gallegly amendment is deleted. The president has promised to veto any immigration bill that includes the Gallegly provision. He has objected less strenuously to other provisions of the bill.

House leaders now appear willing to consider deleting the Gallegly language if they can win assurances Mr. Clinton will sign the bill with no further changes.

If the Gallegly amendment stays, any hope of legislation to blunt illegal immigration will vanish for this session. No fewer than 30 Democrats and 12 Republicans are prepared to support a Senate filibuster of the bill if the Gallegly language survives.

"It's dead as a wedge if it's in this form," Mr. Simpson said.

Senate Majority Leader Trent Lott said efforts continue to rework the Gallegly amendment and preserve the bill.

"It's not dead," Mr. Lott said of the underlying bill. "It's very much alive."

Republicans have modified the Gallegly amendment so that children of illegal immigrants currently in school could remain there. States would be able to charge fees if the children were to change schools. Further, the new language would require Congress to re-examine the policy and approve it again on a separate vote in 2½ years.

Losing Its Preference: Affirmative Action Fades as Issue

By Michael A. Fletcher
Washington Post Staff Writer

A year ago, the debate over affirmative action was turning bitter as Republicans in Congress and state legislatures across the country attacked the issue, which seemed certain to become a decisive question in the 1996 presidential election.

There was a proposal in Congress to eliminate all federal affirmative action programs. In California, eager volunteers quickly mustered enough signatures to put an anti-affirmative action initiative on the November ballot. And conservative Republicans were moving to strike affirmative action statutes from the books in almost two dozen states.

"Discrimination is wrong, and preferential treatment is wrong, too," then-Senate Majority Leader Robert J. Dole (R-Kan.) said last year, as he prepared to introduce legislation to end federal affirmative action programs.

But heading into the final eight weeks of the presidential campaign—and against all expectation—the affirmative action issue has virtually fallen from view.

GOP leaders in Congress have abandoned their bill that would have rolled back most federal affirmative action programs. Outside of California, efforts to force affirmative action onto the ballot have faltered, with Florida becoming the latest casualty when a petition drive there failed last month. And virtually every state legislative proposal launched in the past year to eliminate or sharply curtail affirmative action has been unsuccessful.

Advocates on both sides of the debate say the issue has lost momentum, at least for now, for several reasons: an election-year reluctance to alienate minority and female voters; shrewd action by President Clinton to lessen his vulnerability on the issue by moving to "mend" not "end" many existing affirmative action programs; and the surprising amount of popular support it turns out those programs still enjoy.

To be sure, affirmative action continues to face unrelenting attacks in the courts and may well reemerge as Republicans look to energize their core supporters as the presidential campaign builds toward its climax. But politicians say that the current silence surrounding affirmative action also reflects the lack of unanimity on the issue even within Republican ranks, where the movement to end or roll back affirmative action was initiated.

On the stump, Dole, as the GOP presidential nominee, says very little about affirmative action, just a year after taking center stage on the issue by introducing legislation in the Senate that would have ended all federal affirmative action programs. Dole has not talked much about the issue even in campaign swings through California, where a high-profile battle is being waged over a ballot initiative to end that state's affirmative action programs. And now Dole mostly discusses the issue in terms of equal opportunity as part of "new civil rights agenda."

Many prominent Republicans, including Jack Kemp, have expressed concern that pushing for the elimination of affirmative action without offering a viable alternative is bad policy that makes the party appear hostile to minorities and women.

But after Kemp was chosen to join Dole at the top of the GOP ticket, he reversed himself and backed the party's official platform position against affirmative action in hiring and university admissions.

Dole campaign officials explained it was better for Kemp to signal he is in harmony with the Republican nominee than to have news coverage stay focused on the ticket's differences. Dole communications director John Buckley said that Kemp "will never be asked to go out and sell a message he doesn't believe in."

While pleased that Kemp has modified his position, many conservative activists, who view the elimination of affirmative action as a matter of principle, remain frustrated that the issue is not being emphasized.

"Many Republicans are very much intimidated by the politically correct brigades who will call them racist for pursuing this issue," said Michael Carvin, a Washington lawyer, former Reagan Justice Department official and an affirmative action critic. "I think they are very uncomfortable dealing with any issue involving race even when what they are arguing for is clearly popular."

The GOP's split on the issue is apparent in the battle over a California ballot initiative to bar racial and gender preferences in student admissions, contracting and public hiring. The initiative is led by a black Republican and enjoys a large, if shrinking, lead in the polls and the strong support of Gov. Pete Wilson, whose own efforts to make affirmative action a national issue fizzled with his presidential bid.

Nonetheless, other well-known Republicans, including former California governor George Deukmejian, have urged Dole to stay out of the fight, saying it will not help him politically. Others, including Los Angeles Mayor Richard J. Riordin, have come out against the measure.

Further complicating the affirmative action issue is that some of the nation's most prominent moderate Republicans have spoken out against efforts to eliminate it. Retired Gen. Colin L. Powell, New Jersey Gov. Christine Todd Whitman, Ohio Gov. George V. Voinovich, Massachusetts Gov. William F. Weld and Gov. John Engler of Michigan are among those who support many affirmative action programs.

"There is strong bipartisan opposition in Congress and around the nation to measures which will eliminate affirmative action programs for women and minorities," said Ralph G. Neas, counsel to the Leadership Conference on Civil Rights, which has opposed curtailment efforts.

While affirmative action programs have come under steady attack in recent years, public opinion on the issue has proven to be malleable. One reason for that is that affirmative action is a broad term that describes a wide range of actions aimed at compensating for past or present discrimination. It covers everything from outreach and recruitment programs, to hiring goals and timetables, to special admissions programs at colleges and universities.

"The very ambiguity of the term creates some difficulty in the debate," said Terry Eastland, author of an anti-affirmative action book and a fellow at the Ethics and Public Policy Institute.

Polls have found strong opposition to affirmative action when the issue is framed in terms of "racial quotas" and "racial preferences"—phrases preferred by its opponents and condemned as distortions by supporters of affirmative action. Meanwhile, many polls find solid majorities supporting affirmative action, especially when the question acknowledges that the policy should be amended or points out that affirmative action is about gender as much as it is about race.

"The reality is that a majority of the recipients of affirmative action are women," said Karen Miller, director of executive branch liaison for the conservative Heritage Foundation. "As a result, I think [Republicans] want to be cautious on how they approach the issue."

The legislation Dole introduced last year along with Rep. Charles T. Canady (R-Fla.) was hardly cautious. It would have ended race- and gender-based federal affirmative action programs. At the time, the measure allowed Dole, who previously had backed affirmative action, to outflank Wilson and Sen. Phil Gramm (Tex.), then his main rivals for the Republican presidential nomination and both outspoken critics of affirmative action programs.

"I supported race-based preferences in the past. But over time I've realized that preferences created with best of intentions were dividing Americans instead of bringing us together," Dole said during an August appearance before the National Association of Black Journalists.

But after Dole-Canady bill was unable to win sufficient support even from Republicans, congressional leaders decided to shelve it. Instead, they said, they would focus on repealing a program that sets aside nearly $6 billion worth of federal purchases for minority firms.

"The opponents of affirmative action have decided to focus on minority contracting, specifically minority small business," said Wade Henderson, executive director of the Leadership Council on Civil Rights.

House Speaker Newt Gingrich (R-Ga.) told reporters at the GOP convention that he pulled back from a wholesale attack on affirmative action because there were no good alternatives being offered.

"Frankly, that's part of why I slowed down moving the fight over affirmative action through Congress because I didn't feel that we had adequately explained the positive half, which is how we want to help people who are born into poverty or born into deprived circumstances," Gingrich said.

In the past, opposing affirmative action has been a potent Republican weapon. Sen. Jesse Helms (R-N.C.) used a television ad to accuse his Democratic challenger in the 1990 Senate race, Harvey Gantt, who is black, of favoring racial quotas that deny jobs to qualified whites. The ad is credited with helping to seal Helms's victory.

The difficulty opponents are having in framing their anti-affirmative action message has for the moment left Clinton's "mend it, but don't end it" position unchallenged. That language is mirrored in the Democratic platform.

Supporters of affirmative action say Clinton's phrase captures perfectly the prevailing public sentiment on the issue, although critics say it has not heralded any substantial change. So far, the administration has suspended a huge Defense Department set-aside program and proposed revamping a wide range of other affirmative action efforts in federal purchasing.

"The status quo has largely persisted in terms of the general program," said Eastland, of the Ethics and Public Policy Institute. "For that reason, I think he remains vulnerable on the issue."

But if Clinton is vulnerable on affirmative action, it will take pressure from the Republicans to make that clear. And so far, opponents are struggling to hone their anti-affirmative action message.

"It is really a tough issue for people," said Miller, with the Heritage Foundation. "It is easy to say you are against quotas, set-asides and preferences. But coming up with a plan to replace them is a lot more difficult."

Staff writers Kevin Merida and John E. Yang contributed to this report.

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Redrawing the Color Lines

Separate but equal is wrong, right? From busing to voting, a new generation of politicians and thinkers, black and white, is rethinking integration.

BY HOWARD FINEMAN

IT'S NOT JUST THAT THE mayor is black; it's that her civil-rights credentials are so in order. Sharon Sayles Belton grew up in an integrated Minneapolis neighborhood. After Macalester College (where Hubert Humphrey once taught), she went south to register Mississippi voters. Back home she became a Democratic city councilwoman, championing inner-city jobs programs, drug control and civilian review of the police. Now she's in the office once held by Humphrey, who led a brave, lonely—and successful—crusade to write a civil-rights plank into Harry Truman's 1948 platform.

All of which makes Mayor Belton's own crusade seem that much more remarkable: she wants to end court-ordered busing in her city. Better for African-Americans, she says, to spend the millions in transportation money improving inner-city schools. Better to build affordable housing throughout Minneapolis. Better to rely on "children going to school in their own neighborhoods," she told NEWSWEEK. If that means fewer integrated classrooms, so be it.

Segregation: After years of Jim Crow—separate schools, separate worlds—the '50s and '60s brought the dream of a racially mixed America

Expect the unexpected in the arena of race, politics and culture. A century ago next month, the Supreme Court codified segregation—"separate but equal"—in the infamous *Plessy v. Ferguson* decision. Forty-two years ago, the high court issued new marching orders: integration with "all deliberate speed." Now things are in flux again. Familiar remedies for discrimination—busing, affirmative action, specially drawn voting districts—are under attack. Old questions, once thought answered, are asked anew: if separate really *is* equal, is it wrong? "Many of the assumptions that undergirded the civil-rights movement have been eroded," says Ron Walters, a professor at Howard University. "Clear lines have been erased."

Education is one of the muddled places. There is a growing sense among urban officials—white and black—that busing has outlived its usefulness, if it ever had any. Massachusetts Gov. William Weld wants to overturn a state law that mandates racial balance in classrooms; Pittsburgh, Philadelphia, Indianapolis and Arizona are trying to do away with mandatory busing. So is Prince Georges County, Md., a well-to-do—and majority black—Washington suburb. Its Democratic county executive, Wayne K. Curry, wants to get rid of busing, too. He, like Belton, is African-American.

In state-supported colleges, the issue isn't busing but admissions and scholarships. Georgia's attorney general wants to join California and Colorado in scaling back preferences in public universities. In Texas, the Fifth U.S. Circuit Court of Appeals has temporarily suspended an order abolishing an affirmative-action program at the University of Texas Law School, but no one thinks the threat has eased. "The A-bomb has still dropped," said University of Texas provost Mark Yudof.

The racial-preference rules that apply to the federal government itself are under pressure. In Florida, a court just invalidated a congressional district drawn to enhance

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the chances that a black would be elected. At least half a dozen other districts—all represented by recently elected blacks—are at risk. Meanwhile, prodded by the courts, the Clinton administration is grudgingly rewriting affirmative-action rules in federal contracting. New guidelines, to be issued next month, still use race and gender as factors, but no longer "set aside" business for minorities and women.

Why all the tumult? The simple—and simplistic—answer is a federal judiciary stocked with 12 years' worth of Reagan and Bush appointees. Since 1989, a series of Supreme Court and lower-court rulings have limited what can be used to increase the access of minorities and women to contracts, schools and other benefits. "It shows you just how important judicial appointments are," says David Bositis, an expert on race and politics at the Joint Center for Political and Economic Studies in Washington. In a major speech, Bob Dole just pledged to avoid choosing "liberal" judges if he beats Clinton in November.

But there is more at work than partisan politics. Demographics are equally important. In many urban school districts there are few whites left. Indeed, while the number of racially mixed classrooms climbed dramatically in the '60s and '70s, integration has slowed since. The newest trend—as usual—is in California, where an anti-affirmative-action initiative is on the fall ballot. Immigration has made race there a matter far more complicated than black and white. Hispanics and Asians are larger minority groups, so conservatives like Gov. Pete Wilson and Terry Eastland, author of the new book "Ending Affirmative Action," claim Martin Luther King's dream is their vision, too. "In California, you just can't have anything less than a truly colorblind society," Eastland contends.

There's another demographic trend undercutting the ideal of an integrated society. It's "voluntary resegregation," a fancy term for the old American tradition of sticking with your own kind. Many upwardly mobile blacks—whether searching for a college dorm or a house in the suburbs—are choosing to live with each other rather than with whites. In Washington, Atlanta, New York and Los Angeles, well-to-do African-Americans are flocking to suburbs they can call their own. "They don't want the pressure and the hassle of living in a white world after work," says Bositis.

There is an emotional current as well. Like other groups becoming absorbed into the mainstream, some blacks now—finally—have the painful luxury of worrying about a loss of ethnic identity. There is a rising concern that in the quest for fairness, access and integration, something has slipped away. "There's another side of the ledger," says Walters of Howard. "There's been a loss of community for us."

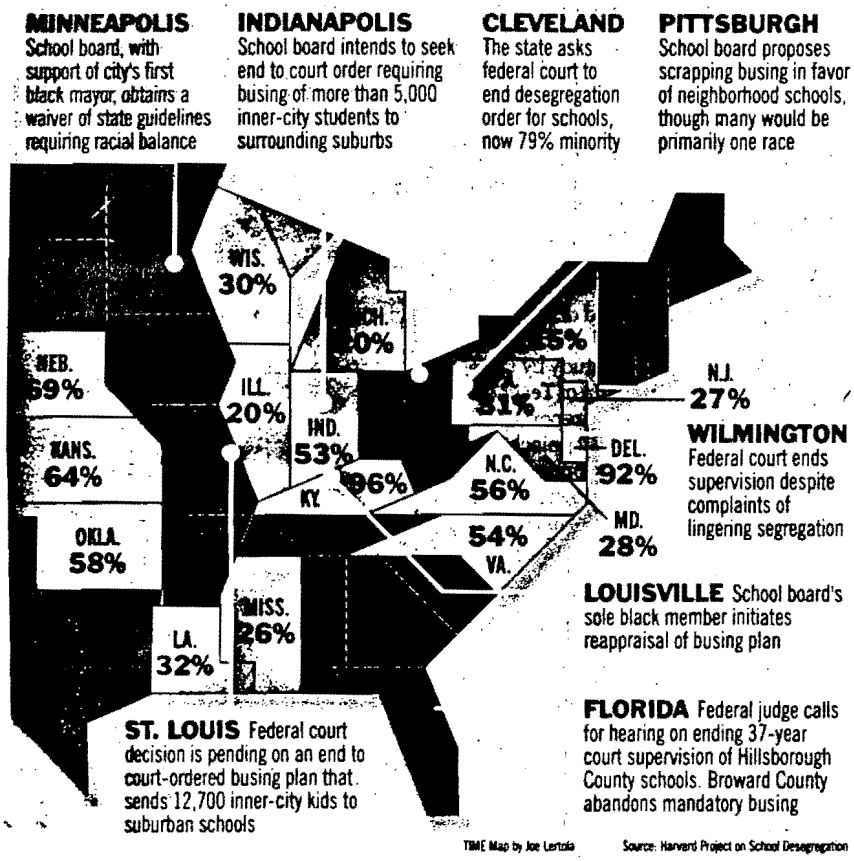
What happens now? No one thinks core antidiscrimination laws are in jeopardy. Though Republicans helped get the anti-affirmative-action measure on the California ballot, Dole does not plan to tie his own campaign there to it. And neither Dole nor Newt Gingrich plans to push a bill Dole introduced to abolish all federal preference programs.

Yet parts of the liberal African-American leadership—based in Washington, New York and the elite universities—feel threatened. At Harvard last weekend, leaders of what W.E.B. Du Bois called "The Talented Tenth"—the revered historian's term for the black best and brightest—gathered to discuss *Plessy*'s 100th anniversary. Educated in the Ivy League, holding powerful jobs, they remain firm public believers in preferences. But some of them have come to doubt the value of integration.

One of the conference's hosts was Henry Louis Gates Jr., chair of the university's Department of Afro-American Studies. In a new essay for the book "The Future of the Race," he recounts both the pride and the estrangement he felt as a student at Yale in the late '60s, and the sense of "survivor's guilt" he says burdens many successful blacks who worry about the culture they've left behind. For her part, back in Minneapolis, Mayor Belton has no time for wistfulness. Doing away with busing is more practical than ideological; she worries about what will happen if "the money dries up." "I don't have the time to intellectualize these things," she says. She was too busy for Harvard. She has a city to run.

With LYNNELL HANCOCK *and* MARK MILLER *in New York*, PAT WINGERT *in Washington*, GINNY CARROLL *in Houston and* VERN E. SMITH *in Atlanta*

Celebration: The old roads to integration are in disrepair, replaced by the sense that black-only institutions are a better way to go



tained as an expert witness by the school board, predicted that if Norfolk's cross-town busing continued, the whole school system would soon become 75% black, making racial balance impossible. "Civil rights groups have always discounted the importance of whites," he says today, "which has always been a mystery to me. It's as though their goal were some abstract equity thing, as opposed to actual integration." The court accepted Armor's argument.

"It was turning back the clock. It was like being told you have to go to the back of the bus," recalls Lucy Wilson, then an associate dean at Old Dominion University and one of two black school-board members who initially voted against the plan. When the federal court's ruling rendered the return to neighborhood schools inevitable, Wilson and the other dissenter changed their votes in exchange for a commitment that the all-black schools would be targeted for extra resources, though Wilson doubts the promise will be kept forever. (As Harvard School of Education sociologist Gary Orfield has observed, "A less powerful group isn't going to get disproportionate resources for a very long time from a more powerful group. It requires that water flow uphill.") For the 1993-94 school year, the district's average expenditure per pupil in the black "target" elementary schools was $736 higher than at Norfolk's other elementaries, while class size averaged 20 pupils, two or three fewer than at the other schools.

Still, test scores dropped at the 10 target schools after the end of busing. In 1991 black third-graders in the target schools scored 5 percentage points lower than black third-graders in the remaining integrated elementaries on a battery of tests. Last year black third-graders in the target schools tested 10 percentage points lower.

Young Park Elementary occupies a well-kept building set among the barracks-like structures of Norfolk's Young Terrace public housing project. Of its 341 students, 98% are black and 94% are poor enough to qualify for the free-lunch program. This year so far, the parents or guardians of 60 to 70 kids have joined the PTA. "Some of the children arrive at school not knowing their full name; they just know their nickname," says principal

colonel with his patrician features, astride his prancing steed, while his swarthy soldiers follow obediently. As the 20th century moved toward its close, most American blacks no longer saw this as the model for relations between the races.

Now the relentless tides of demographic change in most large American cities have eroded the gains made during the school-desegregation era. In 1972—the year blacks sued to desegregate Boston's schools—some 90,000 students were enrolled in the public system, 54,000 of them white. As of September 1995, some 63,000 students remained, barely 18% white. What does it mean to say that one is for integration in a school system so configured?

The *Milliken v. Bradley* decision laid the groundwork for today's desegregation conundrum. Had Boston's federal district court been able to embrace the school systems of such storied American communities as Concord and Lexington, there would have been more whites with whom to integrate and less criticism that Judge Arthur Garrity's order did little more than mix "poor blacks" with "poor whites." But it would be naive to imagine that most suburban whites would obediently put their children on the bus to the inner city. Suburban families might have thrown fewer rocks than did the working-class whites of Charlestown and South Boston, but I suspect that when the dust settled, many would have put their children in private or parochial schools, or found other means of evading the order.

Ultimately, it is futile to debate what might have been. I still believe in desegregating schools by both class and race. But since it won't happen in many places, what goal realistically remains for those who fought so bravely for desegregated schools in Little Rock, Arkansas, Boston, New Orleans and Denver? To what vision of the good society can they dedicate themselves?

As a Boston school official told me last year, "Our task is to educate the kids who're here, instead of yearning for those who have left. And, who knows, perhaps if we do a good enough job, some of those who have left may start trickling back." Call her naive, if you wish, but that strikes me as the only realistic alternative: to make the urban public schools work for whatever clientele remains. It will be a long, slogging, incredibly difficult task. Those who demonstrated their virtue with marches and vigils must now do the harder thing of raising taxes and committing public resources, which may require more genuine heroism than the theatrics of the old integration story. ■

J. Anthony Lukas' book on the Boston busing wars, Common Ground, *won a Pulitzer Prize in 1986.*

CNTD

Ruby Greer, who has managed to improve test scores and attendance. "They don't know how to hold a pencil or a book. And it seems like you never catch up."

A five-minute drive away from Young Park stands Taylor Elementary. This is the neighborhood school of white children from the large houses on the surrounding tree-lined streets; and of black children from nearby, mostly working-class neighborhoods. Sixty-one percent of Taylor's 433 children are white, and only 30% qualify for the free-lunch program. One hundred percent of the children's parents are in the PTA, which runs 22 committees. In 1994, 68% of Taylor's fourth-graders surpassed national norms on standardized tests. At Young Park, 7% did.

"The whole discussion of desegregation is corrupted by the fact that we mix up race and class," says Harvard sociologist Orfield. "You don't gain anything from sitting next to somebody with a different skin color. But you gain a lot from moving from an isolated poverty setting into a middle-class setting." National statistics provide suggestive evidence that desegregation raises blacks' academic achievement (without lowering whites'), despite its apparent failure in such high-profile cases as Yonkers—where middle-class flight left low-income students concentrated in high-poverty schools. A massive 1993 Department of Education study of Chapter One, the compensatory-education program for poor children, found that recipients of Chapter One services in schools where at least three-quarters of the children were poor scored substantially lower in math and reading than recipients attending schools where fewer than half were poor.

And, in fact, since the onset of widespread desegregation in 1971, black 17-year-olds have closed roughly a third of the reading-score gap that separated them from whites. A soon-to-be-released study by Debora Sullivan and Robert L. Crain of Teachers College, Columbia University, reports that among 32 states, the gap between black and white fourth-grade reading scores is narrowest in West Virginia and Iowa, where blacks are least isolated from whites, and largest in Michigan and New York, where blacks are the most racially isolated.

Crain and others have found, however, that academic-achievement tests are only one measure of what schools offer—another important one being what researchers call "life chances." The "great barrier to black social and economic mobility is isolation from the opportunities and networks of the middle class," Crain says. School desegregation puts minority students in touch with people who can open doors to colleges and careers.

In 1966 a randomly selected group of kindergarten-through-fifth-grade low-income students in Hartford, Connecticut, nearly all of them black, were offered the opportunity to attend school in a dozen virtually all-white suburbs. Sixteen years later, researchers

tracked down more than a thousand of those who had been tapped for the program and a like number of those who had not. Crain found that males in the test group were significantly more likely to have completed two or more years of college and less likely to have dropped out of high school or got in trouble with the police, and females were less likely to have had a child before age 18.

School desegregation also leads to housing desegregation, not only by promoting tolerance but also, to put it bluntly, by making it impossible to avoid an integrated school by choosing where you live. According to a study by Louisville's Fair Housing Council, Jefferson County's school-desegregation program reduced residential segregation to such an extent that by 1990, though only 17% of the area's residents were black, a mere one-quarter of 1% of the population lived in a census tract without black neighbors.

But in the case of Louisville, a great desegregation success story, the city and suburbs are in a single school district. In most Northern cities, white flight has undermined even the best efforts at racial balance, and the measurable benefits of desegregation programs have been spottier—while the burdens, particularly on black students, have often been enormous. There has always been some preference in the black community, as in the white, for neighborhood schools (though these may be more an ideal than a reality for the children of the poor, who tend to move, or be moved, a great deal). And there is a realistic

JAMES DOLAN

1975, LOUISVILLE Antibusing demonstrators battle police on the first day of court-ordered busing between city and suburbs. Now Jefferson County schools are among the nation's most integrated, but some parents are disenchanted with a system that requires long, arduous bus rides to school

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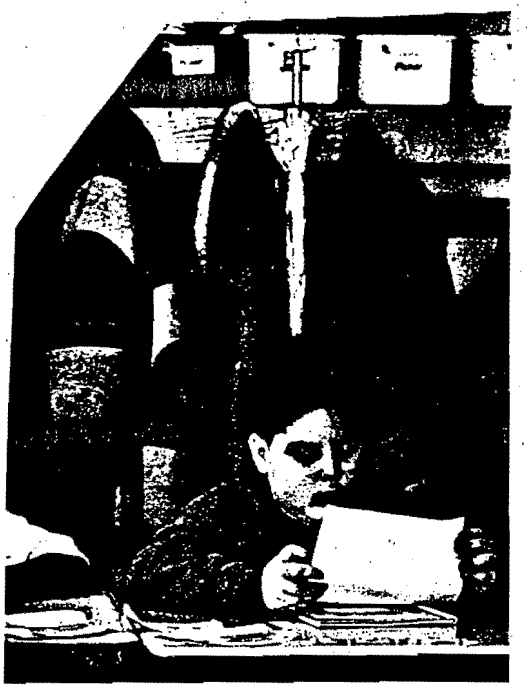

That is exactly what happened. School segregation exacerbated residential segregation, as whites chose not to live in neighborhoods served by predominantly minority schools. Detroit's public school system is now 94% minority. By 1990, in the 18 largest Northern metropolitan areas, blacks had become so isolated that 78% of them would have had to move in order to achieve an evenly distributed residential pattern. The *Milliken* ruling, says Indiana University's Brown, "eliminated all hope of meaningful desegregation in most of the country's major urban areas."

This was the state of affairs when, in 1976, the Federal Government threatened to cut off funds to the KCMSD because it had maintained a dual system of segregated schools. Pro-integration kitchen-table activists who had won control of the KCMSD school board responded by suing suburban school districts and the State of Missouri, arguing that they had worked to confine blacks to the inner city.

Until the *Brown* decision, schools were segregated by law in Missouri; after it, the state allowed desegregation at the discretion of local school boards. Many of the suburban districts (parts of which extended into the city) had not allowed blacks to attend high school, forcing black families to move into central Kansas City in search of education. As the city's minority population grew, the KCMSD redrew school-attendance zones hundreds of times and bused some black children far from their neighborhoods in order to keep the races apart.

Federal District Judge Russell G. Clark, a conservative Democrat, ruled that the state and KCMSD had violated the Constitution, but he dropped the outer districts from the case, finding insufficient proof that they they had acted illegally—a decision he would have cause to regret. "The very minute I let those suburban school districts out, I created a very severe problem for the court and for myself, really, in trying to come up with a remedial plan to integrate the Kansas City, Missouri, School District," the judge reflected years later. "The more salt you have, the more white you can turn the pepper. And without any salt, or with a limited amount of salt, you're going to end up with a basically black mixture."

KCMSD's only remaining hope for racial balance was a system of magnet schools designed to lure whites back from private schools and the suburban districts. In 1986 Judge Clark ordered such a plan. After the KCMSD's enrollment became majority black in 1970, the district's voters, who remained majority white, had allowed the schools to literally fall apart, rejecting funding initiatives 19 times while pipes burst and ceilings collapsed. In addition to smaller classes and higher teacher salaries, Judge Clark's order required renovation of 55 schools and construction of 17. When the school district failed to come up with its quarter of the cost—Clark had laid three-quarters of the bill on the state—the judge took the unusual step of doubling the local property tax. The money bought, among other things, a planetarium, radio and TV studios, and 1,000 computers for Central High School's 1,069 students. Central, which before Clark's order was awash in broken toilets and overrun by rodents, now occupies a $32 million building that resembles a small city's airline terminal and features an Olympic-size swimming pool.

The KCMSD's annual per-pupil expenditure, excluding capital costs, reached $9,412 last year, an amount exceeded by perhaps 40 of the nation's 14,881 school districts. All together, as of this February, $1.7 billion has been spent under court order in Kansas City.

Sugar Creek Elementary is a French-immersion school. An integrated teaching staff of native French speakers recruited from France, Belgium, Canada, Haiti, Egypt and Cameroon keep the children speaking only French, from the Pledge of Allegiance ("*Je déclare fidélité au drapeau des Etats-Unis* ...") through recess to the end of the day. The kids even talk out of turn in French. "They're so eager to learn everything, they pick it up like a sponge," says kindergarten teacher Janet Lawrence.

A third of the students are white, and a third of those come from outside the district—transported by parents such as Virgil Adams. (The state stopped paying for transportation into the district this year.) Adams or his wife makes a 28-mile round-trip drive twice a day from Blue Springs, a suburb of tidy lawns and two-car garages, so that Sarah can go to second grade and William to third at Sugar Creek. They were drawn by the foreign-language instruction, but Adams, an FBI agent based in Kansas City, sees the social mix itself as an important advantage. "Somewhere on the news one night the word nigger was used," he recalls. "My son asked me what it meant. I thought that was great; if he'd been around my dad three or four days in a row, he'd have known. We didn't want to bring up our kids that way."

For all its moral appeal, however, the Kansas City plan's achievements appear modest when weighed against its enormous expense. The number of out-of-district white children enrolled

BURT GLINN MAGNUM

1957, LITTLE ROCK National Guard troops called out by Arkansas Governor Orval Faubus kept black students out of Central High School. A court ordered the Guard withdrawn, and President Eisenhower sent federal troops to escort the black kids in

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at the magnet schools peaked at 1,476 last year. Standardized test scores have registered slight gains. White flight, while substantially slowed, has not been reversed: in 1985, the year before the magnet plan began, the district was 73.6% minority; this year it is 75.9% minority. If nothing else, horrible school facilities have been replaced with nice new ones, and for some that is justification enough. "I bet a lot of kids in Kansas City are enjoying their childhood more now that they don't have to go to schools that smell," says author Jonathan Kozol, a longtime chronicler of educational injustice. "A good society would consider that money well spent."

HIS IS NOT THE PREVAILING view in Missouri, where for the past decade candidates for just about any office have been running against what much of the electorate perceives as Judge Clark's liberal-from-hell spending spree. Attorney General Jay Nixon expresses outrage that the state has spent $2.6 billion on court-ordered school desegregation in metropolitan St. Louis and Kansas City. He is seeking "unitary status"—that is, an end to court supervision based on a judicial finding that the system is desegregated—in both cities. "I'm a Democrat, and I want to help kids' educations," he says. "But to see the fencing team in Kansas City sent to Hungary because it showed up good in the focus groups and the whites would think it's cool, is just ridiculous."

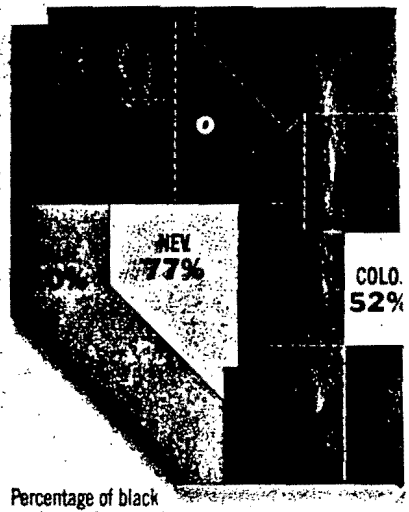
The U.S. Supreme Court evidently agrees. In *Missouri v. Jenkins*, the court held last June that Judge Clark had no authority to order the state and district to pay for a plan aimed at attracting suburban students. Chief Justice William Rehnquist pointedly reminded the district court that its ultimate goal was not to achieve racial balance but "to restore state and local authorities to the control" of the school system. Once the lingering effects of legally enforced segregation were eliminated, it would be perfectly legal for the district to run schools that happened to be all black or all white. As Justice Clarence Thomas explained, "The Constitution does not prevent individuals from choosing to live together, to work together, or to send their children to school together, so long as the State does not interfere with their choices on the basis of race."

For the KCMSD, *Missouri v. Jenkins* portends a big reduction in the state's extraordinary desegregation payments. For court-ordered desegregation generally, the decision's implications could be dire. Says associate director of the NAACP Legal Defense Fund Ted Shaw, who argued the Kansas City case before the high court: "If the courts say unitary status means school districts just have to get to the point where a desegregated snapshot can be taken, and then they can go back to the segregating school assignments they had before—if that's all *Brown* has done, it's been a big charade."

If resegregation is indeed the wave of the future, then the future can be glimpsed in Norfolk, Virginia. Norfolk won federal court approval of a return to neighborhood schools back in 1986, for the stated purpose of increasing parental involvement and arresting white flight. Black parents had sued to block the new plan because it would immediately render 10 elementary schools, many of them serving housing projects, 100% black. Sociologist David Armor, re-

THE TIDE TURNS

Since the Supreme Court's decision last June ...



Percentage of black students who attend white-majority schools

10 most integrated states

10 most segregated states

DENVER
Black-led school board plans return to neighborhood schools after federal court ends desegregation orde

THE NEED FOR A TOUGHER KIND OF HEROISM

1975, BOSTON: The police battle whites opposed to busing

By J. ANTHONY LUKAS

AT THE CREST OF BOSTON'S BEACON HILL, A BRONZE MONUMENT portrays Colonel Robert Gould Shaw leading the black soldiers of the 54th Massachusetts Volunteer Infantry in their assault on Fort Wagner, South Carolina, in July 1863—a battle that cost the young aristocrat and nearly a hundred of his troops their lives. When the Union army asked for his body, a Confederate officer replied, "We have buried him with his niggers." Shaw's sacrifice—memorialized by the poet James Russell Lowell as a "death for noble ends"—has become an emblem of the lofty idealism that inspired New England's 19th century abolitionists and their 20th century descendants in the civil rights and school-desegregation battles.

In the 1960s and 1970s, those movements enlisted the energies of some of that generation's finest young whites, eager to express their altruistic impulses, to live and, if necessary, to die for noble ends. But from the late '60s on, the role of white liberals was circumscribed by the rise of black nationalists, who suspected that Northern whites were as eager to put their own virtue on display as to seek self-determination for Southern blacks. After all, the Shaw monument portrays the young

CONT'D

"I'M A PART OF THIS": Students rehearse for an African-culture performance at J.S. Chick, a Kansas City elementary school that offers an Afrocentric curriculum

pessimism about the prospects for integration. Says the Legal Defense Fund's Shaw: "My sense is a lot of people are saying, 'We're tired of chasing white folks. It's not worth the price we have to pay.'"

EDWARD NEWSOME, AN AFRICAN-American lawyer in the real estate business who himself attended a segregated school in Texas, is a leader of the anti-magnet plan coalition that has dominated the Kansas City school board since 1994. He feels the underlying assumptions of desegregation are patronizing to blacks—as does Justice Thomas. "It never ceases to amaze me," wrote Thomas in his *Missouri v. Jenkins* concurrence, "that the courts are so willing to assume that anything that is predominantly black must be inferior."

Says Newsome: "I welcomed the Supreme Court decision. I saw it as an opportunity for the first time in years to focus on removing the vestiges of segregation. For 10 years we've concentrated on bringing in white kids. There's been no Afrocentric-themed magnet school because it doesn't appeal to white folks."

The J.S. Chick Elementary School represents the kind of school Newsome thinks there should be more of. Chick, whose African-centered program was fashioned by its enterprising principal, Audrey Bullard, occupies a bleak, brown brick building in a rundown east-side neighborhood of Kansas City. Ninety-eight percent of Chick's 327 students are black. "With a Eurocentric curriculum, it appears one race is superior over the others," says Bullard. "The African-centered curriculum makes them feel, 'I'm a part of this. I'm not on the outside looking in.'" Something must be working: Chick's students outscore some of the magnet schools' pupils on standardized tests.

On a recent morning in Lola Franklin's third-grade class, the kids are wearing paper crowns signifying their status as African kings and queens, and they are standing one after another to shout out a dizzying variety of facts. "Welcome to Guinea-Bissau! The official language is Portuguese."

"The main religion is Islam!"

"Sheep, cattle and goats are the principal animals!"

"Who can name an African-American comedian?" inquires Franklin.

"Eddie Murphy!" "Bill Cosby!"

"And some American comedians?"

"Whoopi Goldberg!"

"No, an *American* comedian," she corrects them.

"Roseanne!" a boy calls out.

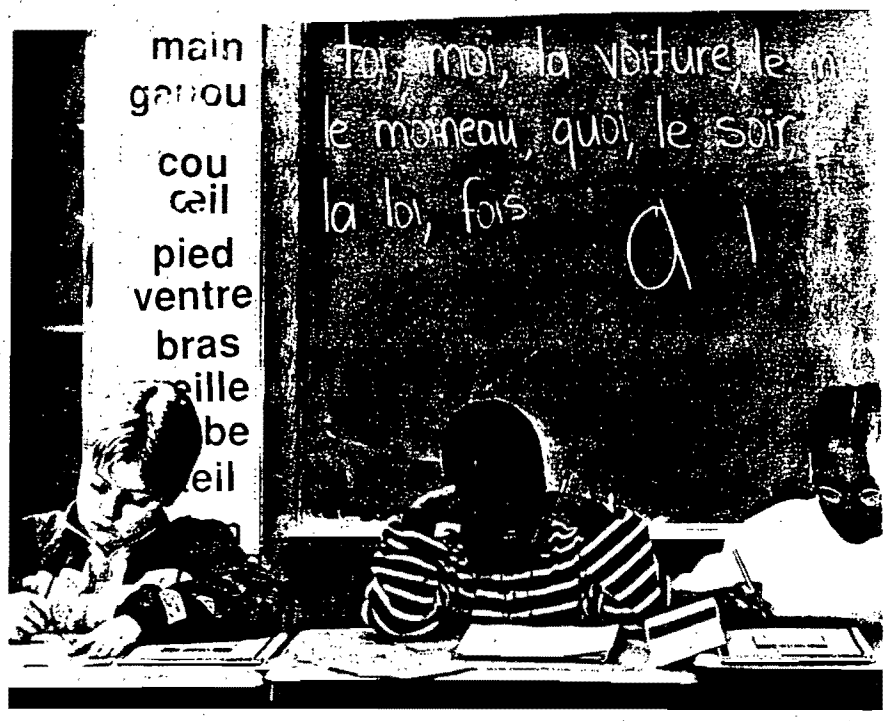
"Good," says Franklin.

Clint Bolick, litigation director for the libertarian Institute for Justice in Washington, predicts court-ordered desegregation schemes will be gone in 10 to 15 years. Their fatal error was in making racial balance a goal, which eventually led to admissions preferences for whites, "turning *Brown* on its head," says Bolick. "What all this shows is that social engineering doesn't work."

But a great deal of social engineering went into creating school segregation in the first place, points out William Taylor, a Washington lawyer who has worked on civil rights cases for 40 years. Taylor laments what he sees as the courts' "peculiar notion that segregation is the natural condition and desegregation goes against the natural order of things. The court's own finding in *Brown* was that segregation had been imposed by law and practice for many years. Missouri is a good example. You have racially restrictive covenants, racially restrictive ordinances. The notion that somehow segregation came about all because of people's individual preferences is wrong."

Engineered or not, American society is facing "awesome demographic changes," says Harvard's Orfield. "In around 2050 there's going to be about half nonwhites in the total population, in 2020 about half nonwhites in the school population. We have to figure out how to run our institutions in that kind of a society. 'Separate but equal' is the most well-tried experiment in American history. It was policy for 60 years, and we have no evidence that it can work, given the distribution of power and resources in our society."

Four decades after his research helped decide the case that was supposed to change everything, perhaps Kenneth Clark still puts the issue most succinctly: "Talk about 'separate but equal,'" he says. "If they're going to be equal, why are they separate?" ■



EGALITE, FRATERNITE: **Whether they're black or white, Kansas City kids or suburbanites, Sugar Creek's third-graders all speak the same language: French**

gated region, half of all black students attend such schools. "We have already seen the maximum amount of racial mixing in public schools that will exist in our lifetime," says University of Indiana law professor Kevin Brown, an expert on race and education. The combination of legal revisionism and residential segregation is effectively ending America's bold attempt to integrate the public schools.

This historic reversal has been welcomed by many in the African-American community. In some cities—Denver, for example—the dismantling of mandatory desegregation has been initiated by black leaders, since it is often black children who bear the brunt of such plans—forced to travel long distances to schools where they may not be welcome. In Yonkers, New York, late last year the local leader of the N.A.A.C.P. was suspended by the national organization for declaring that busing had outlived its usefulness. Clinton Adams Jr., a black attorney who is sufficiently abrasive to qualify as a militant in Kansas City—a town so even-tempered that car horns are blown only to warn of impending collisions—takes an even harder line. "The most egregious injustice is the situation where suburban white kids get priority over resident African-American kids, who are the adjudicated victims of segregation," he says. "That's atrocious. Just to try to achieve some kind of mythical benefit that black kids will receive by sitting next to a white kid?"

HOMER A. PLESSY, DESCRIBED IN COURT papers as "of mixed descent, in the proportion of seven-eighths Caucasian and one-eighth African blood," bought himself a first-class ticket from New Orleans to Covington, Louisiana, and took a seat reserved for whites on the East Louisiana Railway. He was jailed for violating an exquisitely even-handed, race-neutral statute that forbade members of either race to occupy accommodations set aside for the other—with the exception of "nurses attending the children of the other race." Plessy insisted he was white, and when that failed, argued that criminal-court judge John H. Ferguson had violated his constitutional right to the equal protection of the laws.

In its ruling on *Plessy v. Ferguson*, announced May 18, 1896, the Supreme Court declared laws mandating that "equal but separate" treatment of the races "do not necessarily imply the inferiority of either race," and cited the widely accepted propriety of separate schools for white and colored children. In dissent, Justice John Harlan remarked, "The thin disguise of 'equal' accommodations ... will not mislead any one, nor atone for the wrong this day done."

But the thin disguise endured for a half-century, until a series of school-segregation cases culminating in *Brown v. Board of Education of Topeka*. "Separate educational facilities are inherently unequal" and violate the Constitution's equal-protection guarantee, a unanimous Supreme Court ruled on May 17, 1954. A year later, the court ruled that school districts must admit black students on a nondiscriminatory basis "with all deliberate speed" and instructed the federal district courts to retain jurisdiction "during this period of transition."

THE NATION IS STILL IN THAT period of transition, observes Kenneth Clark, 81, the black sociologist upon whose work the *Brown* decision in part relied. "I didn't realize how deep racism was in America, and I suppose the court didn't realize it either," he says. Ten years after *Brown*, when only 2% of black children in the South attended schools with whites, the court announced, "The time for mere 'deliberate speed' has run out." In 1968 the court declared that discrimination must be "eliminated root and branch." In 1971, noting that about 40% of American schoolchildren routinely rode buses to and from school anyway, the court held in *Swann v. Charlotte-Mecklenburg Board of Education* that the federal courts could order busing to desegregate schools.

Busing broke the back of segregation in the South, where 36.4% of black students attended majority-white schools by 1972. But Chief Justice Warren Burger's opinion in *Swann* also opened the door for the federal courts to get out of the integration business. Once legally enforced segregation was eliminated, he wrote, single-race schools would not offend the Constitution unless some agency of the government had deliberately resegregated them.

Since the end of World War II, as blacks have streamed into the cities in search of work, whites have streamed out—in search of greener lawns and whiter neighbors. Anytime blacks were able to breach the wall of restrictive covenants, brokers' steering and mortgage redlining to begin to integrate a neighborhood, white flight and resegregation quickly followed. By 1970, with the white birthrate plunging, Northern urban school districts, which seldom extend beyond city limits, lacked enough white children to desegregate.

A dearth of whites led a federal court to order the city of Detroit to integrate its schools with those of 53 surrounding districts. In 1974 the Supreme Court struck down that order, holding in *Milliken v. Bradley* that suburban districts could not be ordered to help desegregate a city's schools unless those suburbs had been involved in illegally segregating them in the first place. Justice Thurgood Marshall warned in dissent that the court had set a course that would allow "our great metropolitan areas to be divided up each into two cities—one white, the other black ..."

(cont'd)

The New York Times

DATE: 03-28-96
PAGE: B-12

Massachusetts House Speaker Accepts Guilty Plea

BOSTON, March 27 (AP) — The Speaker of the Massachusetts House agreed today to plead guilty to Federal tax evasion for filing false expenses and lying under oath about them.

The Speaker, Charles E. Flaherty of Middlesex, said he would step down on June 30 but remain in the House.

In addition to the Federal charges, United States Attorney Donald Stern said Mr. Flaherty also admitted to the State Ethics Commission that he received free vacation lodging from lobbyists and business executives.

Mr. Flaherty, a Democrat, will spend two years on probation. If he had been imprisoned, state law would have forced him to give up his office.

Mr. Flaherty insisted at a news conference that he had done nothing to violate the public trust. The only evidence of wrongdoing revealed in a three-year investigation, he said, was a "reconstruction" of lost documents that he submitted during a tax audit.

"That was wrong," he said. "It was a mistake in judgment on my part."

Under the terms of today's agreement, Mr. Flaherty said he would plead guilty to a felony tax charge, pay $24,200 in criminal and civil penalties and serve two years' probation. A condition of probation is that Mr. Flaherty also pay $26,000 in fines to the State Ethics Commission for receiving about $13,175 in illegal gratuities from lobbyists and businessmen.

The ethics charges stem from Mr. Flaherty's free use of vacation homes between July 1990 and August 1992.

Mr. Flaherty, 57, was first elected to the House in 1966 and was chosen Speaker in 1991.

Federal authorities said that after his 1983 tax return was audited, Mr. Flaherty submitted a false affidavit and an altered diary in support of expenses he claimed.

Based on the bogus information, the Internal Revenue Service reduced his tax liability and saved him at least $8,400, the Government said.

changing demographics. The population eligible for affirmative action continues to grow several times faster than the nonpreferred population. And where blacks once constituted the great bulk of the eligible population, Hispanics and Asians have become more numerous than blacks, thanks to post-1965 immigration. Generally speaking, affirmative action includes immigrants of the "correct" race or color, and roughly three-quarters of immigrants belong to preferred groups. So while preferences were originally rationalized as a remedy for historic discrimination against blacks, now preferences are increasingly being extended to people who, if they experienced discrimination, experienced it somewhere else at someone else's hand.

Thanks to affirmative action, there is also now conflict among the preferred groups. In Los Angeles, Hispanics want their share of county jobs, arguing that black employees are "overrepresented." In Ohio, blacks and Asian-Indians have gone to court over whether the latter should be eligible for affirmative action in contracting.

Protect Equally

Facts such as these reinforce the case for the proposition that only law that neither advantages nor disadvantages on account of race or ethnicity is law that can equally protect everyone in our increasingly diverse nation. Of course, CCRI and Dole-Canady would establish precisely this kind of law. In doing so, these measures would complete the path to colorblind government largely cut in recent years by the Supreme Court, with doctrine that all but says no to racial preferences by government.

The endgame for affirmative action, at least as practiced by government, has arrived. In seeking to avoid checkmate, President Clinton is siding against the antipreference majority of not only the American people but also his own party. If past performance is any indication, President Clinton may well try to obscure his pro-preference position in the months ahead. So a question for the campaign is whether Sen. Dole can illumine where his opponent stands while articulating the case for law of the kind he supported when he voted for the Civil Rights Act of 1964. The experience of the intervening years has made that case even more compelling.

Mr. Eastland, editor of Forbes Media-Critic, is the author of "Ending Affirmative Action: The Case for Colorblind Justice" (Basic Books).

LABOR

Choice of Compensatory Time Or Extra Pay OK'd by Panel

Along party lines and over the strong objection of organized labor, the House Economic and Educational Opportunities Committee on June 26 approved a bill that would allow employers to grant their workers compensatory time off instead of overtime pay for work performed beyond 40 hours a week.

The bill (HR 2391), drafted by Cass Ballenger, R-N.C., was approved 20-16.

President Clinton embraced the idea but not the specifics of the bill June 24, saying "simply spending time with your family can be a dream in itself." That seemed to be a shift in attitude from May, when House Republican leaders had considered using the measure as the vehicle for an amendment to raise the minimum wage. At that time, White House officials called it "a poison pill," and the idea was dropped.

"At least now we appear to be on the same wavelength," Committee Chairman Bill Goodling, R-Pa., said during the June 26 markup. "A few polls can turn poison pills into vitamins."

But Democrats and the White House insist the Republican approach would let employers exploit low-paid workers. Major R. Owens, D-N.Y., declared he would have to tell his constituents, "The Republicans are coming for your overtime pay."

Current law, established in 1938, maintains that most work beyond a 40-hour work week be compensated at a rate of one-and-a-half times a worker's hourly wage. In 1985, that law, the Fair Labor Standards Act, was amended to allow federal, state and local government employees to be compensated with time off instead of overtime wages. Employees who are considered professionals are exempt from federal wage-and-hour laws.

Under the Ballenger plan, which again amends the Fair Labor Standards Act, employees could choose to take up to 240 hours of compensatory time off a year instead of overtime pay. Clinton would cap compensatory time at 80 hours a year. Under the Republican plan, banked comp time would be cashed out at the end of each year. As with overtime pay, an hour of work performed beyond the 40-hour work week would be compensated at time-and-a-half under both the Ballenger and Clinton plans.

By Jonathan Weisman

BOXSCORE

Bill: HR 2391 — Compensatory time off for overtime work.

Ballenger

Latest action: House Economic and Educational Opportunities Committee approved the bill, 20-16, June 26.

Next likely action: House floor.

Reference: Labor bills, Weekly Report, p. 1390; 1985 Almanac, p. 471.

Democrats contend the Ballenger bill does not create strong enough protections against employers who might coerce their workers to forgo overtime pay. That is because workers are protected only against "willful violations" of the rules against coercion, a standard most employees could not prove, said Robert E. Andrews, D-N.J.

In contrast, the Clinton proposal would establish a lower burden of proof, and it stipulates that workers vulnerable to coercion — such as part-time, seasonal and temporary employees — must be paid overtime wages.

A Choice

The bill ostensibly gives workers the choice between overtime and compensatory time, but leaves the ultimate decision to the employer, said ranking minority member William L. Clay, D-Mo.

For instance, the legislation allows employers to require a reasonable notice before comp time can be used and to restrict its use to times that do not "unduly disrupt" operations. Clinton would allow workers to use their time whenever they need it for family or medical leave or, with two weeks notice, for any other purpose.

Managers could do away with vacation time and force their employees to work extra hours to earn any paid time off, committee Democrats contended. And since an employer could choose at any time to pay cash instead of compensatory time, an employee who might have worked extra hours to take time off for, say, a child's hospitalization, could find that time suddenly evaporated at the employer's whim, Democrats say.

Such objections amounted to little more than nitpicking, said Steve Gunderson, R-Wis., who called the partisan wrangling "just about the stupidest debate I've seen in my 16 years here."

Democrats Patsy T. Mink of Hawaii and Lynn Woolsey of California conceded that a substitute version of the bill offered by Ballenger and accepted by voice vote had moved the legislation significantly toward the opponents' position. For instance, the new version explicitly forbids direct or indirect intimidation, threats or coercion to sway employees toward or against choosing compensatory time, and stipulates that workers who choose compensatory time could change their minds at any time and receive cash, based on their highest wage levels, Ballenger said.

Bill advocates said the measure would simply give employees something that polls suggest 75 percent of them want: a choice between money and time off.

"This really is motherhood and apple pie," Ballenger said. "They just haven't recognized it yet."

The bill is popular with House Republican leaders and could wind up on the floor before the summer is out, said Republican Conference Chairman John A. Boehner of Ohio, but its ultimate passage is a long shot. No companion legislation exists in the Senate. Sen. John Ashcroft, R-Mo., has proposed legislation (S 1129) that is similar in its intent, but even more sweeping in its revision of the traditional 40-hour work week. Ballenger conceded that a union ally like Sen. Edward M. Kennedy, D-Mass., could orchestrate the bill's death before it reaches the White House.

On a voice vote, the committee approved legislation (HR 2428) that would shield donors and distributors of food for the needy from legal liability from mishaps or illnesses resulting from those donations. The bill was named the Bill Emerson Good Samaritan Food Donation Act after the deceased Missouri GOP representative who cosponsored the bill by Pat Danner, D-Mo. *(Obituary, p. 1858)* ■

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CLINTON LIBRARY PHOTOCOPY

LAW/ JUDICIARY

Church-Burning Legislation Heads to Clinton's Desk

Congress has cleared legislation (HR 3525) that would provide the federal government with more tools to combat the recent string of suspicious church fires. President Clinton is expected to sign it.

The fires, which since January 1995 have damaged or destroyed more than 30 Southern churches with predominantly black congregations, triggered an overwhelmingly bipartisan reaction.

On June 26, the Senate passed 98-0 an expanded version of a bill (H Rept 104-621) that the House passed without dissent a week earlier. The Senate substitute, introduced by Lauch Faircloth, R-N.C., and Edward M. Kennedy, D-Mass., was welcomed by House members, who passed it June 27 by voice vote, clearing the bill. *(Weekly Report, pp. 1766, 1683)*

Broad support for legislation responding to the fires was reflected in the Faircloth-Kennedy partnership.

"I believe the Senate realizes that this bill is not about liberals and conservatives or blacks and whites," Faircloth said. "It is about something much larger — the power of justice, the importance of faith and the ability to distinguish between right and wrong."

Faircloth

Kennedy

Kennedy said, "We must send the strongest possible signal that Congress can act swiftly and effectively to address this crisis."

According to Deval L. Patrick, assistant Attorney General for Civil Rights, 73 acts of vandalism on black churches have occurred in the past 18 months.

The bill would expand the circumstances under which the federal government could become involved in prosecuting those who damage religious property. It would eliminate the current jurisdictional threshold of $10,000 in property damage and loosen the circumstances under which federal jurisdiction would be triggered under the Constitution's Commerce clause, which lets Congress regulate interstate commerce.

The bill would allow federal involvement when religious property is damaged for racial or ethnic reasons rather than just religious reasons, as under current law. The measure would allow those injured in church burnings to receive compensation under the 1984 Victims of Crime Act (PL 98-473). And it would double prison penalties from 10 years to 20 years, and extend the statute of limitations on church burnings from five to seven years.

The bill would allow charitable organizations, including churches, to apply for Housing and Urban Development loans to rebuild destroyed churches. It authorizes $5 million in loan guarantees to lending institutions for up to $10 million in loan principal.

The measure also authorizes unspecified sums for the Treasury Department to hire additional agents for the Bureau of Alcohol, Tobacco and Firearms who would assist local police in investigating suspicious fires. It also would authorize additional Justice Department counselors to help communities deal with the aftermath of the fires.

The bill also would reauthorize the Hate Crime Statistics Act, which requires the Justice Department to track and report on crimes committed because of race, ethnicity, sexual orientation or religion. ■

By Charles R. Wolpoff

LAW/ JUDICIARY

War Crime Bill OK'd by Panel

A House Judiciary panel approved a bill June 27 calling for the prosecution of war criminals. It would implement U.S. obligations to provide sanctions for people involved in "grave breaches" of the Geneva Conventions of 1949.

The measure (HR 3680), approved by the Immigration and Claims Subcommittee, would allow U.S. prosecution of war crimes involving an American national or member of the U.S. armed forces, whether as victim or perpetrator. Under the bill, the United States could impose fines and imprisonment on perpetrators, and the death penalty if the victim died.

The legislation would bring the United States into compliance with the Geneva Conventions of Aug. 12, 1949. Negotiated in the wake of World War II, the conventions dealt with the laws of warfare and provided that signatories should enact legislation to sanction "grave breaches" — including willful killing, torture or inhuman treatment, or willfully causing great suffering or serious injury.

Bill supporters say it would encourage other countries to extradite to the United States those accused of committing war crimes against U.S. nationals. Bill sponsor Walter B. Jones Jr., R-N.C., has observed that current law does not allow the United States to prosecute North Vietnamese who mistreated American prisoners of war. The measure would not apply retroactively, but it would cover future situations.

When the Geneva Conventions were initially submitted to Congress in the 1950s, the executive branch and Congress concluded that existing federal and state criminal laws were sufficient, and that implementing legislation was not necessary. The administration at that time was concerned that the Geneva Conventions could require repatriation of Korean War POWs seeking asylum.

But intervening circumstances, including court decisions limiting the jurisdiction of military tribunals over former service members, changed attitudes.

The administration has expressed support for the bill, but said it would like to see certain changes, such as a provision to allow the United States to prosecute a war criminal who is in this country, even if neither the accused nor the victim is American. Such universal jurisdiction, however, may be more controversial than the current bill, which has wide House support.

The full Judiciary Committee is expected to act on the bill in July. ■

By Charles R. Wolpoff

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CLINTON LIBRARY PHOTOCOPY

The Washington Post

DATE: 2-12-95
PAGE: C6

Principles for Welfare Reform

THE CURRENT welfare system does not work. It does not work for welfare recipients, and it especially does not work for poor children. The taxpayers who pay the bill don't like the system, either, and they shouldn't. The welfare system cannot on its own be held responsible for all of the problems plaguing poor rural or inner-city areas. But the system has clearly failed to promote work, long-term independence and family stability.

It is far easier to condemn welfare than to fix it, as would-be reformers seem to learn every decade or so. This is a problem on which "experts" and affected citizens alike are divided and uncertain about what actually *would* work. It is therefore crucial that welfare reform be approached in a spirit of humility, not a virtue in long supply in this city. We offer here a set of principles for welfare reform based on the modest proposition that while trying to make the system better, reformers must be reasonably certain that what they are attempting will not make it worse. In this spirit:

(1) States should be given broad leeway to experiment. Nearly two dozen states have various experiments underway. Many of them are designed to find out which changes in welfare rules might create powerful enough incentives to alter what is often self-destructive behavior, and behavior that is particularly destructive toward dependent children. These experiments should be encouraged, since they provide important clues for building a better system. Decentralization is not a cure-all, but Republicans are right to see substantial advantages in it.

■

(2) These experiments should take place without ending the "entitlement" status of welfare or food stamp benefits. The word "entitlement" carries strong and, in the case of welfare, misleading moral connotations. The main issue relating to welfare's entitlement status concerns not the government's obligation to individuals, but its fiscal obligation to state governments. The House Republican plan offered by Rep. E. Clay Shaw Jr. of Florida would end welfare's entitlement status and bundle a series of programs together as a "block grant" to the states. The danger of this proposal for a fixed and largely frozen allotment is that it will *reduce* rather than *increase* the system's flexibility.

The advantage of having food stamps and welfare as "entitlement" programs is that spending on them varies depending on the economic conditions in each state. During economic downturns, welfare applications go up and federal money flows to the places in greatest trouble. If needs drop, so do federal outlays. Eliminating the "entitlement" status of welfare will force states either to pay all the costs involved in an economic downturn, or, more likely, to slash aid to the poor. Those suffering the most under this new regime could turn out to be the working poor temporarily thrown out of their jobs by a bad economy. The "rainy day" fund in the Shaw plan eases but does not eliminate this problem. Even more harmful would be ending the entitlement status of food stamps, which put a floor under the living standards of welfare recipients and the working poor alike.

■

(3) The welfare system should not encourage long-term dependency. There should be limits on how long anyone can receive a welfare check without doing work. Providing jobs or community service opportunities can be expensive. Job-creation programs have often been inefficient. Jobs outside the home or community-service work may not be the best use of the energies of mothers of very young children. Still, it makes sense to see welfare as a transitional program and to require work of participants after a fixed period.

President Clinton's welfare reform proposal of last year never got anywhere, but its strongest provisions were those that set work as a goal and acknowledged that achieving this goal would not be cheap. The costs arise not only because work programs must be accompanied by the provision of day care for preschool children, but also because many long-term recipients of welfare lack the skills and habits associated with long-term employment. Welfare reformers cannot pretend that this problem would go away if benefits were cut off. Real reform will necessarily involve education and job training and, more generally, intense efforts to acclimate those who have long been out of work to the obligations of employment. If Congress ducks this responsibility in the name of saving money, it is not reforming welfare.

■

(4) The welfare debate cannot focus solely on mothers. Fathers have an equal responsibility for the children they bring into the world. That means any welfare reform must involve more vigorous efforts to require fathers to acknowledge paternity and to provide support for their children. Congress should consider giving the fathers a chance to accept the public service jobs created by welfare reform in lieu of requiring the mothers to do so. This could reduce the costs of day care attendant to work programs and give unemployed fathers a chance to fulfill responsibilities that some in their ranks—perhaps many—would welcome.

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The Washington Times

DATE: 2-13-95
PAGE: A-6

GOP welfare plan would swap AFDC for block grants to states

Individuals may lose guarantees to entitlements

The block-grant program "is a guaranteed entitlement to the states, but not to individuals. The individual entitlement is gone."

By Cheryl Wetzstein
THE WASHINGTON TIMES

As the House Ways and Means human resources subcommittee geared up to begin crafting its welfare reform legislation today, spokesmen for the Republican members revealed more details about the proposals.

Meanwhile, the five Democrats on the panel were studying the proposal in preparation for today's session, aides said.

Ranking minority member Rep. Harold Ford, Tennessee Democrat, called the GOP proposal "tough and mean."

"Nowhere in what I've read do the Republicans ever mention what I think is the most important word: a job," Mr. Ford told the Associated Press on Thursday.

The latest Ways and Means subcommittee version of the welfare reform bill would end the Aid to Families With Dependent Children (AFDC) cash welfare program and create a $15.3 billion block-grant program in its place.

Under the new proposal, states would receive a set amount of money for at least five years to administer programs to give "temporary assistance to needy families."

The block-grant program "is a guaranteed entitlement to the states, but not to individuals," a committee aide said Friday. "The individual entitlement to AFDC is gone."

Two other block grants would be created out of a dozen child care programs and 24 child welfare programs.

States would have to abide by some federal strictures. For example, states could not use federal block-grant dollars to give cash payments to minor unwed mothers and their children, although they could give the same families state dollars.

But the reform would free the states from thousands of federal regulations. Federal rules would also allow states to shift up to 20 percent of one block grant's funds to another block grant.

The child welfare block grant, which is designed to help states prevent child abuse and neglect, represents "the best example of Republican social policy," a committee aide said.

"The problem that we had before was the funding was exactly backwards," the aide said. "There was tightly controlled, [limited] dollars for prevention, but open-ended entitlement money to take the kid out of the family and put him in foster care."

"Now we say to the states, here's the money — over $4 billion — and if you think you can prevent this problem, by all means do it," the aide said.

A section on child-support enforcement was not available for review.

The Ways and Means bill would also deny most welfare programs to most legal aliens and end Supplemental Security Income disability cash payments to drug addicts and alcoholics.

Also overseeing welfare reform are the Economic and Educational Opportunities, Agriculture, Banking and Financial Services, Judiciary, Commerce, and Rules and Budget committees.

The Agriculture Committee is handling the section of the bill that would combine 10 food assistance programs, including food stamps, into a single food-assistance block grant. Rep. Bill Emerson, Missouri Republican and chairman of the Agriculture subcommittee on department operations, nutrition and foreign agriculture, is holding a final hearing on the food block grant tomorrow.

The Economic and Educational Opportunities Committee is overseeing the work provisions. Eight federal day care funding streams would be transferred to that committee to be included in their jobs block grant, a Ways and Means aide said Friday.

The Washington Times

DATE: 2-15-95
PAGE: A-18

Asleep in the city that never wakes

The incapacities of the government of the District of Columbia have been very well documented lately. Just this week, problems with the city's Corrections, Child Welfare and Housing Departments were featured on this page. Well, when it rains, it pours — particularly where financial mismanagement is concerned. And new revelations — or variations on old ones — just keep on coming.

The latest: a Justice Department report excoriating the city for the substandard, sometimes even allegedly life-threatening, care offered at D.C. Village, the nursing home owned and run by the District government; renewed threats to close schools from the judge who closed them down last fall for three days for fire code violations; and SEC subpoenas for city officials and the city's accounting firm.

Justice accuses D.C Village's medical staff of "failing to provide the residents with adequate medical assessment, diagnosis, treatment and monitoring of their conditions in keeping with generally accepted standards of medical care." As for the nurses, according to the report they provide inadequate and inappropriate "nutritional management." Residents are bathed only every three days, given inadequate exercise and the bedridden ones are not turned frequently enough, leading to the danger of bedsores.

As with other aspects of District difficulties, despite poor-mouthing by city officials, money is not the issue. D.C. Village gets $87,000 a year from Medicaid for each resident. To put that sum in perspective, the average daily cost for a District nursing home is 160 percent higher than Virginia's and 111 percent higher than Maryland's.

This is not news to Mayor Marion Barry. In fact, when Sharon Pratt Kelly tried to save some $2 million a year in 1993 by turning the home over to private management, Mr. Barry, then a councilman, was among those who put the kibosh on the plan. So, the city has gone on spending a fortune on D.C. Village and getting nowhere near its money's worth.

Now, during the mayoral campaign, Mr. Barry kept telling us we should elect him because only such a financial wizard as himself could possibly get us out of the hole he and Mrs. Kelly had dug us into. The sorry story of D.C. Village hardly attests to any particular financial acuity on the mayor's part.

And his most recent mayoral shenanigans hardly bespeak an ability to be a responsible guardian of the city's well-being. In fact as the city crumbles beneath his feet, the mayor is putting on a disturbing display of self-indulgence. Mr. Barry announced this week, unblushing and adamant, that he plans to punish the residents of Wards 2 and 6, because their representatives on the city council voted against the property tax increase he was counting on to add $40 million to the city coffers. Why he singled out Jack Evans (Ward 2) and Harold Brazil (Ward 6), when five others also voted to keep rates at last year's level, is unclear. But he did vow to punish them — or rather their constituents — by decreasing police patrols in their wards.

For one thing, it is entirely questionable whether Mr. Barry has any right to do any such thing. For another, even if he does have the right, it would mean telling the commanders of the relevant police districts how to allocate their manpower, since it is they who normally make those decisions. The prospect of the mayor of the District of Columbia ordering police commanders to remove patrolmen from a neighborhood out of political pique is truly horrifying.

If it seems reminiscent of Mr. Barry's post-primary admonition to voters who opposed him to "get over it," that's because it is precisely the same sort of arrogant behavior. Council President Dave Clarke — himself a supporter of the tax increase — has written to the mayor, reminding him that all D.C. citizens are his constituents and upbraiding him for this "kindergarten activity."

That the mayor needs such reminding, and that he permits himself to behave like a 5-year-old in a tantrum, bodes ill for the future of the city.

protect those laws. He insisted that he is not seeking a watered-down version of affirmative action laws to offer as a Democratic alternative.

"The question is: How do we protect it and how do we hold onto it?" he said. "If you look at [Proposition] 187, where I thought we were left defenseless was when we had nothing to offer but the status quo. And so one option that I've thrown out there—but it's just one option—is basically fighting fire with fire."

Press said he could not speak for other Democrats and why they have not spoken out in favor of affirmative action laws, other than to suggest that they might be shocked by the large support for the anti-illegal immigration Proposition 187 last year. He also said the issue should not be cast as one that divides Democrats.

"This is not a dagger aimed at the heart of the Democratic Party; this is a dagger aimed at the heart of California," he said. "This will divide Democrats, it will divide Republicans, it will divide employees, it will divide families, it will divide neighborhoods. I think it potentially could be very, very ugly."

Asked about Clinton and reports that he is sounding out Democrats about the possibility of coming out against affirmative action laws, Brown praised the president's record on appointing minority officials, but warned that he would look like an opportunist if he took a position in response to polls.

"I think if people are going to vote for a racist, they are going to vote for a true racist, they are not going to vote for someone who is playing to them for vote purposes," Brown said. The speaker, known for his eloquence and humor, added: "Bill Clinton would have to reinvent himself. He would have to disassociate himself from that horn that he plays [and] he would have to start playing the goddamned banjo."

Sources said inspections are conducted randomly, once every 500 to 2,500 entries, and certain shipments are targeted based on intelligence information.

The facilitation program has resulted in increased truck traffic all along the border, especially last year when records show that laden trucks increased 51% and empty trucks increased 38%. In anticipation of the North American Free Trade Agreement a year ago, U.S. and foreign investors opened new manufacturing plants on the Mexican side of the border, triggering an increase in cargo shipments to this country.

Numerous inspectors and agents have told The Times they believe that the facilitation policy has provided narcotics smugglers with an easy way of bringing tons of cocaine into the U.S.

"The smugglers know our system as well or better than us," said Jay Erdmann, an inspector for 25 years who is retiring next month. "Why should they smuggle the dope through the desert when they can use line release?"

San Diego port director Applegate said the importing and drug targeting procedures are "very sophisticated."

"Quite frankly, the line inspector is not aware of this," Applegate said. "These guys are like platoon sergeants questioning the war strategy."

But he also said inspectors have a responsibility to target vehicles, based on behavioral analysis of the drivers.

"This risk assessment . . . depends a lot on the inspector's own knowledge," Applegate said.

A Dec. 13 document entitled "1994 Port Tracking Report" said Customs concentrates its drug enforcement efforts on shipments from 16 "high-risk" countries in South and Central America and the Caribbean.

The report said that, although most "high-risk" containers pass through the Mexican border, "substantially less" cocaine was seized there last year than the previous year.

Nationwide, customs inspectors and agents seized 62,850 pounds of cocaine from commercial land, air and sea haulers last year—only 2,000 pounds less than in 1993.

But along the Southwest border, 1,765 pounds was confiscated in 1994—all at Calexico—compared to 7,708 pounds in 1993 and 234 pounds in 1992 when truck traffic was lighter. Customs statistics show there was a similar decline in marijuana seizures, from 17,736 pounds in 1993 to 9,459 pounds last year.

Officials were unable to provide statistics for cocaine seizures in previous years along the entire border.

At the Otay Mesa commercial port—third largest on the border and located seven miles east of San Diego—there were no cocaine seizures in the past three years. There also were no seizures during the period at El Paso, the second largest commercial border crossing.

Laredo, Tex., the biggest commercial port, had no cocaine seizures last year. Inspectors there found 5,027 pounds of the drug in 1993 and none in 1992.

Meanwhile, Customs officials have two new proposals to make it easier for airplane and auto travelers, not just trucks, to enter the United States, The Times has learned.

One plan under study, called Airport 2000, would require airline employees to input the names of passport holders into Customs computers.

Customs inspectors would then check the names for criminal records or ties to drug smuggling. If the name used by the traveler does not arouse suspicion, he would be allowed to leave the airport without having to go through Customs inspection.

"Airport 2000 is a concept developed here and is passenger oriented," said Dennis Shimkoski, a Customs Service spokesman in Washington.

A plan being studied in San Diego would make optional the now-mandatory license plate check of every vehicle entering this country from Mexico. Like Airport 2000, the plan was conceived to cut costs and ease entry into the United States.

Computer checks of license plates have led to the seizure of hundreds of stolen vehicles and thousands of pounds of drugs. The computer checks also tell an inspector if the vehicle is suspected of being used in smuggling and if the driver has a criminal record.

Applegate dismissed complaints from inspectors and Customs agents that the plan signals a retreat from the drug war and invites corruption in the ranks of inspectors.

"The issue is very simple. Our land border traffic is increasing, and our budget is not," Applegate said. "There would be a certain number of inspectors who would view this as the grossest sellout in customs history. [But] how much is it costing the Customs Service to input all this data and what are we getting for it?"

Von Raab, the former Customs commissioner, said he believes that the proposals will weaken enforcement efforts. "I have always seen Customs as a regulatory agency to guard borders and collect tariffs," he said.

Customs inspectors and agents have complained for years about what they call a loophole in the facilitation program. They alleged in interviews that drug rings are paying unscrupulous truck drivers and trucking companies to smuggle cocaine and other drugs—but Customs officials do not subject drivers and trucking companies to the same background checks as importers and manufacturers.

A veteran investigator who has worked on several high-profile drug cases in San Diego said that "you can have the biggest drug dealer in Mexico drive a truck through the compound . . . and the [line-release program's] computer would never tell you who he was, even if he used his real name."

"That's correct," said Barry Fleming, who supervises the line release program in San Diego. "Right now, I have to agree with the inspectors. [The problem is] the carriers. How do we operate in the unknown where we don't know the risk of the driver, the tractor [truck] or the trucking company?"

When asked why there were no cocaine seizures at the Otay Mesa commercial port between 1992 and 1994, Fleming said: "Is it [because of faulty] targeting? Probably it is. We don't have enough intelligence."

Carolyn Goding, president of the San Diego Brokers Assn., agreed that there is "nothing to stop an unscrupulous driver from throwing some cocaine underneath the seat." However, she said the program "is working well for the honest importer by helping facilitate the movement of cargo."

The New York Times

DATE: 2-11-95
PAGE: A-10

'Author on Internet Arrested For Sexually Violent Fiction

By PETER H. LEWIS

A University of Michigan student who was jailed for publishing a sexually violent work of fiction about a classmate on the global Internet computer network was denied bail yesterday.

Magistrate Thomas A. Carlson of Federal District Court in Detroit said that although the student, 20-year-old Abraham Jacob Alkhabaz, who uses the name Jake Baker, had never physically approached or spoken with the classmate, the writing suggested that Mr. Baker was "disturbed" and "dangerous," and that he was "a ticking time bomb waiting to go off."

Mr. Baker, a sophomore from Boardman, Ohio, was arrested in Ann Arbor, Mich., by agents of the Federal Bureau of Investigation on Thursday and charged with the Federal crime of transporting threatening material across state lines. If convicted, he faces a maximum penalty of five years in prison.

The incident is the latest in a series of cases involving computer networks in which law-enforcement authorities in the United States have tried to apply existing laws to the new and uncharted domain of cyberspace.

Mr. Baker was suspended from the university last week, three weeks after he used a school computer to write and electronically publish a story on an electronic forum that specializes in sexually explicit fiction. Before he was taken to jail, Mr. Baker told reporters that his story was protected by First Amendment guarantees of free speech.

In his story, "Pamela's Ordeal," Mr. Baker used the name of a female student who had been in one of his classes last semester, as the object of violent sexual fantasies.

He posted the story on "alt.sex.stories," one of the most popular of the thousands of forums, known as news groups, that make up Usenet, an international network. Mr. Baker added a note to the story indicating that it was "sick stuff," and that he had never spoken to the woman whose name he used in the story.

The Michigan Daily newspaper reported that Mr. Baker's story involved "torturing a woman with a hot curling iron, and mutilating and sodomizing her while she is gagged to a chair."

A University of Michigan alumnus in Moscow was browsing the alt.sex.stories news group in Russia, saw the story, noted its origin and alerted school officials. Campus police and Federal agents were asked to investigate.

In an affidavit filed in the case, an F.B.I. agent, Greg Stejskal, said that in addition to filing his story, Mr. Baker had an electronic exchange of messages with subscribers to alt.sex.stories in which Mr. Baker described his "desire to commit acts of abduction, bondage, torture, mutilation, sodomy, rape and murder of young women."

"This young man posted it into a Usenet group that had other similar postings," said Andrew Taubman, executive director of the Electronic Freedom Foundation, a lobbying group in Washington. "They accepted it as a type of writing that was acceptable under their community standards."

The group known as alt.sex.stories is among the hundreds of groups known as "unmoderated." Anyone with access to the forums, which are commonly reached through the Internet, can post material there.

The president of the university, James J. Duderstadt, suspended Mr. Baker on Feb. 1, citing school bylaws that give the president the power to maintain "health, diligence and order among the students."

The arrest and jailing of Mr. Baker was criticized by several groups, including the American Civil Liberties Union and the university's Student Civil Liberties Watch.

"It's part of a fairly long series of cases in which the authorities have tried to stretch existing laws into areas where they are not particularly applicable," said David Banisar, a lawyer for the Electronic Privacy Information Center in Washington.

"Idle banter across the Internet, even if it is discussing things most people are appalled by, is still not a crime, any more than if it were discussed in a bar or a college dormitory."

"The Internet doesn't have state lines," Mr. Taubman said. "It is arguable that the Internet doesn't even have national boundaries."

The female student whose name Mr. Baker used, identified in court papers as "Jane Doe," reportedly was not aware of the story until she was contacted by reporters.

David Cahill, Mr. Baker's lawyer, said the story was never meant as a threat.

"At the hearing, a psychologist and a psychiatrist both testified that Jake is not dangerous to himself or others," Mr. Cahill said. "It was a fictional story, written in the present tense. It was not in the future tense, and nothing in the story identified the woman as a University of Michigan student."

Mr. Cahill said his client "seemed to be holding up relatively well."

At the bond hearing yesterday, which was attended by Mr. Baker's mother, Vilma Baker, a trial date of Feb. 21 was set in Federal District Court in Detroit.

DON'T SCAPEGOAT THE GERRYMANDER

By Lani Guinier

AS THE NEW CONGRESS convenes, a fight is unfolding under the banner of the Voting Rights Act, threatening conventional assumptions about strategies for black empowerment. Proponents of black voting rights have won the ballot, but may be losing the war. The Congressional Black Caucus's funds have been cut off by the new Republican majority, 20 black committee and subcommittee heads have been deposed and 36 of 38 black House members now vote with the minority party.

The 1982 amendments to the Voting Rights Act secure the right of minority groups to an equal opportunity to elect candidates of their choice. For the first time, the backroom deal-making of incumbents was tempered by a simple command: *Do not exclude.* As a result, 16 new black elected officials joined the 1992 Congress, each elected from newly drawn majority-black districts.

Some blame these districts for handing Republicans a working House majority. When Lyndon Johnson signed civil rights legislation in 1964, he told a young aide, "I think we delivered the South to the Republicans for the rest of your lifetime." Some Democrats are convinced that Johnson's prophecy was realized in the 1994 midterm elections. They see an unholy alliance between Republican operatives and Justice Department officials to enforce the Voting Rights Act for blacks and other minorities, ironically winning greater political influence for Republicans. These pundits accuse Republicans of siphoning off the most loyal Democratic voters into majority-black districts, leaving surrounding districts ripe for G.O.P. plucking. Conservative Democrats like former Representative Tim Valentine of North Carolina also suggest that once districts like his were shorn of black voters, Republicans were able to recruit better candidates.

Lani Guinier, a law professor at the University of Pennsylvania, is the author of "The Tyranny of the Majority."

No doubt some majority-black districts were created that left other districts whiter, more conservative and more Republican. Simultaneously, Republicans deliberately declined to put forward truly competitive candidates in some races to keep black turnout down. And the new black districts may have depressed black turnout by inadvertently excluding the majority of black voters — who don't live in those majority-black districts. Indeed, 58 percent of voting-age blacks in the South still reside in districts that have white majorities.

But focusing on the political fallout in isolated cases could lead to scapegoating these districts for a much larger political problem. The truth is, of course, that the Democrats lost for many reasons. Three stand out. First, white voters fled the party. Second, the Democratic Party gave its traditional base — minorities, labor and city dwellers — little incentive to vote, courting marginal Democratic voters with big television buys rather than turning out its core constituency. Third, about 62 percent of all eligible voters stayed home: both parties are turning off voters. Thirty-six Republicans won previously Democratic seats with fewer votes than unsuccessful Republicans got in 1992.

The fact is, Democrats did no worse in the nine states that drew new black districts after the 1990 Census than in states with no new black districts. Nowhere in America did incumbent Republican representatives lose; this outcome was not driven by newly drawn black districts. And although Republicans did run stronger candidates, they recruited talented Republicans all over America, not just in the South. Moreover, Congressional boundaries did not change between 1992, when Democrats gained 41 seats, and 1994, when the G.O.P. gained at least 52. Finally, Democrats also lost control of the Senate, which, of course, has no black districts.

As an example of the costs of creating black districts, some cite Newt Gingrich's old Georgia district, which he won by a mere 974 votes in 1990. After the 1992 reapportionment, he won with ever-increasing margins — representing, however, entirely different voters. It was not just the 19.5 percent black voters who had been dispersed; his district had been dismembered. Before, his district was largely blue collar, rural and southwest of Atlanta; today, it is north Atlanta, suburban — and the most Republican district in Georgia. In the end, Gingrich wound up with what he himself wanted: a "low-maintenance district."

WHATEVER THE MERITS OF the argument, talk about ridding our political landscape of black, Latino or Asian districts without proposing alternative remedies to insure minority representation is, in reality, talk about resegregating Congress and disfranchising African-, Latino- and Asian-Americans. When state legislatures were not monitored by the protection of the Voting Rights Act, some created weirdly shaped white districts, splitting every black precinct to make sure that all districts had a white majority. One influential state legislator from New Orleans defended Louisiana's 1982 Congressional plan, which had no majority-black districts, by declaring that he didn't want to see "another nigger big shot" elected; they already had "one nigger mayor."

Race still matters. In the 1980's in North Carolina, more than 80 percent of white voters would not vote for a black candidate even when their only other choice was to vote for no one. Because of racial-bloc voting, only four blacks were elected to the House from districts with white majorities. Racial-bloc voting has prompted some Southern white Democrats to neglect issues that are identified with black constituents. Data from 1970 through the early 1980's show that white Democrats in North Carolina who were elected from Congressional districts with white majorities but substantial numbers of blacks tended to vote more

ILLUSTRATION BY VICTOR JUHASZ

PHOTOCOPY PRESERVATION

like Republicans than did white Democrats elected from districts with insignificant numbers of black voters.

In fact, when Tim Valentine represented a district that had a substantial, but not majority, black electorate in the 1980's, his voting record was notably conservative. After studying roll call behavior, Morgan Kousser, a professor of history and social science at the California Institute of Technology, concluded, "White politicians in North Carolina have overwhelmingly considered their primary obligations to be to whites, while they have largely ignored the opinions of the black parts of their constituencies."

In other words, the debate about redistricting begs the larger question: Namely, who gets to decide the interests of *any* voter in choosing representatives? To some extent *all* redistricting is gerrymandering. Critics who assail majority-black districts for artificially predetermining election outcomes are on to something about districts in general. But it is not only black districts that do this; it is all districts.

Our form of "winner take all" districting is simply unfair. It allows self-interested politicians to classify voters by where they live or what color they are, instead of by what they believe. In effect, a Congressional powerhouse can greatly influence the legislature in defining a district, deciding which group will be the majority.

It's not redrawn black districts that lost the Democrats the House. All redistricting is gerrymandering, and it crudely overcompensates the winning side.

This system crudely overcompensates the majority: a candidate who wins with even 50.5 percent of the vote gets 100 percent of the power, while someone like former Speaker Tom Foley, who got 49.5 percent of the vote in November, gets nothing. In 1994, 67 Congressional candidates won with 52 percent or less of the vote, yet each represents 100 percent of the district's constituents.

All voters, not just black voters, are affected by this. In cities, heavily Democratic voting districts often submerge Republican voters; in Republican-dominated suburbs, the voices of Democratic voters cannot be heard. All political constituencies suffer. Women cannot join forces with like-minded voters who don't live in their neighborhood. Ruth Shaw, the lead plaintiff in the landmark case challenging the newly created majority-black districts in North Carolina, described her objections this way: No one ever asked her whether she wanted to be represented as a woman. And in this sense, she is right: Territorial districting cannot recognize dispersed, nongeographic-based interests. Women who would like to identify politically as women are not represented per se.

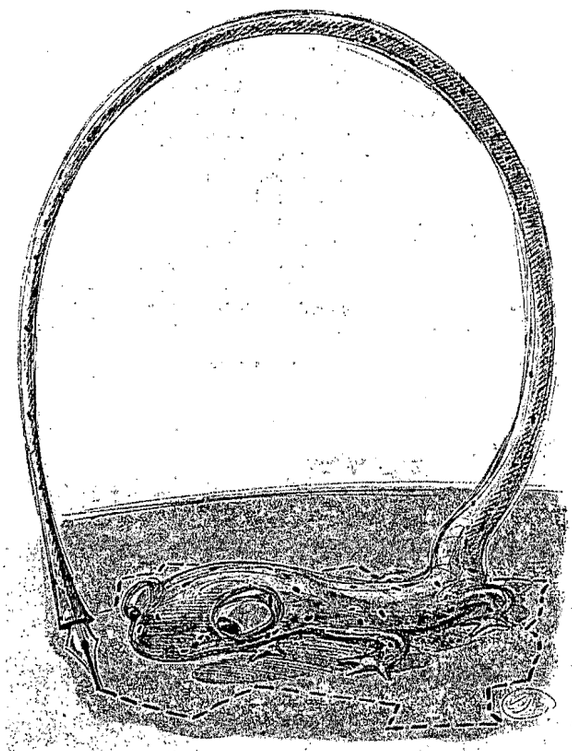
How can we avoid denying minority voters fair representation? One solution is to expand legislative accountability to *all* voters, by endorsing as a universal principle *the equal opportunity to vote for a winning candidate.*

There are many electoral systems that protect the value of all voters' votes. In its first all-race elections, for example, South Africa tried a party-list system. Voters voted for a political party, not a political candidate. Each party then filled legislative seats in proportion to its percentage of the total vote. Political parties representing the white minority got legislative seats according to the number of votes they got. Their supporters' votes were not wasted, as they would have been under our rules; all votes counted in the election of officials, including those associated with parties receiving substantial votes, though less than 50 percent.

Choice — so highly valued in the commercial marketplace — is even more important in the marketplace of ideas. Where elections do not result in only one winner, diverse viewpoints can be represented. Women like Shaw could pool votes to support candidates with their concerns. Blacks, too, could form electoral coalitions of like-minded, not like-colored, voters.

Consider the alternatives. We have become a deeply divided society. In the 1960's, we thought inclusion would come if we simply nurtured the hope of unity. Since then we have learned that unity is elusive. A Democratic coalition that is ashamed of its electoral dependency on black voters is fragile and easily fractured by a juggernaut of zealous, angry and highly motivated voters. A Republican victory is precarious when it depends on chasing away 60 percent of the electorate.

Neither politicians nor judges should underestimate the role of race. But we shall never transcend race if we think only in terms of



how many districts are allocated to people of color. This is not about the election of more Democrats or fewer Republicans. America's democratic future depends on turning principles of political equality into reality for all voters, not on turning back the clock. American democracy should be a dynamic method of governance open to all groups of voters rather than a battle for total victory in the control of "winner take all" districts. This means more participatory democracy, not more Democrats, and a commitment to genuine republican government, not just to a Grand Old Party. ■

PHOTOCOPY
PRESERVATION

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for
June 13, 1995

"Good communication liberates us to do our job better."

PHOTOCOPY
PRESERVATION

BY 5-4, JUSTICES CAST DOUBTS ON U.S. PROGRAMS THAT GIVE PREFERENCES BASED ON RACE

The Case That Tested the Law

Congress requires that at least 10 percent of Federal money spent on highway projects go to businesses owned by "disadvantaged individuals." In 1989 an agency solicited bids to build a section of highway in Colorado. Here is how regulations giving preferences to contractors that use minority subcontractors played a role in that bid.

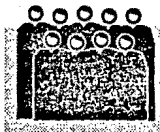
CONTRACTOR CHOSEN The job in the San Juan National Forest in southern Colorado was awarded to Mountain Gravel and Construction.

SUBCONTRACTORS NEEDED

GONZALES CONSTRUCTION WINS Hispanic owned, the company was on a list of disadvantaged businesses. By using Gonzales, Mountain Gravel won a $10,000 Federal bonus payment.

ADARAND CONSTRUCTORS LOSES Adarand, owned by a white man, submitted a bid that was $1,700 lower. Mountain Gravel had no incentive to choose the lower bid.

ADARAND SUES Adarand sued the Federal Government in District Court, challenging the constitutionality of the set-aside program. Adarand lost; it then appealed to the Court of Appeals for the 10th Circuit and lost again.



ADARAND APPEALS TO SUPREME COURT Yesterday the Court ruled 5-4 that Federal programs classifying people by race were presumably unconstitutional without a "compelling governmental interest." The case returns to District Court, where that test will be applied.

The New York Times

DEBATE IS FUELED

Rigorous Criteria Set for Court's Approval of Such Programs

By LINDA GREENHOUSE

WASHINGTON, June 12 — In a decision likely to fuel rather than resolve the debate over affirmative action, the Supreme Court today cast doubt on the constitutionality of Federal programs that award benefits on the basis of race.

Federal programs that classify people by race, even for an ostensibly benign purpose such as expanding opportunities for members of minorities, are presumably unconstitutional, the Court said in a 5-to-4 opinion. Writing for the majority, Justice Sandra Day O'Connor said such programs must be subject to the most searching judicial inquiry and can survive only if they are "narrowly tailored" to accomplish a "compelling governmental interest."

This formidable standard is one that the Court has applied to state affirmative action programs since 1989, when it invalidated a public works program in Richmond in which 30 percent of all contracts had to be set aside for companies owned by members of minorities. The decision today marked an important doctrinal shift for the Court, which until now had given the Federal Government significantly more leeway for its affirmative action efforts. The constitutional guarantee of equal protection should mean the same at all levels of government, Justice O'Connor said.

While the standard the Court adopted today has historically been very difficult to meet, the Court stopped short of declaring unconstitutional either the particular Federal construction program before it today or Federal affirmative action in general.

1 of 3

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NYT 2 of 3

The Court's ruling was greeted with enthusiasm by some conservatives, who saw it as the beginning of the end of the era of affirmative action. Supporters of affirmative action, however, while acknowledging the decision as a setback, declined to see it as a disaster. [Article, Page D25.]

Justice O'Connor's opinion included an important qualification, leaving the door open to the defense of such programs in future cases. "We wish to dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact,'" Justice O'Connor said, quoting from an opinion of the late Justice Thurgood Marshall. She continued: "The unhappy persistence of both the practice and the lingering effects of racial discrimination against minorities in this country is an unfortunate reality, and government is not disqualified from acting in response to it."

Two members of the majority, Justices Antonin Scalia and Clarence Thomas, would have gone considerably further and ruled that affirmative action can never be justified. "Under our Constitution there can be no such thing as either a creditor or a debtor race," Justice Scalia said.

Justice Thomas said: "In my mind, government-sponsored racial discrimination based on benign prejudice is just as noxious as discrimination inspired by malicious prejudice. In each instance, it is racial discrimination, plain and simple."

In declining to adopt those categorical views, the majority opinion, which Chief Justice William H. Rehnquist and Justice Anthony M. Kennedy also joined, left numerous issues to be resolved in future cases. These include the fate of the preference program at issue today, which provides a financial bonus to contractors on Federal highway programs who subcontract part of the work to businesses owned by "socially and economically disadvantaged individuals." The presumption under the law is that blacks and members of other minorities meet that definition, although the presumption may be rebutted in individual cases and white contractors may seek to qualify as "disadvantaged."

The case today was brought by a white contractor who lost a job to a Hispanic-owned company that had submitted a higher bid for a subcontract to build guardrails on a Federal highway in Colorado. Both the Federal District Court in Denver and the United States Court of Appeals for the 10th Circuit, also in Denver, evaluated the program under the relaxed standard the Supreme Court had applied in earlier decisions and upheld it. The lower courts must now re-evaluate the program under the exacting standard the Court set today.

THE SUPREME COURT: Narrowing the Racial Focus

AFFIRMATIVE ACTION

Justices Cast New Doubts On Minority Preferences

The decision today overturned the most recent of the Supreme Court's Federal affirmative action precedents, a 1990 decision called Metro Broadcasting v. F.C.C. that had upheld a Federal affirmative action program designed to increase the number of broadcast licenses awarded to members of minorities. Today's ruling also cast grave doubt on the continued validity of a 1980 decision, Fullilove v. Klutznick, that had sustained a Federal public works program that set aside 10 pecent of the value of contracts for businesses owned by blacks and other minorities.

Despite the qualifications and unanswered questions in the majority opinion, Justice O'Connor's tone was forceful. The two-tiered approach that subjected Federal affirmative action programs to more relaxed judicial review than those of the states was inconsistent with the "basic principle" that the Constitution's guarantees of equal protection "protect *persons*, not *groups*," Justice O'Connor said.

"All governmental action based on race," no matter by what level of government or for what purpose, must be subject to the most searching judicial scrutiny, she said, adding: "Whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection."

The decision, Adarand Constructors v. Peña, No. 93-1841, is certain to encourage legal challenges to a range of Federal affirmative action programs. At the same time, the issue is being vigorously debated in Congress and in the White House, with the Clinton Administration now in the midst of a sweeping review of Federal racial preference programs. By refusing to foreclose affirmative action as a constitutional option, the Court has done little to relieve President Clinton, as well as other elected officials now confronting the issue, of the need to make and defend their own policy choices.

Federal programs are ordered to meet more stringent state requirements.

Affirmative action is also the subject of vigorous debate in the states. Last month, Gov. Pete Wilson of California ordered an end to all state affirmative action programs not required by law or by a court decree. Next year, Californians will vote on a ballot initiative to end affirmative action in state hiring and higher education.

Justice O'Connor's opinion did not precisely define the essential terms, "narrowly tailored" and "compelling interest," by which courts are to judge whether a challenged affirmative action survives the required "strict scrutiny." The opinion referred only to definitions that "this Court has set out in previous cases."

The terms are familiar in the jargon-filled discourse of equal protection, however. In earlier cases, the Court has insisted on evidence rather than generalized assertions about the history of racial discrimination

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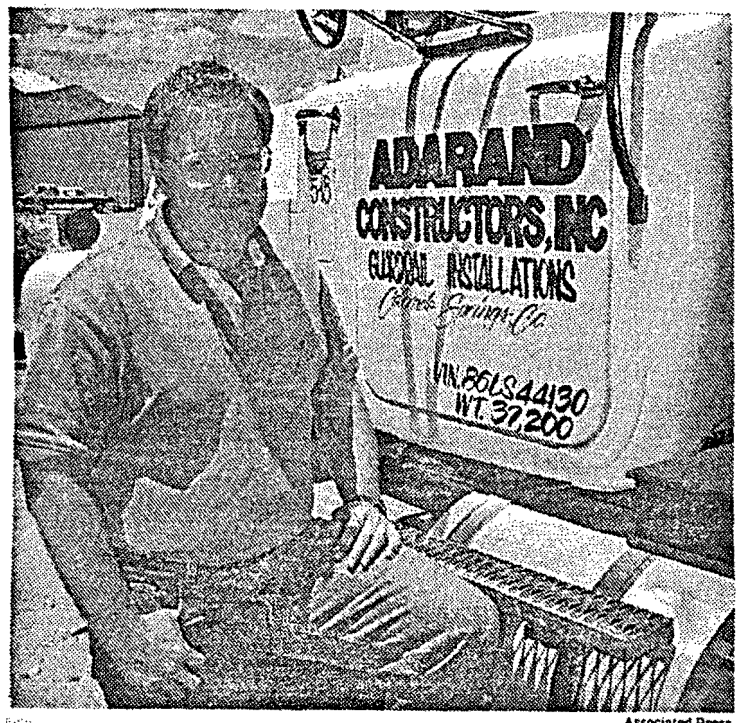
to be overcome. The Court has also asked whether equivalently helpful results could have been achieved through alternative programs that did not classify people by race, and has sought evidence that the program will not last indefinitely.

There were three dissenting opinions today, filed by Justices John Paul Stevens, David H. Souter and Ruth Bader Ginsburg. Justice Stephen G. Breyer, who also dissented, joined Justices Souter's and Ginsburg's opinions.

The position of Justice Stevens was perhaps the most interesting on the Court, because he was a dissenter from the 1980 decision that upheld the Federal public works set-aside program. Justice O'Connor, who was not on the Court in 1980, quoted at length in her majority opinion today from Justice Stevens's dissent, in which he said that the racial classifications the Court upheld in the Fullilove case "can only exacerbate rather than reduce racial prejudice" and "will delay the time when race will become a truly irrelevant, or at least insignificant, factor."

It is a measure of the Court's shift to the right in the intervening 15 years, and of the 75-year-old Justice's consequent journey from the Court's center to its liberal wing, that found Justice Stevens in dissent today, calling for adherence to precedent. If the rigidly race-conscious program the Court upheld in 1980 was constitutional, he said, "it must follow as night follows the day" that the more flexible program at issue today was constitutional as well.

Justice Stevens also voted with the majority in the 1989 decision, City of Richmond v. Croson, that held that state and local affirmative action programs must be subject to strict judicial scrutiny. Today, he said there were important reasons for Federal programs to receive more deference from the Court. "Federal affirmative-action programs represent the will of our entire Nation's elected representatives," he said, "whereas a state or local program may have an impact on nonresident entities who played no part in the decision to enact it."



Associated Press

Randy Pech, who owns Adarand Constructors Inc., filed a suit when a contract went to a minority company even though his bid was lower. The Supreme Court yesterday sent the case back to the appellate court.

Justice Stevens said that the majority today had overlooked the difference between invidious discrimination and efforts to "foster equality in society" through race-based preferences. "There is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that seeks to eradicate racial subordination," he said.

Justice Stevens said the Court's search for "consistency" on racial classifications "would treat a Dixiecrat Senator's decision to vote against Thurgood Marshall's confirmation in order to keep African Americans off the Supreme Court on a par with President Johnson's evaluation of his nominee's race as a positive factor."

Justice Souter, in his dissenting opinion, suggested that at the end of the day, Federal affirmative action programs might be upheld even under the majority's analysis. "Of course there will be some interpretive forks in the road before the significance of strict scrutiny for congressional remedial statutes becomes entirely clear," he said.

New York Times

REACTION

5-4 Decision Buoys Some; For Others, It's a Setback

By TAMAR LEWIN

Some conservatives hailed the Supreme Court's ruling yesterday in Adarand v. Pena as marking the end of an era in affirmative action — or at least the beginning of the end.

"The era of racial preferences is finally coming to an end," said Clint Bolick, litigation director at the Institute for Justice, whose offices are in Washington. "The Court said it had erred in creating one standard for government, another for everyone else. It's really the Court saying, 'Enough is enough.' "

Others who oppose racial classifications were more cautious, saying it remained unclear just what kind of affirmative action programs the High Court would uphold.

Supporters of affirmative action had a far less drastic reading of yesterday's decision, which require that the Federal Government's affirmative action programs meet the same "strict scrutiny" standard as state or local programs.

"It's a setback, but not a disaster," said Penda Hair, senior attorney at the NAACP Legal Defense and Educational Fund Inc. in Washington. "It does put these programs under a cloud of uncertainty, but that's not fatal. Our review shows that Federal contracting programs would survive strict scrutiny, because there's a very compelling reason for them. Right now, women- and minority-owned businesses are getting less than 6 percent of all Federal contracts."

Ms. Hair said that Justice Sandra Day O'Connor, author of the majority opinion in the 5-to-4 decision, "specifically left the door open, talking about the unhappy persistence of racial discrimination and saying that the Government's not disqualified from responding to it."

Adarand Constructors, a Colorado company, went to court to challenge a program that gives Federal highway construction contractors a 1.5 percent bonus for using minority-owned subcontractors. Randy Pech, the owner of the company, contended that the program amounted to reverse discrimination.

The Court did not strike down the program, but it sent the case back to a lower court for reconsideration in light of the new standard.

"Randy was very pleased about the decision, even though when he asked me what it meant, I told him it means we go back to court," said William Perry Pendley, the lawyer for Adarand. "If there's any pot of gold at the end of the rainbow for him, it's that for the rest of his life he'll be able to compete for contracts on a fair basis."

The Clinton Administration said yesterday that it did not see the Adarand decision as killing off affirmative action or changing the direction of the Administration's continuing review of affirmative action programs.

"We'd already asking many of the questions the Court focused on, such as looking for race-neutral alternatives," said a senior White house official, who added that with the tighter legal standard, the Government might have to defend its programs with detailed documentation of past discrimination.

That is what state and local governments had to do after Croson v. Richmond, the Supreme Court's 1989 decision striking down a set-aside in Richmond for contractors because it did not meet the "strict scrutiny" standard.

The Federal Government has more than 160 different statutes, executive orders and regulations aimed at helping women and minority groups. Representative Charles T. Canady, Republican of Florida, has said he plans to introduce legislation later this month forbidding the Government from offering any benefits on the basis of race or gender.

"I think most of the Government's programs have numbers, goals or timetables that can lead to quotas, which are preferences," Mr. Canady said today. "The Court has put a heavy burden on the Government to justify any racial classifications."

Ms. Hair disagreed. "If you look at the list of 160 programs, I'd say it's less than 25 percent of the programs that would be affected," she said. "Most of them aren't race or gender-based programs, but involve recruiting, or outreach or very flexible goals that wouldn't be touched."

Others said the fate of the Government's affirmative action programs depends in part on how hard the Administration defends them.

John F. Robinson, president of the National Minority Business Council, said: "I'm hoping the President will instruct the Government to defend these programs, to do whatever it takes to show how important and needed these programs are, so they can meet the Supreme Court standard. Otherwise, they'll die."

THE NEW YORK TIMES **NATIONAL** TUESDAY, JUNE 13, 1995

Excerpts From the Decision on Justifying Affirmative Action Programs

By The New York Times

WASHINGTON, June 12 — Following are excerpts from the Supreme Court decision today in Adarand Constructors v. Pena, holding that affirmative action programs must be subject to the most searching constitutional scrutiny. The vote was 5 to 4. Justice Sandra Day O'Connor wrote the majority opinion, which Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy, Antonin Scalia and Clarence Thomas joined. Justices Scalia and Thomas wrote concurring opinions as well. Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer dissented. All except Justice Breyer filed dissenting opinions.

FROM THE DECISION
By Justice O'Connor

Petitioner Adarand Constructors Inc. claims that the Federal Government's practice of giving general contractors on Government projects a financial incentive to hire subcontractors controlled by "socially and economically disadvantaged individuals," and in particular, the Government's use of race-based presumptions in identifying such individuals, violates the equal protection component of the Fifth Amendment's Due Process Clause. The Court of Appeals rejected Adarand's claim. We conclude, however, that courts should analyze cases of this kind under a different standard of review than the one the Court of Appeals applied. We therefore vacate the Court of Appeals' judgment and remand the case for further proceedings. . . .

The contract giving rise to the dispute in this case came about as a result of the Surface Transportation and Uniform Relocation Assistance Act of 1987, a D.O.T. appropriations measure. Section 106(c)(1) of STURAA provides that "not less than 10 percent" of the appropriated funds "shall be expended with small-business concerns owned and controlled by socially and economically disadvantaged individuals." STURAA adopts the Small Business Act's definition of "socially and economically disadvantaged individual," including the applicable race-based presumptions, and adds that "women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection." STURAA also requires the Secretary of Transportation to establish "minimum uniform criteria for state governments to use in certifying whether a concern qualifies for purposes of this subsection." The Secretary has done so in 49 CFR pt. 23, subpt. D (1994). Those regulations say that the certifying authority should presume both social and economic disadvantage (i.e., eligibility to participate) if the applicant belongs to certain racial groups, or is a woman. . . .

Adarand's claim arises under the Fifth Amendment to the Constitution, which provides that "No person shall . . . be deprived of life, liberty or property, without due process of law." Although this Court has always understood that clause to provide some measure of protection against arbitrary treatment by the Federal Government, it is not as explicit a guarantee of equal treatment as the Fourteenth Amendment, which provides that "No *state* shall . . . deny to any person within its jurisdiction the equal protection of the laws" (emphasis added). Our cases have accorded varying degrees of significance to the difference in the language of those two clauses. We think it necessary to revisit the issue here. . . .

The Court's failure to produce a majority opinion in Bakke v. Regents of the University of California 1978, Fullilove v. Klutznick 1980, and Wygant v. Jackson Board of Education 1986 left unresolved the proper analysis for remedial race-based governmental action. . . .

The Court resolved the issue, at least in part, in 1989. Richmond v. J. A. Croson Co. concerned a city's determination that 30 percent of its contracting work should go to minority-owned businesses. A majority of the Court in Croson held that "the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification" and that the single standard of review for racial classifications should be "strict scrutiny." . . .

With Croson, the Court finally agreed that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments. But Croson of course had no occasion to declare what standard of review the Fifth Amendment requires for such action taken by the Federal Government. Croson observed simply that the Court's "treatment of an exercise of Congressional power in Fullilove cannot be dispositive here," because Croson's facts did not implicate Congress's broad power under s5 of the Fourteenth Amendment. . . .

Despite lingering uncertainty in the details, however, the Court's cases through Croson had established three general propositions with respect to governmental racial classifications. First, skepticism: '"[a]ny preference based on racial or ethnic criteria must necessarily receive a most searching examination,'" Wygant, (plurality opinion of Powell, J.); Fullilove, (opinion of Burger, C. J.); . . .

Second, consistency: "the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification," Croson, (plurality opinion); i.e., all racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized. And third, congruence: "[e]qual protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." Taken together, these three propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny. . . .

A year later, however, the Court took a surprising turn. Metro Broadcasting Inc. v. F.C.C. involved a Fifth Amendment challenge to two race-based policies of the Federal Communications Commission. In Metro Broadcasting, the Court repudiated the long-held notion that "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government" than it does on a state to afford equal protection of the laws. It did so by holding that "benign" Federal racial classifications need only satisfy intermediate scrutiny, even though Croson had recently concluded that such classifications enacted by a state must satisfy strict scrutiny. "[B]enign" Federal racial classifications, the Court said, "even if those measures are not 'remedial' in the sense of being designed to compensate victims of past governmental or societal discrimination, are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives."

By adopting intermediate scrutiny as the standard of review for Congressionally mandated "benign" racial classifications, Metro Broadcasting departed from prior cases in two significant respects. First, it

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> *"To pursue the concept of racial entitlement even for the most admirable and benign of purposes is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred."*
>
> **JUSTICE ANTONIN SCALIA**
>
> **Concurring Opinion**

turned its back on Croson's explanation of why strict scrutiny of all governmental racial classifications is essential:

"Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics. Indeed, the purpose of strict scrutiny is to 'smoke out' illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen 'fit' this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." (plurality opinion of O'CONNOR, J.).

We adhere to that view today, despite the surface appeal of holding "benign" racial classifications to a lower standard, because "it may not always be clear that a so-called preference is in fact benign." Bakke, (opinion of Powell, J.). "[M]ore than good motives should be required when government seeks to allocate its resources by way of an explicit racial classification system." Days, Fullilove, 96 Yale L. J. 453, 485 (1987).

Second, Metro Broadcasting squarely rejected one of the three propositions established by the Court's earlier equal protection cases, namely, congruence between the standards applicable to Federal and state racial classifications, and in so doing also undermined the other two — skepticism of all racial classifications, and consistency of treatment irrespective of the race of the burdened or benefited group. Under Metro Broadcasting, certain racial classifications ("benign" ones enacted by the Federal Government) should be treated less skeptically than others; and the race of the benefited group is critical to the determination of which standard of review to apply. Metro Broadcasting was thus a significant departure from much of what had come before it.

The three propositions undermined by Metro Broadcasting all derive from the basic principle that the Fifth and Fourteenth Amendments to the Constitution protect persons, not groups. It follows from that principle that all governmental action based on race a group classification long recognized as "in most circumstances irrelevant and therefore prohibited" should be subjected to detailed judicial inquiry to insure that the personal right to equal protection of the laws has not been infringed. These ideas have long been central to this Court's understanding of equal protection, and holding "benign" state and Federal racial classifications to different standards does not square with them. "[A] free people whose institutions are founded upon the doctrine of equality" should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons. Accordingly, we hold today that all racial classifications, imposed by whatever Federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests. To the extent that Metro Broadcasting is inconsistent with that holding, it is overruled. . . .

By requiring strict scrutiny of racial classifications, we require courts to make sure that a governmental classification based on race, which "so seldom provide[s] a relevant basis for disparate treatment" Fullilove (STEVENS, J., dissenting), is legitimate, before permitting unequal treatment based on race to proceed. . . .

The principle of consistency simply means that whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection. It says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny. The principle of consistency explains the circumstances in which the injury requiring strict scrutiny occurs. The application of strict scrutiny, in turn, determines whether a compelling governmental interest justifies the infliction of that injury.

Consistency does recognize that any individual suffers an injury when he or she is disadvantaged by the government because of his or her race, whatever that race may be.

JUSTICE STEVENS also claims that we have ignored any difference between Federal and state legislatures. But requiring that Congress, like the states, enact racial classifications only when doing so is necessary to further a "compelling interest" does not contravene any principle of appropriate respect for a co-equal branch of the Government. It is true that various members of this Court have taken different views of the authority s5 of the Fourteenth Amendment confers upon Congress to deal with the problem of racial discrimination, and the extent to which courts should defer to Congress's exercise of that authority. We need not, and do not, address these differences today. . . .

We think that requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications that kind of detailed examination, both as to ends and as to means. . . .

Finally, we wish to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact." Fullilove (Marshall, J., concurring in judgment). The 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. . . .

When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this Court has set out in previous cases.

Because our decision today alters the playing field in some important respects, we think it best to remand the case to the lower courts for further consideration in light of the principles we have announced. . . .

The question whether any of the ways in which the Government uses subcontractor compensation clauses can survive strict scrutiny, and any relevance distinctions such as these may have to that question, should be addressed in the first instance by the lower courts.

BY JUSTICE SCALIA, Concurring

I join the opinion of the Court, except Part III-C, and except insofar as it may be inconsistent with the following: In my view, government can never have a "compelling interest" in discriminating on the basis of race in order to "make up" for past racial discrimination in the opposite direction. Individuals who have been wronged by unlawful racial discrimination should be made whole, but under our Constitution there can be no such thing as either a creditor or a debtor race. . . . To pursue the concept of racial entitlement even for the most admirable and benign of purposes is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.

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BY JUSTICE THOMAS, Concurring

I agree with the majority's conclusion that strict scrutiny applies to all government classifications based on race. I write separately, however, to express my disagreement with the premise underlying JUSTICE STEVENS's and JUSTICE GINSBURG's dissents: that there is a racial paternalism exception to the principle of equal protection. I believe that there is a "moral [and] constitutional equivalence" between laws designed to subjugate a race and those that distribute benefits on the basis of race in order to foster some current notion of equality. Government cannot make us equal; it can only recognize, respect and protect us as equal before the law.

> *"Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice."*
>
> **JUSTICE RUTH BADER GINSBURG**
> **Dissenting Opinion**

That these programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution, the Government may not make distinctions on the basis of race. As far as the Constitution is concerned, it is irrelevant whether a government's racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help those thought to be disadvantaged. There can be no doubt that the paternalism that appears to lie at the heart of this program is at war with the principle of inherent equality that underlies and infuses our Constitution. . . .

So-called "benign" discrimination teaches many that because of chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence. Inevitably, such programs engender attitudes of superiority or, alternatively, provoke resentment among those who believe that they have been wronged by the Government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are "entitled" to preferences. . . .

FROM THE DISSENT By Justice Stevens, With whom Justice Ginsburg joins

Instead of deciding this case in accordance with controlling precedent, the Court today delivers a disconcerting lecture about the evils of governmental racial classifications. For its text the Court has selected three propositions, represented by the bywords "skepticism," "consistency" and "congruence." . . .

The Court's concept of skepticism is, at least in principle, a good statement of law and of common sense. Undoubtedly, a court should be wary of a governmental decision that relies upon a racial classification. "Because racial characteristics so seldom provide a relevant basis for disparate treatment, and because classifications based on race are potentially so harmful to the entire body politic," a reviewing court must satisfy itself that the reasons for any such classification are "clearly identified and unquestionably legitimate." Fullilove v. Klutznick (1980). This principle is explicit in Chief Justice Burger's opinion, in Justice Powell's concurrence and in my dissent in Fullilove. I welcome its renewed endorsement by the Court today. But, as the opinions in Fullilove demonstrate, substantial agreement on the standard to be applied in deciding difficult cases does not necessarily lead to agreement on how those cases actually should or will be resolved. In my judgment, because uniform standards are often anything but uniform, we should evaluate the Court's comments on "consistency," "congruence" and stare decisis with the same type of skepticism that the Court advocates for the underlying issue.

The Court's concept of "consistency" assumes that there is no significant difference between a decision by the majority to impose a special burden on the members of a minority race and a decision by the majority to provide a benefit to certain members of that minority notwithstanding its incidental burden on some members of the majority. In my opinion that assumption is untenable. There is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that seeks to eradicate racial subordination. Invidious discrimination is an engine of oppression, subjugating a disfavored group to enhance or maintain the power of the majority. Remedial race-based preferences reflect the opposite impulse: a desire to foster equality in society. No sensible conception of the Government's constitutional obligation to "govern impartially" should ignore this distinction. To illustrate the point, consider our cases addressing the Federal Government's discrimination against Japanese-Americans during World War II, Hirabayashi v. United States and Korematsu v. United States. The discrimination at issue in those cases was invidious because the Government imposed special burdens, a curfew and exclusion from certain areas on the West Coast, on the members of a minority class defined by racial and ethnic characteristics. Members of the same racially defined class exhibited exceptional heroism in the service of our country during that war. Now suppose Congress decided to reward that service with a Federal program that gave all Japanese-American veterans an extraordinary preference in Government employment. If Congress had done so, the same racial characteristics that motivated the discriminatory burdens in Hirabayashi and Korematsu would have defined the preferred class of veterans. Nevertheless, "consistency" surely would not require us to describe the incidental burden on everyone else in the country as "odious" or "invidious" as those terms were used in those cases. We should reject a concept of "consistency" that would view the special preferences that the National Government has provided to Native Americans since 1834 as comparable to the official discrimination against African-Americans that was prevalent for much of our history.

The consistency that the Court espouses would disregard the difference between a "No Trespassing" sign and a welcome mat. . . . It would equate a law that made black citizens ineligible for military service with a program aimed at recruiting black soldiers. An attempt by the majority to exclude members of a minority race from a regulated market is fundamentally different from a subsidy that enables a relatively small group of newcomers to enter that market. An interest in "consistency" does not justify treating differences as though they were similarities.

The Court's explanation for treating dissimilar race-based decisions as though they were equally objectionable is a supposed inability to differentiate between "invidious" and "benign" discrimination. But the term "affirmative action" is common and well understood. Its presence in everyday parlance shows that people understand the difference between good intentions and bad. As with any legal concept, some cases may be difficult to classify, (footnote 4) but our equal protection jurisprudence has identified a critical difference between state action that imposes burdens on a disfavored few and state action that benefits the few "in spite of" its adverse effects on the many. . . .

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As a matter of constitutional and democratic principle, a decision by representatives of the majority to discriminate against the members of a minority race is fundamentally different from those same representatives' decision to impose incidental costs on the majority of their constituents in order to provide a benefit to a disadvantaged minority. In his concurrence, JUSTICE THOMAS argues that the most significant cost associated with an affirmative action program is its adverse stigmatic effect on its intended beneficiaries. Although I agree that this cost may be more significant than many people realize, I do not think it applies to the facts of this case. First, this is not an argument that petitioner Adarand, a white-owned business, has standing to advance. No beneficiaries of the specific program under attack today have challenged its constitutionality, perhaps because they do not find the preferences stigmatizing, or perhaps because their ability to opt out of the program provides them all the relief they would need. Second, even if the petitioner in this case were a minority-owned business challenging the stigmatizing effect of this program, I would not find JUSTICE THOMAS's extreme proposition that there is a moral and constitutional equivalence between an attempt to subjugate and an attempt to redress the effects of a caste system at all persuasive. It is one thing to question the wisdom of affirmative action programs: there are many responsible arguments against them, including the one based upon stigma, that Congress might find persuasive when it decides whether to enact or retain race-based preferences. It is another thing altogether to equate the many well-meaning and intelligent lawmakers and their constituents, whether members of majority or minority races, who have supported affirmative action over the years to segregationists and bigots. . . .

BY JUSTICE GINSBURG, Dissenting

The divisions in this difficult case should not obscure the Court's recognition of the persistence of racial inequality and a majority's acknowledgment of Congress's authority to act affirmatively, not only to end discrimination, but also to counteract discrimination's lingering effects. Those effects, reflective of a system of racial caste only recently ended, are evident in our work places, markets and neighborhoods. Job applicants with identical résumés, qualifications and interview styles still experience different receptions, depending on their race. White and African-American consumers still encounter different deals. People of color looking for housing still face discriminatory treatment by landlords, real estate agents and mortgage lenders. Minority entrepreneurs sometimes fail to gain contracts though they are the low bidders, and they are sometimes refused work even after winning contracts. Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice. Given this history and its practical consequences, Congress surely can conclude that a carefully designed affirmative action program may help to realize, finally, the "equal protection of the laws" the Fourteenth Amendment has promised since 1868.

Leading the News

Affirmative Action

SUPREME COURT LIMITS FEDERAL POWER TO IMPLEMENT AFFIRMATIVE ACTION PLANS

The U.S. Supreme Court June 12 placed significant limits on the federal government's authority to implement programs that favor racial minorities (*Adarand Constructors Inc. v. Pena*, US SupCt, No. 93-1841, 6/12/95).

Federal affirmative action programs must meet the same stringent requirements applied to state and local programs, Justice Sandra Day O'Connor ruled in the most closely watched civil rights case of the term. The court split 5 - 4, with Chief Justice William Rehnquist and Justices Antonin Scalia, Anthony Kennedy, and Clarence Thomas joining O'Connor in the majority.

The decision vacated a lower court ruling that upheld a federal statute giving preference to minority-owned highway construction subcontractors. It reinstated a reverse discrimination challenge to the program filed by Adarand Constructors Inc., a white-owned Colorado company that lost a construction project to a minority-owned contractor despite being the lowest bidder.

The decision struck down most of the Supreme Court's 1990 decision in *Metro Broadcasting Inc. v. Federal Communications Commission*, which applied the more lenient standard of "intermediate scrutiny" to federal minority preference programs. With the *Adarand* ruling, the court made federal programs subject to "strict scrutiny"—they must serve a compelling governmental interest and they must be narrowly tailored.

The Fifth and Fourteenth Amendments to the Constitution "protect *persons*, not *groups*," O'Connor wrote. It follows that all governmental action based on race "should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed," she said.

A nation founded on the doctrine of equality "should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons." The evil of federal laws that target people of a particular race can be seen in the World War II laws that allowed the incarceration of Japanese-Americans, she said. O'Connor acknowledged that those laws were upheld by the Supreme Court in the 1940s, at least one under a standard of "most rigid scrutiny."

End Of Affirmative Action

In dissent, Justice John Paul Stevens said the majority had deviated from controlling precedent and had instead delivered "a disconcerting lecture about the evils of governmental racial classifications." The majority's insistence on equal treatment for all persons disregards "the difference between a 'No Trespassing' sign and a welcome mat," he said.

"It would treat a Dixiecrat Senator's decision to vote against Thurgood Marshall's confirmation in order to keep African Americans off the Supreme Court as on a par with President Johnson's evaluation of his nominee's race as a positive factor," Stevens said. "It would equate a law that made black citizens ineligible for military service with a program aimed at recruiting black soldiers."

Stevens is the only justice remaining on the court who approved the racial-preference program at issue in *Metro Broadcasting*. Rehnquist, Scalia, O'Connor, and Kennedy all dissented in *Metro Broadcasting*, arguing that no special consideration should be given to race-conscious measures simply because they are federal rather than state or local.

Thomas, already on record against affirmative action before he joined the court in 1992, cast the fifth and deciding vote in *Adarand*. Remedial racial preferences are "racial paternalism" that "can be as poisonous and pernicious as any other form of discrimination," Thomas said in a separate statement.

In another separate statement, Scalia said the government "can never have a 'compelling interest' in discriminating on the basis of race in order to 'make up' for past discrimination."

This case spells the end of affirmative action, said William Perry Pendley, the attorney who represents Adarand. The strict scrutiny test made applicable today by the court has never been met in the past, he told BNA. Pendley, of the Mountain States Legal Foundation, Denver, said it is very hard for the government to show that a race-conscious remedy is narrowly tailored or that non-racial classifications won't work as well, he said.

Tim D. Word, president of the Associated General Contractors, praised the court for its "strong stand against reverse discrimination." The construction industry has "borne the brunt of the special preference procurement burden," he said.

In 1994, according to Word, nine military bases set aside 100 percent of their construction programs "without any semblance of regard for com-

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petition, or for the fact that setting aside contracts for some citizens who claim disadvantage creates a new class of disadvantaged." Twenty other military bases set aside more than 50 percent of their construction work last year, he said.

"It is ironic that the unfairness of reverse discrimination special preferences were inflicted on construction," Word said, "because government is obliged to avail of open competitive bidding for government construction contracts. Sealed bids, publicly opened and awarded to the lowest responsive and responsible bidder, are a guarantee against *any* form of discrimination."

Extends Croson

The program at issue in the *Adarand* case gives a bonus to prime contractors in federal highway construction business if they utilize subcontractors defined as socially or economically "disadvantaged business enterprises." The Small Business Act specifies that small businesses owned and operated by minorities are presumably disadvantaged.

When it lost the contract, Adarand sued the federal government, claiming that the minority preference provision violated the equal protection component of the Fifth Amendment's Due Process clause. The U.S. Court of Appeals for the Tenth Circuit rejected Adarand's claim. The Tenth Circuit relied on *Metro Broadcasting*, which held that race-conscious measures adopted by Congress are entitled to greater deference than state or local programs.

In the majority opinion, O'Connor traced the evolution of standards applied by the court for analyzing race-conscious remedial legislation. With regard to state and local programs challenged under the Equal Protection clause of the Fourteenth Amendment, the court did not definitively resolve the issue until *Richmond v. J.A. Croson Co.* in 1989, she said.

In *Croson*, the court held that a single standard of review applies to race-conscious state or local programs, whether they burden or benefit the particular group, O'Connor said. That standard is "strict scrutiny," she said.

Preferences Not Always 'Benign'

A year later, the court "took a surprising turn" with *Metro Broadcasting*, she said. *Metro Broadcasting* involved a Fifth Amendment challenge to Federal Communication Commission race-based rules aimed at promoting diversity in broadcasting, she said. The majority held that benign racial classifications—even those aimed at remedying societal rather than actual instances of discrimination—need only meet an "intermediate scrutiny" standard, she said.

Metro Broadcasting turned its back on *Croson*, she said. *Croson* called for strict scrutiny precisely because there is no way of determining whether a classification is benign or remedial or in fact motivated by racism, she said. Strict scrutiny is designed to "smoke out" illegitimate uses of race, she said. Despite the surface appeal of holding "benign" racial classifications to a lower standard, it may not always be clear that a so-called preference is benign, she said.

Metro Broadcasting also ignored other principles established by this court's earlier equal protection cases: congruence between the standards applicable to federal and state racial classifications, skepticism about any racial classification, and consistency of treatment irrespective of race, she said.

Contrary to Justice Stevens' dissent, strict scrutiny does not treat dissimilar race-based decisions as equally objectionable, she said. Strict scrutiny "evaluates carefully all governmental race-based decisions *in order to decide* which are constitutionally objectionable and which are not," she said.

Racial characteristics seldom provide a relevant basis for disparate treatment, she said. Since such classifications are potentially so harmful, the reasons for such classifications must be clearly identified and unquestionably legitimate, she said. "We think that requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications that kind of detailed examination, both as to ends and as to means."

Justice David Souter issued a separate dissent. He argued that the court should not have reached the question of whether strict scrutiny or some lesser standard is applicable to this program. "When the extirpation of lingering discriminatory effects is thought to require a catch-up mechanism," like the inducements under the statute here, "the result may be that some members of the historically favored race are hurt," regardless of how innocent they may be, Souter added.

Justices Ruth Bader Ginsburg and Stephen Breyer joined Souter's opinion. Ginsburg, the only dissenting justice to join Stevens' opinion, also authored a separate dissent. "The divisions in this difficult case should not obscure the court's recognition of the persistence of racial inequality and a majority's acknowledgment of Congress' authority to act affirmatively, not only to end discrimination, but also to counteract discrimination's lingering effects," she said. Breyer also joined Ginsburg's separate opinion.

(Decision appears in Section E).

—By *Susan R. Kneller*

End of Section

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THE WASHINGTON POST TUESDAY, JUNE 13, 1995

Court Toughens Standard for Federal Affirmative Action

By Joan Biskupic
Washington Post Staff Writer

The Supreme Court yesterday jeopardized a broad range of federal affirmative action programs with a ruling that set a tough new standard for justifying policies designed to benefit blacks, Hispanics and other minorities.

The 5 to 4 ruling in a Colorado highway contracting case is unlikely to resolve the growing public controversy over whether set-asides, hiring goals and scholarship programs for minorities are justified by the experience of discrimination or constitute unfair preferences causing "reverse discrimination" against whites.

Instead, yesterday's decision sets the stage for a multitude of court challenges against federal programs for minorities, and it comes at a time when affirmative action is becoming a major point of contention between President Clinton and his likely Republican challengers.

In refusing for the first time to uphold a federal affirmative action policy, the court said that such race-based policies enacted by Congress must now survive the same judicial standard that state and local programs have faced since 1989. Known as "strict scrutiny," it is the toughest judicial standard to meet. To survive, a program must serve a compelling governmental interest and must be narrowly tailored to address identifiable past discrimination.

"Government may treat people differently because of their race only for the most compelling reasons," Justice Sandra Day O'Connor wrote for the court. She said the Constitution's guarantee of equal protection of the laws protects "persons, not groups" of people.

"It follows from that principle that all governmental action based on race—a *group* classification long recognized as . . . irrelevant and therefore prohibited—should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed."

The court offered no examples of federal permissible policies and generally the majority denounced all government distinctions based on race. The ruling in *Adarand Constructors v. Pena*, however, does not strike down any specific federal policies, not even the Small Business Administration (SBA) contracting program that was the subject of the case. Nor does it directly address affirmative action programs aimed at women. And, the court left the door slightly open for justifying some affirmative action as a remedy to cases of pervasive and systematic discrimination.

Because the ruling "alters the playing field in some important respects," O'Connor said that lower courts should now reexamine the SBA affirmative action program under the new standard.

"I don't think it's the end of all affirmative action programs, by a long shot," said Steven Shapiro, legal director for the American Civil Liberties Union. "My concern is that in the hands of an unsympathetic judiciary and in this political climate, many programs will not survive."

William Perry Pendley, who represented the white highway contractor in the case, said, "I don't know of any federal programs that can survive this judicial scrutiny, given how they have been piggybacked on each other . . . with few or no findings of past discrimination or an examination of where the problem really is."

He said he thinks the highway program is "a dead duck."

The original lawsuit in the case was brought by Adarand Constructors, a white-owned, Colorado Springs-based firm that turned in a lower bid but still lost out on a guardrail project in the San Juan National Forest to a Hispanic-owned company. The contract was decided on the basis of an SBA policy that, according to the court, "presumes" that blacks, Hispanics, American Indians and Asians are "socially disadvantaged." Acting on that policy, the Department of Transportation gives money bonuses to government contractors that subcontract at least 10 percent of their work to disadvantaged firms.

Adarand sued in 1990 contending that the subcontracting policy violated constitutional guarantees of equal protection and due process. Adarand lost in lower courts, but yesterday the Supreme Court said those courts were too lenient in assessing the government race-conscious policy.

Federal affirmative action blossomed in the 1960s and 1970s as federal lawmakers tried to compensate for the remnants of segregation and attitudes that made it hard for minority-owned businesses to prosper. Virtually every federal agency uses some sort of affirmative action, whether in grants and procurement, or contracting and hiring. An estimated $10 billion a year in contracting alone is at stake.

Yesterday's decision in the Adarand case overruled a 1990 decision, narrowly won by now-retired Justice William J. Brennan Jr., that upheld an effort to increase black ownership of broadcast licenses. That case said congressionally enacted policies are entitled to a more lenient equal-protection standard.

The Adarand decision highlighted a change in the court's majority over the past five years, which has meant a new court suspicion of government policies giving special advantage to minorities and an emerging desire for race neutrality.

This view was also revealed in the court's school desegregation ruling yesterday.

The strength of this majority will be further tested when the court rules on the constitutionality of voting districts drawn to increase the representation of minorities in Congress. A decision is expected within weeks.

Joining O'Connor in the majority in the Adarand case were Chief Justice William H. Rehnquist and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas.

Thomas, the court's only black justice and one of its most vocal opponents of race-based policies, added in a separate statement that while financial incentives to hire minority subcontractors may be motivated by good intentions, "the paternalism that appears to lie at the heart of this program is at war with the principle of inherent equality that underlies and infuses our Constitution."

Scalia also wrote separately to say affirmative action could never constitutionally "make up" for past racial discrimination. "[U]nder our Constitution there can be no such thing as either a creditor or a debtor race."

THE WASHINGTON POST TUESDAY, JUNE 13, 1995

Ruling May Sharpen Debate on Preference Policies

By John F. Harris and Kevin Merida
Washington Post Staff Writers

The Supreme Court's ruling in a key affirmative action case yesterday increases pressure on President Clinton to present his views on the issue, but administration sources said yesterday it also may point him toward a middle ground.

Clinton has refrained from clarifying his views on the issue for the past four months while his administration carries out a government-wide review of affirmative action. And while the precise implications of the court's 5 to 4 decision on a case dealing with minority set-asides in federal contracting remain murky, some people within and outside the administration say the justices may have offered a sketchy map that Clinton can follow as he articulates which programs are defensible and why.

At the same time, the administration sees political cover. When Clinton began his review in February, many leaders of traditionally Democratic civil rights constituencies complained that it was a political exercise—a calculated retreat from minority concerns to woo white voters.

Now, administration officials said, they can more convincingly argue that their review was necessary—even though the administration had supported the set-aside program in question—and Clinton could argue it was simply following the same reevaluation that is also taking place in the legal system.

The Supreme Court ruled that the federal government must meet a tougher standard—demonstrating past discrimination—before it implements an affirmative action program. Nonetheless, some administration officials believe, the decision wasn't necessarily all bad news for affirmative action proponents.

That's because several justices in opinions seemed to uphold the basic defensibility of affirmative action as a remedy. Only two seemed to embrace the philosophy of Republican presidential candidates such as California Gov. Pete Wilson and Sen. Phil Gramm (Tex.) that affirmative action is another name for reverse discrimination.

"This could create both a floor and ceiling," said one administration official, who discerned the outlines of a "broad middle" in yesterday's various opinions.

But Rep. Kweisi Mfume (D-Md.), former chairman of the Congressional Black Caucus, said the ruling should not be viewed as a political escape hatch for Clinton and others. "I don't think the White House has any cover in this," he said, adding that the president should "take the time to delineate a course of action."

Though he acknowledged the ruling was a setback for proponents, Mfume said, "I don't think this is the time to bow your head and go running off into the darkness."

But yesterday's ruling buoyed the hopes of those who have been pushing to get rid of programs that have survived for three decades.

"The Supreme Court's decision . . . is one more reason for the federal government to get out of the race-preference business," said Senate Majority Leader Robert J. Dole (R-Kan.). "The bottom line is that the federal government should work to bring all Americans of all backgrounds together, not divide us by race."

"This decision hurts," acknowledged Jesse L. Jackson. "It's a major setback."

Jackson, a two-time Democratic presidential contender who has talked of mounting an independent campaign next year, called on Clinton to exert leadership in the wake of what he called a "racist" ruling. "We need a major address," he said, "driven by moral convictions and not by polls and the flow of the wind to get the country back on the high plain of closing the gap [on racial division] instead of letting this gulf get wider."

The case in question involves a Transportation Department program in which prime contractors on federal highway projects are given a 1.5 percent bonus if at least 10 percent of their subcontracts are awarded to minority-owned firms or other "disadvantaged business enterprises."

Proponents argue that such programs have been important in helping minorities get started in business, while opponents say they have led to "reverse discrimination" against white men.

In fiscal 1993, minority-owned businesses received at least $10.5 billion of the $179.4 billion in contracts awarded by the federal government—largely through two set-aside programs designed primarily to benefit racial minorities but that could include non-minority women, the disabled and others who are considered "socially disadvantaged."

Several affirmative action advocates said the ruling indicated that a majority of justices saw room for race-conscious remedies in certain circumstances.

"We can come up with a justification for these programs even if it's under a stricter standard," said Laura Murphy Lee, director of the Washington office of the American Civil Liberties Union. "Affirmative action is still alive."

But she added that the court's ruling had put the political debate in sharper focus. "This is not a decision that will allow fence-sitters," she said. "Either you have to argue for these programs aggressively or say they should be struck down altogether."

But Rep. Charles T. Canady (R-Fla.), who plans to introduce legislation to abolish affirmative action at the federal level, said, "The court's decision will give impetus to the movement in Congress to dismantle the system of race and gender preferences that have built up over the last 25 years."

White House aides have battled over how much change to propose for affirmative action. Set-aside programs, which in some agencies set precise levels for what percentage of targets are to go to minority- or women-owned firms, have been identified as affirmative action's most vulnerable component.

While some Clinton aides have said that he must act if he wants to recapture white voters who have left the Democratic Party, others have said that a greater danger is that he will offend blacks and liberals who are the party's most reliable voters.

REP. KWEISI MFUME
. . . acknowledged ruling was setback

'Strictest Judicial Scrutiny' Deemed Necessary in Race-Based Programs

Associated Press

Excerpts from the Supreme Court ruling yesterday on affirmative action programs.

From Justice Sandra Day O'Connor's majority opinion:

Any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny.

The Fifth and 14th amendments to the Constitution protect persons, not groups. It follows from that principle that all governmental action based on race . . . should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed.

Accordingly, we hold today that all racial classifications, imposed by whatever federal, state or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.

We wish to dispel the notion that strict scrutiny is "strict in theory but fatal in fact." The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and the government is not disqualified from acting in response to it.

When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this court has set out in previous cases.

Because our decision today alters the playing field in some important respects, we think it best to remand the case to the lower courts for further consideration in light of the principles we have announced.

From Justice Antonin Scalia's concurring opinion:

In my view, government can never have a compelling interest in discriminating on the basis of race in order to make up for past racial discrimination in the opposite direction.

Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor or race.

To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred.

From Justice Clarence Thomas's concurring opinion:

Government cannot make us equal; it can only recognize, respect and protect us as equal before the law.

That these programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution the government may not make distinctions on the basis of race.

As far as the Constitution is concerned, it is irrelevant whether a government's racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help those thought to be disadvantaged.

From Justice John Paul Stevens's dissent:

Instead of deciding this case in accordance with controlling precedent, the court today delivers a disconcerting lecture about the evils of government racial classifications.

The consistency that the court espouses would disregard the difference between a "No Trespassing" sign and a welcome mat. It would treat a Dixiecrat senator's decision to vote against Thurgood Marshall's confirmation in order to keep African Americans off the Supreme Court as on a par with President Johnson's evaluation of his nominee's race as a positive factor.

An interest in consistency does not justify treating differences as though they were similarities.

WASH. Post.

THE WALL STREET JOURNAL TUESDAY, JUNE 13, 1995

Not Affirmed

Supreme Court Ruling Imperils U.S. Programs Of Racial Preference

Contracting or Hiring Rules Must Be Narrowly Aimed At Past Discrimination

A 5-4 Vote Upsets Precedent

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – The Supreme Court joined the assault on affirmative action, attacking the foundations of the vast federal network of programs providing preferential treatment to minorities.

In a 5-4 decision, the high court ruled that Congress must meet an extremely tough legal standard to justify any contracting or hiring practice based on race.

The court's conservative majority stopped short of striking down any particular program. But yesterday's decision is sure to provoke a raft of court challenges against government minority-preference programs and to fuel the growing political backlash against affirmative action.

"This signals the beginning of the end for the era of racial preferences," said Clint Bolick of the Institute for Justice in Washington, a conservative activist who is helping to lead the charge against affirmative action. Lawyer William Coleman, a former transportation secretary and longtime advocate of affirmative action, called the ruling "a very dishonest and shocking opinion."

Justice Sandra Day O'Connor wrote the majority opinion, declaring that "strict scrutiny of all governmental racial classifications is essential" to distinguish between legitimate programs that redress past discrimination and programs that "are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." As a practical matter, this "strict scrutiny" test will be very hard for the government to meet, although Justice O'Connor added that it needn't be seen as "fatal" for all affirmative-action programs.

Justices Antonin Scalia and Clarence Thomas said in separate concurring opinions that they would have gone much further, wiping out all government race preferences. "These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are 'entitled' to preferences," wrote Justice Thomas, the only minority-group member on the high court.

Filling out the majority were Chief Justice William Rehnquist and Justice Anthony Kennedy. Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer dissented.

Political Football

The decision touches on one of the most emotionally powerful issues in contemporary American politics. Ever since a Democratic president and Congress pushed through civil-rights legislation a generation ago, white resentment has helped to transform the allegiance of the Southern electorate and fuel the GOP's resurgence nationally. Affirmative action is just one of several race-tinged themes – along with crime, welfare and immigration – already taking center stage in the emerging 1996 presidential campaign.

Every leading candidate for the GOP nomination has criticized affirmative action to one degree or another, while President Clinton has struggled to find an approach that appeals to white moderates without alienating black voters who represent the most loyal element of the Democratic base.

How Congress will respond to the court ruling remains unclear. Republican leaders in the House and Senate have postponed action on conservative calls for an end to racial preferences in federal hiring and contracting. "I'd be inclined to have them hold hearings, but not necessarily to move quickly," House Speaker Newt Gingrich said yesterday. He withheld direct comment on the decision until he could be briefed on it.

Effect on Contractors

The decision's most immediate effects are likely to be felt among the tens of thousands of small companies that do business with the federal government. Last year, the government set aside $6.4 billion of contracts for minority businesses, in industries ranging from construction to computer services. In addition, the government provided incentives and set goals that helped bring the total amount of federal contracts going to minority-owned firms to $14.4 billion, or 8.3% of federal procurement – a sharp increase from 3.6% a decade earlier.

Those programs have changed the face of American small business, helping many minority-owned firms to get their start but also provoking a wave of resentment among white-owned firms that lost business as a result.

In Houston, for instance, George Barbosa is a Hispanic former police officer who in 1983 started a security-guard firm. He now employs 400 people as a result of set-aside contracts with the Internal Revenue Service and other federal agencies. He fears that a rollback of federal affirmative action could force his company to shrink drastically. Speaking before yesterday's ruling, he said such a move would contribute to "tearing down what everybody fought for in the 1960s, what JFK and LBJ did – to give minorities jobs and a place in the system."

But Randy Pech, the Colorado Springs, Colo., subcontractor whose suit led to yesterday's ruling, contends it is time to stop discriminating against white businessmen like him. "It's not right when I'm the low bidder for the government to help a minority get the work," he said before the ruling. Mr. Pech, who installs highway guardrails, challenged a Transportation Department policy that provides bonuses to prime road contractors who give 10% or more of their subcontracting work to "disadvantaged" firms. Minorities are presumed by law to be disadvantaged.

While the high-court case concerned federal contracting, it could have ripple effects in private hiring. Under current law, more than 100,000 companies and universities that have federal contracts of over $50,000 must establish "goals and timetables" to hire and promote minorities and women. This form of affirmative action, monitored by the Labor Department, "has been absolutely vital" to the integration of corporate America, says Anthony Robinson, president of the Minority Business Enterprise Legal Defense and Education Fund.

Pentagon Rules

Smaller employers subject to this regulation have had more trouble complying with it and would be more likely to try to use yesterday's ruling to attack it in court, according to Stephen Bokat, general counsel of the U.S. Chamber of Commerce. But it is unlikely that large companies will drop

A Hot Button Gets Hotter

The Supreme Court's affirmative action ruling had politicans and advocacy groups scrambling to seize the high ground on this explosive issue. The stakes appear highest for Clinton. Article on page A20. In other coverage:

- **Santos Garza is a success story, but is she 'disadvantaged'? B1.**
- **Arnold O'Donnell turns the tables on contracting set-asides, B1.**

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Not Affirmed: Supreme Court Sets Tough Standard For Federal Programs Involving Racial Preferences

special minority hiring efforts in the immediate future, Mr. Bokat thinks. "The AT&Ts and IBMs have well-entrenched programs and have the resources to get through the regulatory maze that affirmative action can create, and they would just as soon not see it undone," he predicts.

In the realm of affirmative-action contracting, the Pentagon is by far the biggest federal player. In 1994 alone, the Defense Department paid minority firms $6.1 billion for a variety of products and services—including construction work, maintenance, landscaping and other services—in large part because of set-asides and other race-related goals. Prime contracts for building submarines and tanks, which go to large defense contractors, probably won't be affected by the ruling. But minority subcontractors that get small pieces of weapons-systems work could be hurt.

Also at risk are dozens of subtler affirmative-action programs for which annual dollar values are hard to come by. For instance, a "factor considered" by the Commerce Department in the award of grants fostering "marine-related careers" is whether applicants propose to "stimulate interest" among minorities, women and the handicapped.

Another example: The Navy, in cleaning up pollution on Kaho'olawe Island, Hawaii, and surrounding waters, is obliged by law to give preference to small and minority-owned contractors from Hawaii. There also is a law requiring that at least 10% of U.S. development aid to Africa be spent on contracts with "disadvantaged" firms, including those owned by minorities and women.

Two Ways to Look at It

Ronald Jewell, who runs an office-services company in Alexandria, Va., is one of many black businessmen who have benefited from this web of preferential programs. Founded in 1972, Jewell Industries Inc. struggled for many years but now employs more than 300 people, thanks to set-aside business from the Education Department and other federal agencies. "There are 300 productive citizens not looking for government assistance," Mr. Jewell notes.

But Thomas Stewart of Spokane, Wash., who like the plaintiff in the Supreme Court case is in the guardrail business, says he has compiled dozens of letters over the past 15 years from contractors telling him that he submitted the low bid on a road project but that a minority- or woman-owned firm got the subcontract because of federal or state affirmative-action requirements. Bill Hammett, general manager of Superior Asphalt & Concrete Co. of Yakima, Wash., wrote one of the rejection letters to Mr. Stewart, but wishes he hadn't had to. If affirmative-action requirements were eased, Mr. Hammett says, low bidders would get more business and taxpayers would save money on public works.

The ruling could affect white-collar as well as blue-collar contractors. Accountant Noell Webb's Portland, Ore., temporary-office-staff firm landed a key medical-transcription contract with the local Veterans Administration hospital because of affirmative action. That work led to added assignments that weren't necessarily earmarked for minorities, says Ms. Webb, who is black. Affirmative action "opened the door," she explains.

But Thomas Dunn, head of Dunn Computer Corp. in Sterling, Va., sees affirmative action as a ruse. He says he has lost millions of dollars in business with the federal government because of contracts being set aside for minorities. "When I think how much I've had to bust my chops . . . it makes me really mad that other people get work based on skin color," he says. Mr. Dunn says he had been considering filing his own suit, over an IRS set-aside of half of a $100 million computer purchase that he wanted to compete for.

Overturning Precedent

The Supreme Court majority took the unusual step yesterday of formally overruling one of its two major precedents upholding federal affirmative action and thoroughly eviscerating the other one. Justice O'Connor wrote that the court had simply gone astray in 1990 when it upheld Federal Communications Commission preferences for minorities seeking broadcast licenses. That 5-4 ruling "undermined important principles of this Court's equal protection jurisprudence," she maintained. Four members of the 1990 majority have left the court.

Without officially jettisoning it, she also gutted a 1980 high-court ruling that upheld a 10% minority set-aside provision in the Federal Public Works Employment Act. Taken together, the 1980 and 1990 rulings were widely understood as establishing that the federal government had broader authority than states and cities to use racial classifications to remedy the effects of past discrimination. Justice O'Connor said this view of the law "is no longer controlling."

Instead, the majority said that the daunting "strict scrutiny" standard that the Supreme Court applied to state and local set-asides in a 1989 case from Richmond, Va., should cover federal programs as well. Under this standard, an affirmative-action program survives only if it responds to specific, provable past discrimination and is "narrowly tailored" to eliminate that bias.

The 1989 Richmond case resulted in the elimination of scores of local affirmative-action programs, although some were revived in altered form after cities made more-detailed findings to demonstrate past discrimination.

Not 'Fatal'

Justice O'Connor went out of her way to "dispel the notion that strict scrutiny is strict in theory, but fatal in fact." She held out the possibility that some federal programs could be sustained under the high court's tougher new standard. Yesterday's decision "alters the playing field in some important respects," she said, but the best course would be to leave it to lower courts to take the first crack at applying the new standard for federal affirmative action.

Among the things that lower courts should consider in analyzing a racial-preference contracting program, Justice O'Connor explained, is "whether there was any consideration of the use of race-neutral means to increase minority business participation" in government work. Another relevant inquiry is "whether the program was appropriately limited such that it will not last longer than the discriminatory effects it is designed to eliminate," she added.

"Unresolved questions remain," Justice O'Connor emphasized. Some affirmative-action programs, such as a major set-aside program run by the Small Business Administration, "require individualized inquiry into the economic disadvantage of every participant," she said, seem-

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ingly with approval. But in contrast, the Transportation Department incentive program at issue in the Supreme Court case relies on an automatic presumption that minorities are disadvantaged, she observed.

In the case before it from Colorado, the Supreme Court set aside a federal appeals-court decision upholding the Transportation Department minority-incentive program and sent the dispute back to the lower court for reconsideration. The case stemmed from a 1990 reverse-discrimination lawsuit filed by Mr. Pech after he wasn't given the guardrail portion of a federal road project in southwest Colorado even though he had submitted the low bid. The prime contractor selected a Hispanic-owned firm for the guardrail work and, by doing so, qualified for an extra $10,000 payment from the government. The Transportation Department has an overall goal of seeing that at least 10% of its annual spending goes to minority firms.

In the main dissenting opinion, Justice Souter said that there wasn't any justification for the court to throw out its own precedent, and that under those cases, the Transportation Department incentive program is constitutional.

—John Harwood contributed to this article.

FCC Alters Auction Rules After High Court Decision

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – Federal Communications Commission officials plan to push ahead with an Aug. 2 auction of wireless-communications licenses after changing the rules to comply with yesterday's Supreme Court decision.

The personal communications services auction, limited to small businesses, allows companies owned by women or minorities to get bidding credits of 15% or 25%, as well as other preferences.

But communications lawyers said it would normally take as long as a year for the FCC to change the auction rules, because of procedural requirements. FCC efforts to move much faster could produce legal challenges from minority bidders who want to preserve the bidding credits. The FCC would have to show that it can eliminate the bidding and financing preferences and still meet Congress's requirement to ensure that minorities get a chance to participate in the auctions.

It was unclear yesterday if the FCC would also move to eliminate bidding credits for women; the ruling didn't embrace sex-based preferences.

Federal Programs That Could Be Affected

Agencies use varying approaches, from goals to formal set-asides. Yesterday's ruling didn't strike any programs down but could provide the basis for court challenges.

- **SMALL BUSINESS ADMINISTRATION** Certifies about 5,400 firms as "socially and economically disadvantaged," making them eligible to get contracts from other federal agencies without competitive bidding. In 1994, minority-owned firms got $4.4 billion in contracts.
- **DEFENSE DEPARTMENT** Sets aside $2.8 billion in contracts for minority-owned firms through SBA and $1.4 billion more through military program. Department's goal, which it now exceeds, is for 5% of procurement to go to "disadvantaged" firms.
- **FEDERAL COMMUNICATIONS COMMISSION** Gives preference to firms owned by women and minorities that seek to buy TV and radio stations and wireless-telephone licenses. The court yesterday overruled a 1990 decision upholding FCC race preferences.
- **LABOR DEPARTMENT** Monitors over 100,000 companies and universities that have sizable federal contracts and must set "goals and timetables" for hiring and promoting minorities and women.
- **RESOLUTION TRUST CORP.** Uses various incentives and "bonus considerations" to steer legal, banking and accounting work to minority- and women-owned firms.
- **AGRICULTURE DEPARTMENT** Says recipients of rural-housing and community-development grants "are encouraged" to use minority-owned banks for the deposit and disbursement of funds.
- **ENERGY DEPARTMENT** Says agency's head "may provide" loans to "any minority business enterprise" to help it get R&D contracts, to the extent she "considers appropriate."
- **JUSTICE DEPARTMENT** Requires that at least 10% of local law-enforcement grants under the 1994 crime bill be spent on contracts with businesses owned by women or minorities.
- **STATE DEPARTMENT** Requires that at least 10% of spending to build embassies and guard foreign-service buildings go to minority contractors, to the "extent practicable."
- **TRANSPORTATION DEPARTMENT** Requires that at least 10% of a $151 billion transportation bill passed in 1991 "shall be expended with" minority businesses, "except to the extent that the secretary" determines otherwise.

Source: Congressional Research Service, various U.S. agencies.

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Successful, Affluent but Still 'Disadvantaged'

WALL St. JOURNAL

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

LEGAL BEAT

Santos Garza doesn't fit everyone's definition of "disadvantaged."

The owner and chief executive of a growing security company, she lives in a $350,000 house in the affluent Washington suburb of Bethesda, Md. She directs 375 employees – engineers, investigators and guards – who protect such federal agencies as the State and Treasury departments. Her company's revenue last year topped $10 million, and she pays herself a salary of about $100,000.

Santos Garza

But more than three-quarters of Ms. Garza's business comes courtesy of a Small Business Administration program that steers government contracts to the "socially and economically disadvantaged." Because she is of Mexican descent, her company, Counter Technology Inc., gets access to public contracts that white-owned companies can't bid for.

Ms. Garza's story is the sort that infuriates some critics of racial preferences. "It's disgraceful" that skin color determines who gets certain federal work, asserts Herbert Saunders, president of a similar but white-owned company, Varicon International Co. of Falls Church, Va.

Yet Santos Garza also is precisely the sort of success story that makes backers of affirmative action proud. The child of migrant farm workers, Ms. Garza spent part of her childhood in dirt-floor company housing and was two years late finishing high school because she worked to help support the family. She has built a company whose work force is 60% women or minorities, some of whom, with her guidance, have gone on to start their own companies.

Now such racial-preference programs are on the griddle. The Republicans who control Congress are threatening to repeal them and got a boost from yesterday's Supreme Court decision potentially undercutting federal affirmative-action programs.

Some affirmative-action critics say it is unfair to give special treatment to minorities who are already in the middle class. Government preferences, this argument goes, should help only those who are down and out. "That's where we need to push: to help those who are really deserving, not to enrich those who have already made it," says Clint Bolick of the conservative Institute for Justice in Washington.

But others reply that it would be senseless to give government contracts to people almost certain to fail. "A poor person can't handle a $500,000 or $1 million contract," says Timothy Bates, an economist at Wayne State University in Detroit. "You have to go to someone with business skills, which means someone who is probably already middle-class."

Ms. Garza, 47 years old and a Republican who defends affirmative action, acknowledges the delicacy of her position. She continues to take advantage of opportunities based on her ethnicity, conceding: "I never would have made it from a tiny company – four people – to where I am today without the set-asides."

But she also says she is "sick and tired" of other members of minority groups "who are always [complaining], 'Poor me.' . . . Work, and you won't be poor."

Ms. Garza has come a long way from the cotton fields of Texas. As a little girl, one of six children, she tagged along with her mother, who earned 35 cents a pound for picking cotton, while her father drove a farm truck. By 1957, the Garzas had saved enough to settle in Aurora, Ill., near Chicago, and buy a three-bedroom house for $4,800. "That's the first time I felt like a real American, because we were living in our own house, like on 'Father Knows Best,' " Ms. Garza says.

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Success Can Still Mean 'Disadvantaged'

Married and divorced in her early 20s, Ms. Garza raised two boys on her own and held two jobs at a time. She took some college classes and joined the Aurora Police Department in 1976. "They made it clear that they hired me because of affirmative action," she says.

After 11 years and several frustrated bids for sergeant's stripes, Ms. Garza decided the Aurora police weren't ready to promote a Hispanic woman and resigned from the force. Cashing in her pension and severance, she paid $20,000 for Counter Technology, a nearly defunct security company run by Richard Roth, a former Secret Service specialist in debugging and antiterrorist planning. Mr. Roth, who is white, became Ms. Garza's employee; about a year later, they married.

From the start, some competitors grumbled that Ms. Garza was "fronting" for Mr. Roth so that CTI could get set-asides. Mr. Saunders, for example, says he has nothing personal against Ms. Garza and thinks CTI does high-quality work but contends its status as minority-owned "is a sham because her husband is the guy really behind it."

Ms. Garza responds angrily: "Unlike a lot of my [minority] competitors, who own 51% of their company and have someone [white] behind them, the only person who put any cash in this company is San Garza."

She has the documents to back up what she says, including police department letters showing she collected her pension of $18,308.97 and severance of $2,542.67 in 1987 and canceled checks written a short time later with which she bought all the CTI stock. She also has a "property agreement" dated Aug. 23, 1988, under which she and her husband agreed that her stock "shall not be considered marital property." Ms. Garza submitted her documents to the SBA. "We've been satisfied," says Neil Wensel, a senior minority-business official in the SBA's Washington office.

Besides Mr. Roth, Ms. Garza hired her older brother, Ray, a former police officer, and her son, Trenton, an accounting and computer whiz. Business was lean in the beginning, mostly debugging and investigative work brought in by Mr. Roth. Ms. Garza and her family didn't draw regular salaries until 1991, paying themselves just enough to cover bills. Banks were skittish, so Ms. Garza borrowed from a brother-in-law and ran up huge credit-card bills.

She saw the SBA's set-aside program, known as Section 8(a), as a way to gain stability. Federal agencies, now required to help achieve a goal of giving 5% of federal contracts to minority-owned companies, route some through this SBA program. The SBA becomes the contractor and steers the work to companies it certifies as socially and economically disadvantaged. In 1994, about 37% of the value of contracts set aside under the program went to black-owned companies, 29% to Hispanic-owned companies and 25% to Asian-owned companies.

As a Hispanic, Ms. Garza enjoyed an automatic presumption under the law that she had been socially disadvantaged. She met the second 8(a) test – being economically disadvantaged – because of her financing problems and a personal net worth far below the $250,000 limit. But she also included in her application examples of what she perceived as the extra obstacles she faced as a minority entrepreneur. At one point, for instance, CTI was awarded a contract to perform a security survey of a federal agency computer center for only $3,000, while a bigger company was contracted by the same agency to conduct the same survey for $124,000.

The 8(a) program itself suffers from racial stereotyping: Many federal agencies set aside primarily low-tech, low-profit, labor-intensive assignments like landscaping and janitorial services. "The presumption is, this is the work the 8(a) firm, the minority firm, can handle," explains Mr. Wensel of the SBA.

In Ms. Garza's case, it was security guards. She tried to market CTI's ability to design systems using closed-circuit television, magnetic-strip card-reading machines and other gadgetry. But the State Department and other agencies just wanted her to send guards.

She compromised: In 1992, she accepted multimillion-dollar guard contracts with the National Aeronautics and Space Administration and the Commerce Department that involved some technological aspects. CTI suddenly jumped in size and soon had a slew of good references, which led to more design-related work.

If not for the 8(a) program, NASA, for one, probably would automatically send its guard business to industry giants, says NASA security specialist Richard Soppett – even though he considers CTI's employees better-trained than those of some big companies.

Ms. Garza says she now turns down most business from federal agencies. She doesn't want CTI to grow too dependent on set-aside contracts that won't be available to her if the 8(a) program is canceled or when she is forced to leave the program in 1999, after participating for the maximum nine years. Her caution sets her apart from many other 8(a) participants, who gobble up set-asides but then collapse when forced to go it alone, the SBA's Mr. Wensel says.

Ms. Garza has chosen aviation security as the niche she ultimately wants to fill. CTI broke into the field by helping redesign the underground communications center at Chicago's O'Hare Airport. And CTI was chosen last year over a dozen mostly bigger companies to draft the master security plan for a new airport being built in Austin, Texas.

Gus Garcia, a member of the Austin City Council, acknowledges that ethnicity played a role in the decision. The council's staff had recommended giant Bechtel Group Inc., with CTI as second choice. But the city's goal is to have 30% of the airport-construction budget go to minority-owned firms. "We wanted to enhance our [minority] participation, with the understanding that the quality of the work wouldn't suffer," Mr. Garcia says.

At least on paper, Ms. Garza has to remain "disadvantaged" to stay in the SBA program. But in the high-flying aviation market, the last thing she wants is to be considered disadvantaged. "Nobody likes to do business with a loser," she explains. "You never emphasize the minority-8(a) aspect."

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Wall St. Journal

A White Man Is Ruled Eligible for Set-Asides

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

Arnold O'Donnell has a problem.

For years, he has crusaded against minority set-aside programs as a form of reverse discrimination. Co-owner with his brother of a small Washington, D.C., construction company, he has pestered bureaucrats, testified before Congress and filed lawsuits. One of his pitches has been that as a white man trying to do business in a city that steers a lot of construction work to minorities, it is he who should be admitted to an affirmative-action program.

Now, Mr. O'Donnell's wish has come true. The U.S. Small Business Administration has admitted him to its contracting set-aside program—one of a whole range of federal programs that may be threatened by yesterday's Supreme Court ruling.

"It's bizarre," he says. "I've been a vocal critic of these programs, and now I'm in one."

The SBA, which for years had spurned Mr. O'Donnell, was forced to enroll him after an in-house administrative-law judge at the SBA ruled in May that, at least in Washington, a white, middle-class builder can qualify as "socially and economically disadvantaged."

Mr. O'Donnell plans to take advantage of the SBA program. "Hey, if this gets me business, I'll do it," he says, chuckling.

A lot of other people aren't amused.

"It's outrageous," says Carroll Harvey, a prominent black builder in Washington.

"It's shameful," adds Anthony Robinson, president of the Minority Business Enterprise Legal Defense & Education Fund, a Washington-based advocacy group.

"This is all smoke and mirrors," says Steven Jumper, acting director of Washington's municipal Department of Human Rights and Minority Business Development.

As recently as this April—only a month before the federal judge found that Mr. O'Donnell was "disadvantaged"—a Washington municipal commission reached the opposite conclusion. Rejecting Mr. O'Donnell from a local affirmative-action program, the commission said that he "failed to establish . . . that [he has] been subjected to chronic instances of prejudice or bias."

City officials and local black contractors have an extra beef with Mr. O'Donnell: An earlier lawsuit of his resulted in Washington's municipal set-aside program being struck down by a federal appeals court in 1992 (although it has since been revised and revived).

Mr. O'Donnell, 47 years old, has worked in construction since he graduated in 1972 with an engineering degree from Massachusetts Institute of Technology. He and his older brother, John, started their own company in 1985, specializing in paving and utility work — laying pipes and wires under roads.

At its peak in the late 1980s, O'Donnell Construction had annual revenue of about $2.6 million and employed 25 people, Mr. O'Donnell says. But the brothers say that because of the aggressive minority set-aside program in Washington at the time, they couldn't get much work in the capital and had to go to Virginia or Maryland instead.

"It didn't seem morally right that we were excluded [from bidding on many Washington contracts] because of skin color," says Mr. O'Donnell.

So in 1989, with financial backing from the Associated General Contractors, a predominantly white trade group that has successfully attacked affirmative-action programs in cities across the country, they sued the city. Three years later, the U.S. appeals court in Washington ruled that the set-aside program violated the constitu-

'O'Donnell Construction Co. ... failed to demonstrate that it is owned, operated and controlled by individuals who are socially and economically disadvantaged.'
From the April 13, 1995 ruling of the Government of the District of Columbia Minority Business Opportunity Commission

Opposite rulings on O'Donnell Construction's appeals

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A White Man Is Ruled Eligible For Federal Set-Aside Program

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were for O'Donnell Construction, the agency reasoned, its owners *couldn't* prove they were subjected to personal prejudice.

Mr. O'Donnell didn't back down. He wrote boxes of letters to federal officials, initiated an administrative-law appeal against the SBA and repeatedly testified before Congress. In April, for example, he appeared on behalf of the Associated General Contractors before the Senate Small Business Committee, lashing out at the $4.3 billion-a-year 8(a) program. He accused the SBA of employing "rigid racial classifications" in its application process and reserving "the bulk of its benefits for the affluent members of the nation's minority groups."

Meanwhile, over at the SBA, his appeal was grinding on, and in May, much to the surprise of all concerned, Administrative Law Judge Nahum Litt issued a blistering opinion, finding that the agency had been "arbitrary and capricious" in turning down Mr. O'Donnell's application. The O'Donnell firm "does not have access to District financial markets, cannot bid on a significant percentage of projects in the District and is not on a reasonably fair playing field within the context of legitimate affirmative-action programs," Judge Litt declared.

Lacking any alternative, the SBA relented. The agency's general counsel, John Spotila, says this is "probably the first time" a white, middle-class man like Mr. O'Donnell has been accepted into 8(a).

Of the program's 5,400 participants, roughly 40 aren't members of protected minority groups and therefore, like Mr. O'Donnell, had to prove their disadvantaged status, according to an SBA spokeswoman. Among these others are some white women and disabled people and a handful of members of minority groups that don't enjoy the legal presumption of eligibility, such as Hasidic Jews.

Mr. Spotila worries that other white men in cities with local set-aside programs will now apply to get into the federal 8(a) program. That prospect has the potential of "undermining the whole program," by diverting contracts away from minorities, says Mr. Spotila.

In his cluttered office, Mr. O'Donnell is filling packing crates with the paper detritus of his battle against the SBA. He has promised his wife that there will be no more congressional testimony, no more late nights writing protest letters. "I don't know what I'm going to do with my spare time now," he says.

But then he remembers the forms he has to fill out to actually participate in 8(a). "They're endless," he complains. "There's no way if you're really disadvantaged that you'd even be able to get through all the paperwork . . . It just shows how out-of-whack these programs are."

O'Donnell Construction 'does not have access to District financial markets, cannot bid on a significant percentage of projects in the District, and is not on a reasonably fair playing field within the context of legitimate affirmative action programs. Here the facts are that the company, and perforce its two sole owners, are at an economic and social disadvantage.'

From the May 15, 1995 ruling of the U.S. Small Business Administration Office of Hearings and Appeals

tional guarantee of "equal protection" under the law. By then, O'Donnell Construction had shrunk to four employees and had annual revenue of $600,000.

Despite the Associated General Contractors' support, Mr. O'Donnell says he and his brother have acted on their own initiative. The combination of local and federal set-aside programs "was literally killing the company," he contends.

His solution: apply to the SBA's Section 8(a) program, which funnels contracts that have been set aside by other federal agencies to small "socially and economically disadvantaged" businesses. The huge majority of 8(a) beneficiaries are members of ethnic minority groups, because they are presumed by law to be socially disadvantaged. White applicants have to prove this condition under an extremely tough standard.

Mr. O'Donnell insisted, however, that in Washington, white-owned firms like his are victims of discrimination. The SBA disagreed. No matter how rough things

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TUESDAY, JUNE 13, 1995

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Businessman Who Brought Suit Praises Ruling by Justices

■ **Courts:** Randy Pech says his gripe focused on government bias against whites, not his rival firms. Dissenting voices, however, see a setback for minority races, women.

By MARLENE CIMONS
TIMES STAFF WRITER

WASHINGTON—Randy Pech says he had nothing against his minority-owned competitors. His gripe was with what he views as government-backed discrimination against whites. "It's not like it's a them-against-me situation," he said Monday of his business rivals. "I'm not attacking them—just the program."

Pech, who described his major competitors as well-established companies who don't need the edge provided by the government's affirmative action program, took his gripe to the Supreme Court—and won.

The Colorado man, the white owner of Adarand Constructors Inc., objected when a coveted job went to a minority-owned company because of a government affirmative action program—even though his was the lowest bid.

Through the Small Business Act, government agencies are required to use their purchasing power to help small businesses, with historically disadvantaged owners, i.e., minorities and women, receiving special breaks. This case centered on a program for awarding federal highway contracts.

"It was very discouraging to run a legitimate, honest business, to go to a lot of trouble of bidding on a project—to know you did a great job and came in the low bid—and then find out they can't use you because they have to meet their 'goals,'" Pech said, after learning that the Supreme Court had agreed with him.

"We get along fine with these other companies," he said. "We help each other out. This wasn't about them. It was about the program, a program that says it's OK for the government to discriminate. It shouldn't be OK for the government to discriminate. That's what we were trying to accomplish."

But others decried the high court's decision as a major setback to gains made in recent years by women and minorities, and urged the Clinton Administration to aggressively defend the affirmative action concept.

"Affirmative action isn't magic," said Laura Oren, a law professor at the University of Houston Law Center. "But it *has* made a difference. This decision gives political ammunition to those who would dismantle affirmative action.

"In recent years, a growing number on the court have felt that it's all over with, that we fixed it all and therefore it is unjust to use these programs because they impose an injustice the other way," she continued. "Whatever good has been achieved has not been so enormous; it's not as if we've arrived and can heave a big sigh of relief and say we can ignore this problem. We still have a long way to go."

Patricia Ireland, president of the National Organization for Women, urged President Clinton and the Congress: "Don't lead the retreat, don't take the bait this decision offers and back down. Affirmative action is a defining issue in our country right now, and it will be a defining issue in next year's campaigns.

"Today's decision shows what a difference five years and four justices can make in the treatment of women and people of color under the U.S. Constitution," she added.

But Republican California Gov. Pete Wilson called the court's ruling "another important step in our journey toward equal opportunity and a colorblind society, where individual merit is the new standard, as opposed to group entitlements based on race or gender."

Wilson, who last week issued an

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Associated Press

Randy Pech: "It shouldn't be OK for the government to discriminate."

executive order abolishing affirmative action preferences in state government, said: "The country is moving into a new era of equal opportunity, where everyone is given an equal opportunity regardless of characteristics that were bestowed on them at birth."

Wilson said he hoped that "defenders of the status quo will move beyond the racial rhetoric" and recognize that the nation was ready for a system "that guarantees equal opportunity for all, and special, race-based preferences for none."

Organizers seeking to place a state constitutional amendment outlawing racial preferences on California's November, 1996, ballot said the court's decision served to strengthen their resolve.

While the decision was in keeping with the intent of the California Civil Rights Initiative, "it is not the same thing as a constitutional amendment," said Joe Gelman, campaign manager for the initiative.

"Supreme Court decisions come and go, governors come and go, policies change," he said. "We need a constitutional amendment, the principle of a colorblind system enshrined in the Constitution."

In a written statement, the initiative's co-author Tom Wood praised the court decision.

"The government should never have an interest in discriminating on the basis of race or gender and this Supreme Court decision moves us in the right direction," Wood said.

Times staff writer Cathleen Decker in Los Angeles and researcher Lianne Hart in Houston contributed to this story.

L.A. TIMES 6-13-95

High Court Deals Severe Blow to Federal Affirmative Action

■ Rights: Justices hold that race-based preferential treatment is almost always unconstitutional. But an opening is left for narrow, specific bias remedies.

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—The Supreme Court dealt a potentially fatal blow to most federal affirmative action programs Monday, ruling that preferential treatment based on race is almost always unconstitutional, even when it is intended to benefit minority groups who suffered injustices in the past.

The 5-4 ruling in a Colorado case reversed past high court decisions, most recently in 1990, that applauded federal affirmative action as "benign race-conscious decision-making."

Instead, for the first time, the high court held that "all racial classifications" by government agencies are "inherently suspect and presumptively invalid."

The court, however, left a small window open. As a last resort, affirmative action programs can be upheld as a means to correct specific, provable cases of discrimination, the court said, but stressed that such programs cannot be broadly applied to remedy suspected discrimination by a society over time.

Its opinion directs judges to skeptically examine any program that treats people differently because of their race. It also sets a strict legal standard that will make it hard to justify any government program—federal, state or local—that explicitly reserves jobs, grants, contracts, broadcast licenses or college admissions for minorities.

"The Constitution protects persons, not groups," wrote Justice Sandra Day O'Connor for the court. "Whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely with the language and spirit of the Constitution's guarantee of equal protection," she said.

In a second setback for civil rights lawyers, the court said low achievement levels among minority students are not reason enough to continue a court-ordered school desegregation plan. The ruling, in a Kansas City case, marked the third time in four years that the court has pressed judges to end long-running desegregation orders.

The Clinton Administration wound up on the losing end in both cases, having urged the court to preserve affirmative action and court-ordered desegregation.

The affirmative action case decided Monday arose when a white road builder from Colorado complained that he lost a federal contract for a guard rail repair to a Latino businessman, even though the white businessman had submitted a slightly lower bid.

The Latino businessman had benefited from a 1987 law that requires the Department of Transportation to steer at least 10% of its funds to firms owned by racial minorities or women.

A federal judge and a U.S. appeals court in Denver rejected the white contractor's claim on the grounds that the Supreme Court had twice before upheld affirmative action programs authorized by Congress.

But the case, Adarand Constructors vs. Pena, 93-1841, arrived just as the court, Congress and the Administration were rethinking the entire concept of affirmative action. The stakes were high, too, since more than $10-billion a year in federal contracts is directed to minority-owned firms under an array of affirmative action programs.

Something else also changed since the court last revisited the issue in 1990. Justice Thurgood Marshall, the legendary civil rights lawyer and leading liberal, had retired, and his seat was taken by Justice Clarence Thomas, a staunch conservative.

With Thomas casting the fifth and deciding vote Monday, the court reversed course and took a giant step toward wiping away preferential policies based on race. In a concurring opinion, Thomas denounced affirmative action in the strongest terms. It is a form of "racial paternalism," he wrote, whose "unintended consequences can be as poisonous and pernicious as any other form of discrimination."

Thomas and O'Connor were joined in the majority by Chief Justice Justice William H. Rehnquist and Justices Antonin Scalia and Anthony M. Kennedy.

The four dissenters—Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer—said affirmative action should be preserved as a "catch-up mechanism designed to cope with the lingering effects of racial subjugation."

The majority opinion stopped short of deciding the case in favor of the white contractor. The matter was sent back to a federal judge in Denver to consider whether the Latino businessman obtained a preference because of his ethnic background or because he had shown he was "socially and economically disadvantaged." While the court has frowned on classifications based on race, it has indicated that it would uphold a nonracial preference program directed to people who are poor or otherwise economically disadvantaged.

In addition, the ruling said nothing about employment matters in private business. In the past, the court has said a private employer may prefer minorities and women in hiring or promotions to correct "a manifest imbalance" in a work force.

The ruling also said nothing

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about affirmative action for women and dealt only with classifications based on race or ethnic origin.

But the scope of the ruling is unquestionably broad. The court did not focus just on government contracts or "set-aside" programs such as the one in the Adarand case. Instead, it attacked the use of race as a criterion in all government programs, whether hiring, college admissions or distributing grants.

Looking back over its history, O'Connor concluded that the Supreme Court had made its worst mistakes when it allowed the government to categorize people based on race. She cited the Plessy vs. Ferguson case of 1896, which upheld the policy of racial segregation in the South, and the case of Korematsu vs. U.S. in 1944, which upheld the World War II internment of Japanese-Americans.

"A free people whose institutions are founded upon the doctrine of equality should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons," O'Connor wrote. As a last resort, O'Connor said, a limited program of preferences could be justified to remedy a clear pattern of "prior discrimination" against minorities.

"The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and the government is not disqualified from acting in response to it," she wrote.

A judge may uphold a program of preferential treatment if it is a "narrowly tailored remedy" to make up for "prior discrimination" by a government agency or a government contractor.

She cited only a 1987 ruling that upheld a hiring quota for blacks in Alabama after a judge concluded that the state highway patrol had repeatedly and blatantly refused to hire nonwhites.

For the future, much depends on how judges interpret the phrase "prior discrimination." Six years ago in Richmond vs. Croson, the high court, also in an opinion written by O'Connor, ruled that states and municipalities should not employ race as a criterion for awarding contracts or other benefits, such as scholarships, except as a remedy for past discrimination.

Lower courts have split on what that means. Some have upheld city programs that reserve contracts for minorities on the theory that statistics show only a small percentage of contracts go to businesses owned by blacks or Latinos. This suggests a pattern of discrimination. But other judges have struck down similar programs because no discrimination has been proven.

Despite Richmond vs. Croson, nearly every state university still uses affirmative action in admissions. A specific challenge on that practice has not come to the high court since then. However, a federal appeals court recently cited the Richmond ruling as a basis for striking down a scholarship program at the University of Maryland that was exclusive to black students.

Opponents of affirmative action called the decision a landmark, while defenders said it is not clear how the decision will play out in the lower courts.

"The era of racial preferences is coming to an end," said Clint Bolick, an attorney for the Washington-based Institute for Justice. He predicted that the ruling would encourage congressional Republicans to wipe out affirmative action programs.

Leaders of the Anti-Defamation League also hailed the decision as a "sea change" in the law.

"Government preferences or benefits based upon race, religious beliefs or ethnic origin are as threatening to the American ideal as the historic discriminatory practices used to justify those preferences," said Abraham H. Foxman, ADL national director.

Rep. Charles T. Canady (R-Fla.), who plans to introduce legislation to repeal affirmative action programs, praised the decision and said it "gives impetus to congressional action to dismantle the pervasive system of race and gender preferences" established in Washington.

But lawyers for the NAACP Legal Defense Fund said affirmative action programs can survive if federal officials step forward to defend them.

"In theory, these programs are still alive and they are still defensible," said Theodore Shaw, associate director of the fund. "If you can show a history of exclusion, then you can require some remedial efforts, including affirmative action," he said.

He worried, however, that the ruling could be used by White House officials who want to scrap some set-aside programs.

From Justice Sandra Day O'Connor's majority opinion:

Any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny.

The Fifth and 14th amendments to the Constitution protect persons, not groups. It follows from that principle that all governmental action based on race ... should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed.

Accordingly, we hold today that all racial classifications, imposed by whatever federal, state or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.

We think it best to remand the case to the lower courts for further consideration in light of the principles we have announced.

JUSTICES FOR

- William H. Rehnquist
- Sandra Day O'Connor
- Anthony M. Kennedy
- Clarence Thomas
- Antonin Scalia

JUSTICES AGAINST

- John Paul Stevens
- David H. Souter
- Ruth Bader Ginsburg
- Stephen G. Breyer

From Justice Antonin Scalia's concurring opinion:

In my view, government can never have a compelling interest in discriminating on the basis of race in order to make up for past racial discrimination in the opposite direction.

Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor race.

To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred.

In the eyes of government, we are just one race here. It is American.

From Justice Clarence Thomas' concurring opinion:

Government cannot make us equal; it can only recognize, respect and protect us as equal before the law.

That these programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution the government may not make distinctions on the basis of race.

As far as the Constitution is concerned, it is irrelevant whether a government's racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help those thought to be disadvantaged.

In my mind, government-sponsored racial discrimination based on benign prejudice is just as noxious as discrimination inspired by malicious prejudice.

From Justice John Paul Stevens' dissent:

Instead of deciding this case in accordance with controlling precedent, the court today delivers a disconcerting lecture about the evils of government racial classifications.

The consistency that the court espouses would disregard the difference between a "No Trespassing" sign and a welcome mat. It would treat a Dixiecrat senator's decision to vote against Thurgood Marshall's confirmation in order to keep African Americans off the Supreme Court as on a par with President Johnson's evaluation of his nominee's race as a positive factor.

An interest in consistency does not justify treating differences as though they were similarities.

Los Angeles Times

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L. A. TIMES 6-13-95

GOP Sees Ruling as Charge to End Racial Preferences

■ **Congress:** Dole calls for Senate hearings. Clinton faces challenge of finding a politically viable response.

By MELISSA HEALY
and PAUL RICHTER
TIMES STAFF WRITERS

WASHINGTON—Republican critics of affirmative action hailed Monday's Supreme Court decision as a mandate for even more sweeping action by Congress and vowed to press home their attack on federal programs of racial preference.

Senate Majority Leader Bob Dole called the ruling—that preferential treatment based on race is almost always unconstitutional—"one more reason for the federal government to get out of the race-preference business" and summoned fellow lawmakers "to follow the court's lead and put the federal government's own house in order."

Dole, once a supporter of affirmative action, has called for hearings on the subject in the Senate, and has said he may sponsor legislation to rewrite many of the programs. He was joined in his praise of the court ruling by fellow presidential contender Sen. Phil Gramm (R-Tex.), who said Monday's decision "greatly strengthens the prospects" that he would seek to amend all funding bills passing through Congress this year to bar the use of federal dollars for "quotas and set-asides."

The court's dramatic ruling, meantime, thrust President Clinton and other Democrats into a new bind both legally and politically. Administration officials acknowledged it has disrupted a review of the federal government's 180-odd affirmative action programs now under way. Clinton had sought the review to help deflect criticism both from the GOP and conservative forces within his own party.

Legally, Clinton now can hope to save parts of affirmative action only if he can come up with new rationales that are defensible under the narrow terms outlined by the Supreme Court on Monday. The court said affirmative action programs can be upheld as a means to correct specific, provable cases of discrimination, but not to correct suspected discrimination by a society over time.

That, in turn, underscores Clinton's political challenge in dealing with the charged issues of race and gender. The President must either acquiesce in cutbacks to affirmative action programs, thereby risking alienation of minority voters who are crucial to his party's base, or actively defend the programs and risk offending large numbers of white voters.

"This has really intensified the question of which programs should live and which should die," said one Senate Democratic aide. "And that really raises the heat on what Clinton has been doing."

The White House has said it expects to complete its review of affirmative action by the end of this month. Before the court announced the rulings, officials familiar with the review have predicted that it would essentially affirm most principles of federal affirmative action, while calling for changes in the procurement "set aside" programs that have attracted so much criticism.

Administration aides were in general agreement that the decision now would considerably delay the results of the review, which were to be released in a major thematic speech.

"If we're not back to square one, we've at least moved back some distance," said one Administration official.

But with the White House still contemplating its next move on the issue, House Republicans are set to redraft completely the controversial programs that were launched in the early 1960s to compensate women and minorities for past discrimination in higher education and the job market.

Rep. Charles T. Canady (R-Fla.), a one-time Democrat who now chairs the House Judiciary Committee's constitution subcommittee, is set later this month to unveil legislation that would forbid the federal government to use gender or race preferences in any federal program, and dismantle many of the programs that have come to be central to affirmative action.

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The House bill would effectively repeal one of the central features of 160 government programs that use racial and gender preferences in hiring and promoting federal workers, granting federal contracts and awarding benefits under federal programs. It would call a virtual halt to federal programs that "set aside" slots and pools of funding for businesses owned by minorities and women, and would require substantial changes in other programs.

On Monday, Canady said the court's decision "gives impetus" to Republicans' political efforts to roll back many such programs, by making clear the court's intent to "return to a focus on individual rights" over groups' rights.

But the complex ruling, he added, also makes it vital for Congress to weigh in quickly with its own views on affirmative action. "You'll now see all kinds of challenges and litigation moving through district appeals courts, all the way to Supreme Court," Canady said. "The sooner we can act, the less legal uncertainty there'll be surrounding particular programs."

But Democratic proponents of affirmative action on Monday said that the court's ruling had increased pressure on the White House to act, and to do so quickly, before Congressional Republicans seize the initiative.

"It is perhaps even more important that the President take time to delineate a vision and a course of action . . . as only the President can do," said Rep. Kweisi Mfume, (D-Md.) former chairman of the Congressional Black Caucus. He rejected the suggestion that the court ruling would give the Clinton Administration political cover for proceeding with difficult program changes that are widely favored within the Administration, including the discontinuation of set-aside programs for minority- and women-owned federal contractors.

Mfume, focusing on one of the majority opinion's few comments that could be construed as justifying existing programs, lauded the court for acknowledging that "race discrimination is real and government has a role in eradicating it."

"For those Republicans who have some notion that they ought to do away with all set-asides in the government because there's no need for them, the court is saying, that is not correct, there is still," he said.

Times staff writer Janet Hook contributed to this story.

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Ruling Likely to Affect Minority Firms' Contracts

By PATRICK LEE
TIMES STAFF WRITER

The Supreme Court's ruling Monday undercutting federal affirmative action policies throws into doubt the future of federal programs that set aside billions of dollars in contracts for minority and disadvantaged businesses, potentially affecting thousands of firms nationwide, including hundreds in California.

And it could drastically alter the legal requirements that private firms actively hire and promote minorities if they do business with

NEWS ANALYSIS

the U.S. government. That could affect virtually every major employer in the United States.

"It's not a good sign for any of those programs: hiring, contracts, bidding," said UCLA law professor Jonathan Varat. "All come under question."

Firms that do more than $10,000 worth of business with the U.S. government in a year must have a state policy guaranteeing equal employment opportunity; those that do more than $50,000 a year and have more than 50 employees must have a written affirmative action plan and periodically report their hiring and promotion of minorities to the federal government.

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FIRMS: Minority Contracts

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Firms in both categories employ about 25% of the U.S. work force, or 26 million workers, according to the Office of Federal Contract Compliance. The ruling wouldn't affect voluntary affirmative action programs, which amount to only a small fraction of the total.

Minority business people saw the ruling as a dramatic setback to recent hard-won gains.

"Without a requirement to do it, agencies and educational systems and employers will not take the affirmative steps they used to take before to hire and contract with minorities and women," said Nancy Archuleta, chairwoman of the Latin American Management Assn. and head of the MEVATEC Corp., an Alabama-based science and engineering company and a federal minority contractor.

The ruling also raises questions about the Federal Communications Commission's controversial plans to broaden bidding on coveted broadcasting and telecommunications licenses to make it easier for minorities to qualify.

Critics have attacked the set-asides as unfair to non-minority firms. Others argue that the programs funnel federal dollars to a relatively small number of minority-owned businesses, doing little to spur the creation of new ones, particularly in impoverished inner-city areas.

On the contracting side, billions of dollars of federal money are at stake.

For example, the Defense Department has a goal—mandated by Congress in the late-1980s—of seeing that minority-owned firms get at least 5% of its overall annual spending.

Similarly, under the Small Business Administration's 8a set-aside program for disadvantaged firms, $4.37 billion in federal contract money went to 5,293 firms in 1994 alone, the General Accounting Office reported in testimony to the U.S. Senate in April. The SBA program is the federal government's oldest and largest contracting set-aside program.

Without the SBA 8a program, as many as 40% of the 8a firms with federal contracts would go out of business by the year 2000, said Fernando Galaviz, a Latino business owner and vice chairman of the National Federation of 8a Companies in Arlington, Va.

Of the total number of firms in the SBA's 8a program, about 580 are in California, SBA spokesman D.J. Caulfield said. Since 1988, California companies have received $2.6 billion in 8a prime contracts. In fiscal 1994, that amounted to $502 million.

'Without a requirement to do it, agencies and educational systems and employers will not take the affirmative steps they used to take before to hire and contract with minorities and women.'

NANCY ARCHULETA
Chairwoman of the Latin American Management Assn. and head of the MEVATEC Corp.

The SBA's legal staff was reviewing the court's decision Monday to determine what action, if any, it needed to take, Caulfield said.

Galaviz's own firm, the Centech Group, is a 210-employee computer services company that relies on federal 8a contracts for about 81% of its $16 million in annual revenues.

"You won't find private markets to make up for the federal money," he said. "The purpose of the programs are to allow businesses to develop expertise and credibility, and if that's taken away from you, there's no way you can be credible."

About 50 of the 8a firms received more than one-fourth of the contract dollars awarded last year, and 56% of the firms got no money in 1994, the GAO reported. Only 18.5% of the $2.06 billion in new 1994 contracts were competitively bid.

However narrowly focused such funds are, they can spur businesses to grow. Applied Technology Associates Inc., a software firm based in Mountain View, is owned by an Asian American, John Ng, and received federal contracts under the 8a program that allowed it to grow to 1,450 employees.

The firm eventually weaned itself off the 8a program in 1991, and now competes head-to-head with other firms for the federal contracts that account for all of its more than $50 million in annual revenues, said the firm's contracts administrator Mike Galbo. The 8a program "gives the small people a chance to get some business," Galbo said. "Without that, how can you compete with the IBMs, Lorals and TRWs?"

On the hiring side, the court's ruling Monday could jeopardize federally mandated programs that cost U.S. businesses about $2 billion a year to administer, according to a study by Barnard College economics professor Cecilia A. Conrad.

Spokesmen for the Defense Department and several big defense contractors, including Northrop Grumman Corp., Hughes Electronics Corp. and McDonnell Douglas Corp., all said they were still reviewing the Supreme Court's ruling and, therefore, could not immediately say whether it would force them to make significant changes in their programs.

But Hughes spokesman Richard Dore said that "regardless of whether it's a legal requirement, we think there's a business benefit to having a culturally diverse work force." More than 30% of Hughes' employees are minorities, Dore added.

Times staff writer James Peltz contributed to this story.

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The Washington Times

Affirmative action dealt blow by court

By Frank J. Murray
THE WASHINGTON TIMES

The Supreme Court yesterday imposed strict new limits on politically charged federal affirmative-action programs and required agencies to justify every instance of reverse discrimination.

Writing the 5-4 ruling on an issue that also has split Congress and intruded into the 1996 presidential campaign, Justice Sandra Day O'Connor said all governments must keep "racial politics" out of the equation when dealing with discrimination.

As of February, there were 180 such federal race-preference programs that steer billions of dollars in contracts to minority-owned firms.

"The 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," Justice O'Connor wrote in deciding the case of Adarand Constructors vs. Transportation Secretary Federico Pena.

In a dissenting opinion by the court's liberal wing, Justice John Paul Stevens wrote: "Instead of deciding this case in accordance with controlling precedent, the court today delivers a disconcerting lecture about the evils of governmental racial classifications." Also dissenting were Justices David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Rounding out the majority in requiring proof of "compelling governmental interest" in every case were Chief Justice William H. Rehnquist, Justice Clarence Thomas and Justice Antonin Scalia, who make up the conservative wing, and Justice Anthony M. Kennedy, the swing vote. Justices Thomas and Scalia both wrote separate concurring opinions to add explicit language to Justice O'Connor's decisive but understated rhetoric.

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• Ruling fuels attempts to repeal race and sex preferences. A14

"We have long held that equal protection of the law is a personal right, not a group right," Justice O'Connor said in announcing the decision from the bench. "Laws classifying citizens by race pose a great threat to that right."

In his concurring opinion, Justice Scalia bluntly dismissed racial entitlements and argued that the government can never meet the test of having a "compelling interest" in penalizing one race to benefit another.

"In the eyes of government we are just one race here. It is American," Justice Scalia wrote. "There can be no such thing as either a creditor or debtor race."

Justice Thomas, the only black justice, disdained what he called a racial "paternalism" exception to the principle of equal protection. "Government cannot make us equal. It can only recognize, respect and protect us as equal before the law," he wrote.

The Adarand firm, owned by whites, filed the low bid for a $104,800 highway guardrail, but the contract was given to a Hispanic-owned firm by a general contractor who got a 10 percent bonus to do so.

"It's no longer a public-policy debate. Now it's a constitutional question," said Adarand's attorney, William Perry Pendley of the Mountain States Legal Foundation in Denver.

"The court has said the federal government can no longer make decisions based on the race of the individual except when there's a very compelling governmental interest."

Such a practice has produced what President Clinton has called the "angry white male" syndrome among resentful men who feel displaced, often by people with fewer qualifications and sometimes at a higher price.

Yesterday's decision did not reverse lower-court judgments, but rather vacated them and sent the case back, giving the government a chance to show it had a compelling interest before a decision is made on Adarand's claim for damages.

"We are ecstatic. We think it signals the beginning of the end for the era of racial preferences," said Clint Bolick of the Institute for Justice.

"This decision speaks far beyond set-asides to every instance in which government classifies according to race," he said, itemizing education policies, interracial adoptions and voting rights.

After the similar J.A. Croson vs. Richmond case in 1989 affecting state and local agencies, the share of contracts to minorities dropped from 30 percent to 2 percent. It later rebounded to about 15 percent.

Although the decision is not expected to eliminate affirmative-action programs, a comparable reduction would move move billions of dollars in business out of minority companies.

Advocates for minority groups yesterday sought to soften the implications of the decision.

"They could have reversed this case, but they remanded it," said John Payton of the Washington firm Wilmer, Cutler & Pickering, who represented a cluster of minority-rights groups.

"The level of rhetoric from the dissent also is much lower than is normal in these cases," said Mr. Payton, attributing the lowered voices to accommodation of each other's concerns by Justices Stevens and O'Connor.

Theodore M. Shaw, associate director of the NAACP Legal Defense and Educational Fund, said: "We're not happy with the result, but at the same time, federal affirmative action is still alive. In some respects the opinion is not a surprise, given what the direction of the court has been."

"They haven't eliminated all programs, but they've certainly slowed them down," said Weldon H. Latham, attorney for the National Coalition of Minority Businesses. "I think it's too much of an overstatement that none of them will be affected."

Wash Times

Ruling on affirmative action expected to spur Congress

By Nancy E. Roman
THE WASHINGTON TIMES

The Supreme Court's ruling on affirmative action gives momentum and an added sense of urgency to congressional efforts to repeal race and sex preferences.

Senate Majority Leader Bob Dole said yesterday that the court's ruling is "one more reason for the federal government to get out of the race preference business."

"It's now our responsibility in Congress to follow the court's lead and put the federal government's own house in order," the Kansas Republican said.

Rep. Charles T. Canady, Florida Republican and chairman of the subcommittee with jurisdiction over affirmative action, has drafted a sweeping plan to repeal race and sex preferences in government hiring, promoting and contracting.

"The ruling makes clear that the congressional policy of cavalierly accepting racial preferences is not constitutional," he said.

Clint Bolick, vice president of the Institute for Justice who has been working with Mr. Canady and Mr. Dole on congressional efforts to reform affirmative action, said the court's ruling will certainly help their efforts.

"It gives the impetus to bring federal policies into compliance with the Constitution," he said. "Of the 180 federal racial preference progams, I do not think a single one could survive the scrutiny that the Supreme Court has applied to such programs."

Ed Gillespie, spokesman for House Majority Leader Dick Armey, Texas Republican, said the ruling could hasten the House's timetable on affirmative action.

"Our read of it is that it certainly does reinforce the Republican approach to legislative options," he said, adding that a bill could begin moving this summer.

Rep. Kweisi Mfume, Maryland Democrat and the Congressional Black Caucus' point man on affirmative action, urged protection of race and sex preferences, saying they have given women and minorities "at least one grab at the apple."

"The political situation is grave," said Mr. Mfume, who publicly warned President Clinton last week that if he didn't stand up for affirmative action, he would lose the support of blacks in 1996.

Mr. Mfume ignored the ruling's implications for federal programs that grant preferences and singled out what he saw as a ray of hope in Justice Sandra Day O'Connor's opinion.

"Both the practice and lingering effect of racial discrimination is an unfortunate reality," he said, reading her words, and then adding his own: "The clear-cut statement recognizes a need for affirmative action."

In a splintered and complex 5-4 vote, the court stopped short of striking down a federal program that offers special help to small businesses owned by racial and ethnic minorities but made it much harder for those programs to pass constitutional muster.

The federal government awards more than $10 billion a year in contracts to minority-owned firms in compliance with congressional directives on affirmative action.

House leaders have been concerned that if they move too quickly on affirmative action, they could alienate black and female voters they hope to attract in 1996.

To temper a perception that the party is pursuing an anti-black agenda, the leadership assigned the Minority Outreach Task Force to come up with pro-active legislation for inner-city communities.

That legislation was slated to move before any proposal to repeal race and sex preferences. A senior House leadership aide said yesterday the court ruling may change that time frame.

"There is definitely a little bit of a strain there," the aide said. "But this ruling takes away any timing choices on our part."

WASH. TIMES

AFFIRMATIVE-ACTION RULING

Excerpts from yesterday's Supreme Court decision in the affirmative-action case titled Adarand Constructors Inc. vs. Federico Pena, secretary of transportation. In the majority were Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas. Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer dissented.

Justice O'Connor for the majority:
"Any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny. . . .
"The point of carefully examining the interest asserted by the government in support of a racial classification, and the evidence offered to show that the classification is needed, is precisely to distinguish legitimate from illegitimate uses of race in governmental decisionmaking. There is nothing new about the notion that Congress, like the states, may treat people differently because of their race only for compelling reasons. . . ."

Concurring opinion by Justice Scalia:
"In my view, government can never have a 'compelling interest' in discriminating on the basis of race in order to 'make up' for past racial discrimination in the opposite direction. Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or a debtor race."

Concurring opinion by Justice Thomas:
"Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law. That these programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution, the government may not make distinctions on the basis of race."

Dissenting opinion by Justice Stevens:
"Instead of deciding this case in accordance with controlling precedent, the court today delivers a disconcerting lecture about the evils of governmental racial classifications. . . . The majority's concept of 'consistency' ignores a difference, fundamental to the idea of equal protection, between oppression and assistance. The majority's concept of 'congruence' ignores a difference, fundamental to our constitutional system, between the federal government and the states. And the majority's concept of 'stare decisis' ignores the force of binding precedent."

Dissent by Justice Souter:
"When the extirpation of lingering discriminatory effects is thought to require a catch-up mechanism, like the racially preferential inducement under the statutes considered here, the result may be that some members of the historically favored race are hurt by that remedial mechanism, however innocent they may be of any personal responsibility for any discriminatory conduct. When this price is considered reasonable, it is in part because it is a price to be paid only temporarily."

The Washington Times

COVER STORY

USA TODAY 1/12

Court signals 'end for era' in civil rights

By Ed Andrieski, AP

PLAINTIFF: Randy Pech sued over contract.

By Tony Mauro
USA TODAY

The Supreme Court, with its promise of "Equal Justice Under Law" etched in marble above the front door, has been seen for more than four decades as the ultimate protector of the civil rights of minorities.

On Monday, that view shifted as the court, in a pair of decisions on affirmative action and school desegregation, took a direction far removed from the traditional liberal approach to civil rights.

"They've become indifferent, or worse, enemies of civil rights," said Columbia University law professor Jack Greenberg, who for more than 30 years has been a leading strategist in civil rights litigation.

"It used to be the only place to turn to."

The court's two opinions, echoing what many are saying in society at large, expressed outright exasperation with civil rights remedies that take race into account, give minorities a boost in government contracts and hiring, and involve the courts in running public schools.

"In the eyes of government, we are just one race here," proclaimed Justice Antonin Scalia.

Supporters of the court's approach applauded the rulings as a step back toward "equal justice" — for whites as well as blacks — that has been damaged by 30 years of affirmative action programs.

"The court is speaking more adamantly than ever before on this issue and clearly wants to get government out of the business of racial classifications," said Clint Bolick of the conservative Institute for Justice.

Rep. Charles Canady, R-Fla., who plans to introduce a bill this month that would outlaw racial preferences in hiring, hailed the decision as "a step in the right direction."

"This signals the beginning of the end for the era of racial preferences," said Bolick.

Clearly, the Supreme Court's two rulings have rearranged the landscape of a thorny political battle.

The justices set a standard for assessing federal affirmative action plans that may leave few of the hundreds of programs standing.

And joining in the GOP trend away from big federal government, the court charted a course that will diminish the role of federal courts and agencies in remedying racial and gender bias.

Next likely target: redrawing of congressional districts aimed at electing more minority candidates to Congress. A court ruling on that case is expected within the next three weeks.

In the school desegregation case, the majority said school systems did not have to guarantee equal results for black and white students and said returning schools to local control should be a prime goal of court-ordered desegregation.

"It is a watershed day in the history of overcoming the legacy of racial apartheid in this country," said Harvard law professor Laurence Tribe.

"They are pulling back from active desegregation efforts and are far less interested in the explicit use of race as a remedy."

Perhaps most symbolic of the shift: the views expressed Monday by Clarence Thomas, who succeeded Thurgood Marshall as the court's only black justice.

Marshall helped fashion affirmative action remedies.

But Thomas swept them aside them in a 2½ page opinion that bolstered the majority's stance critical of federal affirmative action programs.

Thomas dismissed affirmative action as "racial paternalism. ... These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are 'entitled' to preferences."

The Thomas view is light years away from the prevailing civil rights philosophy of the high court for decades.

Justice Harry Blackmun once put it this way: "In order to get beyond racism, we must first take account of race."

Against the backdrop of the national debate over affirmative action, it was the case of *Adarand Constructors vs. Pena* that gained most attention Monday.

Adarand was the losing bidder for a subcontract to build the guardrail on a federal highway project in southern Colorado, even though it had submitted the low bid.

Under an affirmative action program, the main contractor won a cash bonus for giving the guardrail work to a Hispanic-owned company.

The federal program at issue is designed to help "disadvantaged business enterprises" without a specific race requirement, as the Clinton administration pointed out in defending it before the Supreme Court.

But while white-owned firms could conceivably qualify as disadvantaged, all minority-owned firms are presumed to qualify — no matter how prosperous or poor.

Ruling in Adarand's favor, the court did not explicitly strike down the program, but sent it back to lower courts to re-examine under a so-called "strict scrutiny" standard — a test that will force federal officials to decide whether the program is narrowly tailored to serve a compelling government interest.

"Under that standard, it's a dead duck," said William Perry Pendley, Adarand's lawyer.

USA TODAY

Under ruling, program is 'a dead duck'

"All governmental action based on race," said Justice Sandra Day O'Connor for the majority, "should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed."

Dissenting Justice John Paul Stevens fretted that the tough new standard "has usually been understood to spell the death of any governmental action" measured by it.

But Ralph Neas, of the Leadership Conference on Civil Rights, insists that even under the higher test, "a lot of affirmative action programs will survive."

Neas concedes "it will be more difficult" now to justify affirmative action programs.

The court's dramatic shift was a clear legacy of the Reagan and Bush presidencies. Just five years ago, in a 5-4 decision, the justices upheld a federal affirmative action program not unlike the one struck down on Monday.

What changed?

Four of the five justices in the 1990 majority have left the court: William Brennan, Marshall, Byron White and Blackmun. Two were replaced by Bush, two by Clinton. The Clinton appointees, Stephen Breyer and Ruth Ginsburg, both supported affirmative action.

Thomas, appointed by Bush in 1991, was the justice who made the difference.

He joined four other Reagan-Bush appointees — William Rehnquist, Anthony Kennedy, O'Connor and Scalia — to form a majority that overturned the 1990 decision.

The message is that one justice can clearly make a difference, a fact of political life that rarely draws attention during campaigns for president — the person who gets to appoint the justices.

"It should be an election issue," said Patricia Ireland of the National Organization for Women, who supports affirmative action. "This was the Reagan-Bush Supreme Court ruling today."

Said University of Minnesota law professor John Powell, once legal director for the American Civil Liberties Union: "The Supreme Court once took a special role in protecting minorities. The schools are still segregated, there's tremendous discrimination in jobs and housing, and now the court is saying, 'We don't see a problem here.'"

Contributing: Andrea Stone and Jessica Lee

'Preference' programs oppressive, Thomas says

Clarence Thomas, the only black justice on the U.S. Supreme Court, used a 5-4 ruling Monday against broad-based federal affirmative- action efforts to condemn the programs and how they work:

"That these programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution, the government may not make distinctions on the basis of race. As far as the Constitution is concerned, it is irrelevant whether a government's racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help those thought to be disadvantaged.

"These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are 'entitled' to preferences."

Reactions:

▶ **Shelby Steele**, a conservative scholar, calls Thomas' opinion "very good. There is no provision in the Constitution that says, to repay a historical wrong, discrimination is justified. ... That kind of thinking is paternalistic. It's another form of oppression, particularly for blacks. Thomas, more broadly the court, uses the principle of strict scrutiny (of programs' goals) as the weapon with which they will dismantle affirmative action."

▶ **Charles Kamasaki**, vice president of the National Council of La Raza, a civil rights organization: "The problem with (his) analysis is it ignores ongoing discrimination. If you have both past discrimination that puts people at a disadvantage and ongoing discrimination, how does one deal with that? Judge Thomas pretends it's not there. He leaves aggrieved parties with no remedy at all."

▶ **Linda Chavez**, conservative columnist and head of the Center for Equal Opportunity, a Washington think tank: "It is very eloquent. He makes exactly the points I like to make. It's affirmative-action racism that presumes people, because of color or race, are incapable of meeting the same standards as whites. I find that very offensive and he does as well."

▶ **Jesse Jackson**, Rainbow Coalition leader: "In a very real sense, Clarence Thomas has betrayed the very social justice movement that made his opportunities possible. Without the laws we worked for, he couldn't have gone to Yale, couldn't have gone to the EEOC (Equal Employment Opportunity Commission), he couldn't have gone on the Supreme Court."

— Linda Kanamine

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Rules on desegregation and affirmative action

By Tony Mauro
and Jessica Lee
USA TODAY

The Supreme Court Monday weakened two of the most powerful and often-used federal remedies for discrimination: affirmative action and court-ordered school desegregation.

By 5-4 majorities in two cases, it established rules that:

▶ May kill many federal affirmative action programs.

▶ Will make it easier for local and state governments to end court supervision of school desegregation programs.

"It is a setback," said civil rights leader Jesse Jackson. "While we react to those wearing white sheets, it is those who wear black robes who take away our protection."

The decisions are a major shift in the way the high court viewed government efforts to solve continuing racial bias.

"Government cannot make us equal," wrote Justice Clarence Thomas, the court's only black member.

The affirmative action decision came in the midst of a debate over programs that consider race in hiring, education and government contracts.

More than $10 billion in federal contracts are awarded under programs that give preference to companies owned by minorities or women.

"This signals the beginning of the end for the era of racial preferences," said Clint Bolick of the Institute for Justice, who opposes affirmative action.

But some advocates drew comfort from the fact that seven justices — all but Thomas and Antonin Scalia — agreed that affirmative action might be justifiable in some cases.

In the other ruling, justices sided with the state of Missouri in its efforts to end federal supervision of its school desegregation efforts in Kansas City.

The state argued that after 17 years and more than $1 billion, it had provided equal opportunity — even if tests show unequal results.

The court agreed, and said control of the schools should be returned to local authority.

USA TODAY

Affirmative action takes new turn for '96 race

By Judy Keen
USA TODAY

Affirmative action was shaping up as a pivotal test in the 1996 presidential campaign, a classic fault line dividing President Clinton and his Republican challengers.

But Monday's Supreme Court ruling, which established a new standard that could make most federal affirmative action programs extinct, scrambled the shape of the debate and the politics of both sides.

The ruling could ease pressure on Clinton. His review of federal affirmative action programs, begun in February, has been delayed repeatedly. Republicans said the decision backs their opposition to affirmative action. But they concede that if they move too hard on what's still a divisive issue, they risk charges of racism that could drive voters away and energize Democratic groups.

Clinton's aides have been searching for ways to acknowledge brewing public resentment over hiring preferences while preserving programs dear to Democratic coalitions whose support he needs to be re-elected.

AP

JACKSON: Calls ruling a setback

AP

WILSON: Undoing California policies

The White House was disappointed but not surprised by the court's action, and Clinton aides indicated their report will address the set-aside programs the court examined.

"The president instructed us to ask many of the same questions that the court focused on today," said special counsel Christopher Edley Jr., heading up the staff review.

Clinton could now reluctantly endorse an end to some affirmative action programs — and blame the court.

"It probably does let him off the hook," said Gwen Daye Richardson, editor of *National Minority Politics*, a monthly conservative magazine. "He can piggyback his policies on the court's ruling."

Democratic strategist Brian Lunde said Clinton's goal "is to get affirmative action off his political plate. For Democrats to have a public national debate over affirmative action can only hurt us."

But groups fighting to keep affirmative action intact will up the ante, demanding Clinton do something to counter the Supreme Court's conservative trend.

"This decision puts the Clinton administration on the line, not off the hook," said Patricia Ireland of the National Organization for Women.

A Democratic primary challenge or third-party candidacy by Jesse Jackson would really put heat on Clinton.

After Monday's ruling, Jackson lamented "very paltry" national leadership on the issue and said it's "a major factor in any decision as to what we must do in '96."

Republican candidates called Monday's court action a corroboration of their opposition to affirmative action:

▶ Senate Majority Leader Bob Dole called the decision "one more reason for the federal government to get out of the race-preference business."

▶ The court, said Sen. Phil Gramm, R-Texas, "is obviously moving in the direction that America's moving in."

▶ "The Supreme Court is now an ally of the conservative movement," said commentator Pat Buchanan.

But Richardson said he hopes the ruling pre-empts affirmative action as a presidential campaign issue: "It's too often used as a wedge or misused by both sides. They're not really using it to come up with a solution."

If the debate evaporates, Republicans may lose a potent campaign weapon, but one that might have made several of them uneasy. Dole once voted to set aside some federal contracts for women and minorities, and California Gov. Pete Wilson supported affirmative action as San Diego mayor.

Still, Wilson can claim he has taken steps to curtail affirmative action. He signed an executive order this month dismantling an array of state preference policies.

The issue's effect on the presidential race may shift, but it won't go away. California will have a measure to erase preference programs on its 1996 ballot; referendums and bills are pending in other states.

Clinton's review will be delayed while parts are rewritten to reflect the decision. But, said spokesman Mike McCurry, the ruling "certainly will not put it on ice."

Sen. Richard Lugar, R-Ind., a presidential candidate, said few voters ask him about affirmative action when he's out campaigning.

He said "thoughtful" individuals and businesses are, like the court, ahead of politicians and already amending their views.

"We are going to see dozens of issues in the campaign," Lugar said. "What's most important depends on the status of the country at that point."

Contributing: Andrea Stone, Tony Mauro

USA TODAY

1954–1995

Milestones in desegregation and affirmative action,

1954
Brown vs. Board of Education: The Supreme Court rules unanimously that racially 'separate educational facilities are inherently unequal' and violate the U.S. Constitution. At issue were schools in Kansas, South Carolina, Virginia and Delaware.

1965
President Johnson signs Executive Order 11246, requiring employers who receive federal funds to establish minority hiring goals — but not quotas.

1969
Nixon administration issues the Philadelphia Plan, forcing federal contractors to set forth plans for increasing the number of minorities in construction jobs.

1974
Milliken vs. Bradley: Multidistrict remedies for school segregation cannot be ordered unless it can be shown that all districts involved helped create the problem in the first place.

1980
In *Fullilove vs. Kultznick*, the Supreme Court allows a federal public works program that sets aside 10% of grants to minority businesses.

1954 1960 1965 1970 1975 1980

1964
Congress passes the Civil Rights Act, barring workplace discrimination.

1971
Swann vs. Charlotte-Mecklenburg County: Busing and redrawing school district lines are acceptable ways of curing segregation.

1978
The Supreme Court in *Regents of University of California vs. Bakke* strikes down a university program that set aside 16 of 100 openings for minorities. The court said less formal race-conscious remedies could be acceptable.

1979
The Supreme Court in the *United Steelworkers vs. Weber* endorses a private-sector quota plan in the steel industry.

Bettman Newsphotos

Black student Elizabeth Eckfor enters Little Rock's Central High School in 1957.

Source: USA TODAY research

AP

South Boston High School desegregation in 1974

AP

Allan Bakke

1986
The Supreme Court rules in *Wygant vs. Jackson Board of Education* that an affirmative action program protecting black teachers from layoffs was unconstitutional.

1990
The Supreme Court, in *Metro Broadcasting Inc. vs. FCC* upholds an FCC policy favoring minority broadcasters. Four of five justices in the majority have since retired.

1995
In *Adarand Constuctors vs. Pena, secretary of Transportation*, the Supreme Court rules Congress is limited by the same strict standards as the states in offering special help to minorities. In *Missouri vs. Jenkins*, the court rules that court-ordered school desegregation plans can be ended even if student test scores still fall short of national norms.

1985 1990 1995

1985
The Reagan administration mounts an unsuccessful campaign to weaken Johnson's executive order.

1989
In *Richmond vs. J.A. Croson Co.*, the Supreme Court strikes down a Richmond, Va., set-aside program because of insufficient evidence of past bias.

1994
The new Republican majority in Congress targets affirmative action programs, and the Supreme Court agrees to consider a new challenge to an affirmative action program in federal highway contracts.

Newt Gingrich takes the gavel from Richard Gephardt in January 1995.

By Tim Dillon, USA TODAY

By Sam Ward, USA TODAY

USA TODAY

COURT, From A6

Ruling May Affect $10 Billion in Federal Contracting

Dissenting were Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Stevens, joined by Ginsburg, lashed out at the majority for abandoning its usual deference to congressional decisions and for equating race-based policies that hurt blacks with race-based policies that help.

"There is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that seeks to eradicate racial subordination," Stevens said.

O'Connor said that strict scrutiny need not be "fatal" to all affirmative action.

"The 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."

Souter, joined by Ginsburg and Breyer, tried to soften the force of O'Connor's words by noting that most of the justices still believe that some circumstances would permit programs aimed at remedying the effects of past invidious discrimination.

Ginsburg, joined by Breyer, also wrote a separate statement to say that elected officials, rather than judges, should be in charge of improving affirmative action.

O'Connor's decision puts federal set-asides on the same plane as state and municipal race preferences.

In 1989, the court rejected a Richmond public works program that set aside 30 percent of construction funds for minority contractors and said such local programs deserve the most rigorous judicial scrutiny.

The ruling also guts prior court opinions that said definitively or indirectly that Congress deserves greater court deference on race-based policies.

THE FIRM FOUNDER OF AFFIRMATIVE ACTION

Arthur Fletcher Isn't Going to Take a Challenge to His Legacy Lying Down

By Kevin Merida
Washington Post Staff Writer

Art Fletcher pushes aside his medically incorrect breakfast of corned beef hash and buttered toast, saved only by the prunes with lemon. Despite his 70 years and two heart bypass operations, he's got more urgent matters on his mind. The man who, as much as anyone, could be called the godfather of affirmative action is fighting to preserve his contribution to history.

Taking pen to paper at a corner table at the Channel Inn, just around the corner from his town house in Southwest Washington, Fletcher is deep into his defense of the controversial system of government regulations intended to bring more minorities into the workplace. He draws two large circles—"applicant pools"—and fills them with amoeba-like symbols—"job candidates."

You see, he explains, for decades employers hired only from the white pool. And now when companies hire from the pool of minorities, he continues, whites yell "reverse discrimination." Fletcher, eyes widening for effect, draws another large circle. That's the pool with the extraordinary minorities in it.

"That's the pool whites want you to hire from," he says. "They say, 'The only way you can keep me from screaming bloody murder is you have to hire out of the Michael Jordan pool.' We used to call it the Jackie Robinson pool."

It is one of many points he has been making again and again. All across the country, at universities and on talk shows, before bar associations and state legislatures, Arthur Allen Fletcher is arguing his case as if these are his last days in the blazing sun. He has hoisted himself onto the front lines of the national debate over where equal employment opportunity ends and quotas begin.

Twenty-six years ago as an assistant labor secretary under President Nixon, Fletcher implemented a plan that forced federal construction contractors in Philadelphia to set goals for hiring minorities—and make a "good-faith effort" to meet the targets—or face sanctions. It became a model for future affirmative action programs, introducing into the American workplace the concepts of timetables and

See FLETCHER, C2, Col. 1

1 of 3

THE WASHINGTON POST

Arthur Fletcher

2/3

FLETCHER, From C1

proportional representation by race and gender.

Now, that plan and other such programs are under assault. Yesterday the U.S. Supreme Court potentially jeopardized a broad range of affirmative action, including just the sort of government contracting programs that were pioneered by Fletcher.

What has him steaming is that the effort to uproot affirmative action is being driven largely by conservative Republicans and GOP presidential contenders, many of whom are his friends.

"My party is really making me sick with their hot, short-term pursuits to this thing," he complains. "They're ruining my legacy. Affirmative action is my legacy."

To be sure, there are many other people who consider affirmative action part of their legacies as well. But few take it so personally. In fact, Fletcher, a moderate Republican and member of the U.S. Commission on Civil Rights, is so angry about the attacks on affirmative action that he is planning to launch his own long-long-shot campaign for the GOP presidential nomination next month. It is "the only way for me to get an interview," he theorizes.

Fletcher's chances of becoming the 1996 GOP standard-bearer are next to none, but it will not be the first time he has acted on one of his Don Quixote impulses. In 1978, he ran for D.C. mayor against Marion Barry. He got 28 percent of the vote. Last year, he threatened to run against Barry again but opted out.

"I'll be the only one in the race who can stand toe to toe with the right-wing conservative and the frightened liberal," says Fletcher. "I am the affirmative action constituency's candidate."

Fourth and Long

Fletcher has long been a curious figure—a kind of insider-outsider, part eminence, part gadfly. At 6 feet 4, 225 pounds, he is an imposing man who once played professional football. Today his eyes convey the same intensity he displayed on the gridiron and in the many sanctums of government where he was often a lonely black agitator.

BY ROBERT A. REEDER—THE WASHINGTON POST

Arthur Fletcher is fighting for the life of affirmative action, a policy that he helped formulate.

His credentials in the Grand Old Party go back four decades to when he was vice chairman of the Kansas GOP, before being a black Republican was considered cool. "Art Fletcher comes out of the tradition of the Republican Party that saw social justice as not just a practical issue but a moral issue," observes Jesse Jackson.

He also comes from the tradition of Jackie Robinson and the Rev. Martin Luther King Sr.—public figures who had standing in their own communities but could negotiate outside them. From city councilman in Pasco, Wash., during the 1960s to adviser to four Republican presidents, Fletcher has rarely been anything but candid.

When President George Bush named Fletcher chairman of the Civil Rights Commission in 1990, Nixon sent Fletcher a handwritten note: "You must be prepared to take a lot of heat from critics on both the left and right. But you have demonstrated that you can dish it out as well as you can take it!"

Nixon certainly knew.

At a high-drama White House meeting with the Congressional Black Caucus in 1971, black lawmakers presented Nixon with 60 recommendations on how to improve the lives of African Americans. At the session's conclusion, the president turned to Fletcher and asked him if he cared to comment, according to a book by Rep. William L. Clay (D-Mo.).

"No, Mr. President," Fletcher replied. "I have been telling you for 15 months the same things as these congressmen, and nobody's been paying any attention to me."

In the 24 years since that meeting, the only predictable thing about Art Fletcher has been his unpredictability. He described the Civil Rights Commission he formerly chaired as "Mickey Mouse," backed the controversial Supreme Court nomination of Clarence Thomas and condemned his party for using "inflammatory racial rhetoric" in the 1988 presidential campaign. He once became so upset with Rep. John Conyers Jr. (D-Mich.) that he threatened to "punch him out"—that is, if he had been younger and in better fighting shape.

"People find him kind of an oddball," says his wife of 31 years, Bernyce Hassan-Fletcher.

But he is a principled kind of an oddball—someone the Republicans have been holding up for years to illustrate how broad their party is, how open it is to authentic black voices.

And now the fight over affirmative action is testing whether Art Fletcher is really *somebody* in the Republican Party or just a character operating on the margins.

Two Views

"They don't respect him the way they should respect him," says Bernyce Fletcher of the party elders. For all the credibility he has brought to the GOP as an African American, she continues, you would think that on the subject of affirmative action—*his issue*—he would be invited into the strategy sessions, made a player. "That would be showing respect," she says. "This man is not asking for something he didn't earn. They know his history."

Apparently, many don't.

In February, Fletcher sent a 15-page "open letter" to every Republican member of Congress, making a case for affirmative action and inviting a response. For months, he got no reply.

"His advice has not been heeded because the politics of the Republican Party is that they are playing the race card, and because Fletcher doesn't believe in playing the race card he is out of sync," says Mary Frances Berry, chairwoman of the Civil Rights Commission.

Conservative GOP strategist William Kristol disagrees. "What's wrong with this issue is it has been almost politically incorrect to even question racial set asides and preferences," he says.

And what of Fletcher's contention that scuttling affirmative action will further tarnish the party's image among minorities and set race relations back 100 years?

"I'm sure he's saying what he believes," Kristol adds, "but I think he's wrong . . . intellectually and politically as well."

Fletcher continued 3/3 post

Path to 'Disaster'

Back at the Channel Inn, Fletcher has finished his breakfast and grabs a briefcase full of dusty reference books with underlined passages and old census figures that helped him argue for affirmative action inside the Nixon administration.

"The point is I had to make the case in the White House with hard, cold data," explains Fletcher. "Otherwise, I couldn't have done it."

You quickly realize, as Fletcher shuffles through his material, that he is from another era. His sideburns are long, his sweat suit is a 1970s model, his Yukon Jack hat is not cocked in the hip way.

Like a wise grandfather eager to share history's lessons, Fletcher passes up the easy quote, preferring to build drama with the long, winding tale. He worries that some younger blacks are so brimming with rage they want to fight the affirmative action war on the strength of emotion.

In fact, during his "teach-ins," which are replete with charts, brochures, even a video, he instructs students emphatically: "If you can't explain affirmative action, stay the hell off television."

Contrary to popular sentiment, he counsels, affirmative action is not a civil rights issue at all—or even one of social policy. He thinks that there is a fundamental misunderstanding of what should be the purpose. "It's based on sound economic law and procurement principles," says Fletcher. "When you hire a person, you're purchasing their skills and their impact to help you make a profit."

His arguments to Nixon, he recalls, were not that blacks should be compensated for past discrimination but that they "ought to have a piece of tomorrow's future."

Fletcher often argues the merits of affirmative action differently from other leaders, speaking of breaching contracts and measuring discrimination with "scientifically constructed studies."

"Most black champions of affirmative action are talking about social equity," he says. "I'm talking about it as a method of getting economic equity."

Fletcher's bona fides on the subject date to 1969 when he signed an administrative order known as the Revised Philadelphia Plan—labeled such because an earlier version was voluntary and deemed legally unenforceable. This maiden Nixon voyage into enforceable affirmative action targeted Philadelphia's skilled construction trades, which had a track record of denying opportunities to minorities. The plan required firms competing for federal contracts to commit to numerical hiring targets devised by the Labor Department.

As Fletcher explains it today, contractors were simply asked to adhere to a new bid specification—that minorities would log a flexible range of hours on projects. "This is all traditional business practice," he says. "We didn't ask them to do a damn thing that they weren't doing all along, just to include minorities." (Initially, women as a group were not covered under the Nixon plan.)

In 1970, Nixon's Labor Department extended the Philadelphia Plan to government contractors nationwide. And though these early initiatives have been challenged in court and on the political playing field for a quarter-century, they have pretty much remained intact.

Until now.

Yesterday's Supreme Court decision was the latest in a series of setbacks that have come from the judicial branch. ("Disaster," Fletcher called the ruling. "It sets a tone for the nation. To those who opposed or frustrated affirmative action efforts to begin with, they now have a license to be more vengeful and vindictive than before.")

Politicians have followed a similar course of undermining affirmative action, with Senate Majority Leader Robert Dole taking a lead position by promising an overhaul of all programs.

Fletcher has seen a number of his colleagues who ardently defended affirmative action in the Nixon years abandon him. Among them are former labor secretary George P. Shultz, now a fellow at Stanford University's Hoover Institution, and labor solicitor Laurence H. Silberman, now a federal judge in the District who first disclosed his uneasiness with the Nixon era policies in a 1977 opinion piece in the Wall Street Journal.

"Although I expressed a different view ultimately," Silberman says today, "I never had anything but respect for Art's sincerity."

'It's a Great Time'

It is sometimes difficult to challenge an elder who has put in his years and earned his stripes. But that is exactly what radio talk show host Armstrong Williams did to Fletcher back in March at a highly charged town hall meeting, broadcast nationally from Howard University's law school.

Williams, a fellow Republican who opposes racially based preference programs, was trying to explain to other panelists and a skeptical audience that he had access to Dole and that the senator had promised to convene a series of meetings before any decisions on affirmative action were made.

This prompted Fletcher to remind Williams that he has known Dole since 1952 and that the senator had not even given him the courtesy of a reply. "The least Bob could do was pick up the phone and say, 'Art, come talk to me. Since you are the father of this thing, come talk to me.' "

"It's obvious that you and I have a different kind of relationship with the senator," Williams replied, drawing boos and hisses from many students who thought the 35-year-old conservative had shown disrespect to Fletcher.

Though Williams later called to apologize, he believes Fletcher is effectively standing in place, unable to fathom revisions of affirmative action "because that's his baby."

"Fletcher's a good man," says Williams. "He's done well. But we can't stay there. The world has changed since 1970."

Indeed it has, for these are some of Art Fletcher's best days. Long viewed, by his own admission, as a second-tier leader on civil rights issues, he is now in great demand. He has received 138 invitations to speak on college campuses, and he finally got a response from Dole to his letter.

"Although we may have to agree to disagree on some points," Dole wrote, "I value your advice and I respect your longstanding commitment to equal opportunity."

"It's a great time," Fletcher says, "particularly to be 70 years old and to have undergone two triple bypasses, with no book on the shelves and no whole lot of press notoriety, and then for the kids to look up and say, 'You mean, the original source [of affirmative action] is still alive?' For a great-grandfather, it doesn't get much better than this, son."

ALR 6-13-95

Disability Benefits

JUSTICES PERMIT DISABILITY CUTOFF FOR CHANGE IN WAGE-EARNING CAPACITY

By a vote of 8-1, the U.S. Supreme Court has ruled that the phrase "change in conditions" under the Longshore and Harbor Workers Compensation Act refers to factors other than the employee's physical health, so that the law envisions changes to compensation based on shifts in wage-earning capacity. The ruling opened the prospect that benefits will be cut off for a longshoreman who, despite a disability, acquired new skills as a crane operator and earned three times his former wage (*Metropolitan Stevedore Co. v. Rambo*, US SupCt, No. 94-820, 6/12/95).

The court said that the act does not require that a cutoff or modification of benefits be supported by both a change in wage-earning capacity and a change in an employee's physical condition.

Disability is in essence an economic, not a medical concept, said Justice Anthony M. Kennedy. He found that the fundamental purpose of the act is to compensate employees for injuries resulting in loss of wage-earning capacity. But that where that capacity has been reduced, restored, or improved, modifications are permitted.

John Rambo injured his back and leg in 1980 while working for Metropolitan Stevedore Co. The parties stipulated to a nearly one-fourth permanent partial disability, and a Department of Labor administrative law judge found a $120 decrease in his weekly wage of $534. Rambo received an award of two-thirds that loss, or some $80 per week.

Finding that Rambo's disability was only partly due to the job, the employer's period of liability was set at 104 weeks. After the award, Rambo attended classes to learn how to operate a crane. In the meantime, he worked as a heavy lift truck operator. His physical condition remained the same, but between 1985 to 1990, his average weekly wages ranged from $1,300 to $1,700 per week.

Metropolitan Stevedore sought to modify the award, claiming that there had been a change in conditions so that Rambo was no longer disabled under the act. Discounting wage increases relating to inflation, an administrative law judge held that Rambo no longer has a wage-earning capacity loss, and cut off his payments. The benefits review board agreed that the term "change in conditions" includes change in wage-earning capacity, as well as change in physical condition. Rejecting a stance taken by the U.S. Court of Appeals for the Fourth Circuit, the Ninth Circuit held that the act permits modification of an award only where there has been a change in the claimant's physical condition.

Kennedy acknowledged that the cutoff in benefits appears to run counter to some 50 years of court pronouncements, but warned that "breath spent repeating dicta does not infuse it with life." He further rejected the argument that this change in statutory interpretation will flood the courts with litigation. Such arguments are best directed to Congress or to the Labor Department, the court said.

Justice John Paul Stevens cast the sole vote against remand. He warned that except for the 1985 holding of the Fourth Circuit, the result that his colleagues have adopted runs counter to 60 years of otherwise consistent precedent. He observed that courts have refused to find a change in conditions even where the employee was imprisoned for life, or where the employee was committed to an insane asylum.

Sex Discrimination

FEDERAL JUDGE APPROVES $940,000 AGREEMENT SETTLING SEX BIAS ALLEGATIONS AGAINST CIA

A federal judge June 9 approved a settlement in which the Central Intelligence Agency agreed to pay $940,000 in back pay and salary increases to female employees who alleged classwide discrimination against female officers and trainees (*Conway v. Studeman*, DC EVa, No. 95-426-A, 6/9/95).

Following a hearing on the fairness of the settlement, Judge Albert V. Bryan of the U.S. District Court for the Eastern District of Virginia approved the tentative settlement reached by the parties in March (65 DLR A-3, 4/5/95). The agreement provides for 25 retroactive promotions, 24 career-enhancing and stretch assignments, and 15 transfers back into case officer status for female employees at the agency.

The CIA admitted no wrongdoing in settling the sex bias suit. "We will implement fully the terms of the court-approved agreement, but I believe that additional measures are called for," CIA Director John M. Deutch said in a June 9 statement.

As part of the settlement, the CIA agreed to adopt policy changes that will ensure gender equity in future employment practices, including revised management training, increased feedback to female employees, and monitoring of future promotion rates.

Nine female CIA employees alleged in their complaint that they encountered discrimination while they were certified as, or were training to become, basic category officers with the agency from Jan. 20, 1986 through May 1, 1994. The class of employees entitled to relief includes approximately 400 women, according to Michelle Fishburne of Steptoe & Johnson in Washington, D.C., one of the plaintiffs' attorneys.

Court Overrides Objections

Some class members had objected to the settlement because they believed it provided inadequate relief, said Fishburne. According to Fishburne, Judge Bryan said that in these types of cases plaintiffs can be disappointed with the amount of the settlement, but that he found this settlement fair and reasonable.

Class members and attorneys for the class will monitor the CIA's compliance with the settlement for four years, and the agency will provide data regarding promotions on an annual basis, Fishburne said.

"All agency officers will be held accountable for their actions" in achieving a bias-free workplace, Deutch said. The CIA director has established a Human Resource Oversight Council to be chaired by Nora Slatkin, the CIA's executive director. The council will be responsible for implementing measures designed to ensure that each individual is considered according to his or her capabilities and accomplishments.

Joseph M. Sellers of the Washington Lawyers' Committee for Civil Rights and Urban Affairs in Washington also represented the plaintiffs.

Elizabeth R. Rindskopt, CIA general counsel, and Mary E. Goetten of the Justice Department represented the CIA.

DOL, WOMEN'S BUREAU PLAN HEARING ON FMLA

The Commission on Family and Medical Leave and the Labor Department's Women's Bureau have scheduled a June 26 hearing in San Francisco on experiences involving family and temporary medical leave policies.

The commission is conducting a comprehensive study of existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies not covered under the Family and Medical Leave Act.

Interested persons may submit information or views on employer or employee experiences with family and temporary medical leave policies prior to or at the hearing. The hearing will be open to the public.

For more information contact Susan King, executive director, Commission on Family and Medical Leave, U.S. Department of Labor, telephone (202) 219-4526, Ext. 102.

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Discrimination

SUPREME COURT REFUSES TO REVIEW WHETHER JURY AMENDMENT APPLIES TO BIAS COMPLAINT

The Supreme Court has declined to review whether the 1991 Civil Rights Act's provisions permitting jury trial and compensatory damages in suits against the federal government apply to a case filed after the effective date of the act but relating to conduct that took place prior to that date (*Ventre v. Johnson*, US SupCt, No. 94-1420, 6/12/95).

The incidents that gave rise to the claim of sex discrimination began in 1988 when a new supervisor—William Albee—was assigned to oversee the work of plaintiff Virginia Ventre.

Ventre had worked in a career training program with the General Services Administration. She received a certificate of achievement in March 1988, but on her Feb. 14, 1988, anniversary date, Albee refused to promote her. He cited office policy requiring another year of experience.

Nonetheless, in the following year, the boss again failed to promote her. Albee gave reasons relating to poor job performance and knowledge. Ventre filed her complaint of sex discrimination on June 19, 1989. She later filed suit in the U.S. District Court for the District of Columbia on March 23, 1992. The suit was filed within the 90-day period permitted under the 1991 act, which went into effect Nov. 21, 1991.

The General Services Administration sought to transfer the litigation to federal court in Alexandria, Va. The court granted the transfer of venue, and the Alexandria court ruled in the government's favor on all claims.

In October 1994, the U.S. Court of Appeals for the Fourth Circuit held that it lacked jurisdiction to decide after final judgment whether or not the change of venue was an abuse of discretion. The court took the view that it lacked jurisdiction to review a transfer order entered by a district court in another circuit. It also affirmed the trial judge's dropping the plaintiff's demands for compensatory damages and a jury trial.

According to the Fourth Circuit, the 1991 act does not apply to cases arising before its enactment.

In her petition for review, Ventre again challenged the venue transfer order, and the holding on the Civil Rights Act retroactivity.

(Summaries of cases denied review on June 12 appear in Section E.)

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DLR 6-13-95

Government Operations

CLINTON SAYS REVIEW OF EXISTING RULES NETS 20% ELIMINATION, 35% REINVENTION

President Clinton June 12 said a recent page-by-page review conducted by agencies of existing federal rules resulted in proposals to eliminate 20 percent and modify 35 percent of the 140,000-page Code of Federal Regulations.

The comprehensive regulatory inventory, ordered by Clinton Feb. 21, is part of a collection of initiatives undertaken by the White House to improve government performance, reduce costs and burdens to businesses, elevate compliance assistance over punishment, and cut federal paperwork requirements (103 DLR A-12, 5/30/95).

The president said the White House would provide more details of the results of the page-by-page review, as well as other regulatory initiatives, after June 15, when agencies must send summary reports of all their efforts to the Oval Office.

The president elected to highlight the results of the government-wide housecleaning in terms of quantity of pages, announcing that agencies have identified more than 16,000 pages of rules in the CFR they will eliminate and 31,000 additional pages they will seek to modify either through administrative or legislative means.

Agencies had until June 1 to make their recommendations to Clinton. The president did not identify the total number of specific regulations to be cut or changed, nor did he estimate a level of savings to the government, the public, or businesses as a result of the effort.

"We're committed to making the regulatory burden lighter, literally lighter, specifically 39 pounds lighter," the president said in a speech to the White House Conference on Small Business meeting at the Washington Hilton Hotel. As aides brought out 16,000 pages of government rules on the stage with the president, Clinton noted they would stretch five miles if put end-to-end.

The regulations to be eliminated included 50 percent of the Small Business Administration's rules, 40 percent of the Education Department's requirements, and 25 percent of "the reporting burden" of the Environmental Protection Agency, according to the president.

Agencies identified existing regulations for elimination if they were obsolete, unnecessary, or if their goals could be accomplished by other means.

Grits, French Fries

Clinton offered two examples he said were relevant to his experience. The government would eliminate the regulation that specifies how to test grits (a product of ground white corn), the president said to much laughter as he read from the excruciatingly detailed rule. And it would jettison the 2,700-word regulation on french fries, he said. "Now, I have to tell you, there is some real sacrifice in this, though."

Agencies already have begun the formal process of weeding out the underbrush of rules and requirements they consider useless, which, ironically, must be accomplished through notice-and-comment rulemaking. Those that must be eliminated or modified with help from new legislation will have to win backing on Capitol Hill.

Some general examples of legislative recommendations to be made in reports after June 15 include changes to a Transportation Department rule that employers require drug testing before hiring workers; changes to export control requirements at the Commerce Department; and modifications to the Resource Conservation and Recovery Act suggested by the Environmental Protection Agency, according to Sally Katzen, administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget.

The president's instructions to prune existing regulations applied primarily to the departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Administration, EPA, and SBA.

Others that submitted reports, many voluntarily, included that Architectural and Transportation Barriers Compliance Board, the Consumer Product Safety Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Office of National Drug Control Policy, the Nuclear Regulatory Commission, the Pension Benefit Guaranty Corporation, and the Social Security Administration, according to the White House.

The post-June 15 documents to be released by the administration also are expected to include suggestions of proposed rules that could be written through negotiated, or consensual negotiations.

One administration official said some agencies suggested "hundreds" of candidates, for which they have neither the immediate manpower or resources. Agencies also were instructed by Clinton to change their performance measures to reward employees for compliance and results instead of process and punishment, and to come up with plans to modify regulatory penalties for small businesses to allow waivers of fines if the money can be put toward complying with rules.

The president also told agencies to demonstrate how they will cut by one-half the frequency of regularly scheduled reports required by federal rule or policy from the public to the government, if allowable under the law.

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■ **CORRECTION**

An article on contingent workers, at 112 DLR A-12, 6/12/95, should have quoted Jeffrey McGuiness, president of the Labor Policy Association, as saying: "I think the kind of demagoguery that the business community has endured for the past 40 years is going to come to an end. We've got to have government and business working together for the benefit of employees."

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Minority Set-Asides Under GOP Assault Before Court Ruling

Rep. Meyers already at work to End a small-business preference Like one struck down yesterday

Even before the Supreme Court yesterday made it harder for federal agencies to set aside contracts for minority businesses, the chairwoman of the House Small Business Committee was crafting legislation to end a program that grants more than $4 billion annually in such contracts.

Jan Meyers, R-Kan., says she wants to kill a "clumsy and old" section of the Small Business Act that sets aside federal contracts for disadvantaged and minority business owners. Under Section 8(a), racial minorities are presumed to be socially disadvantaged and therefore more likely to receive contracts than whites.

"It's never operated as we intended it to, to assist minority programs to start up and then gradually wean them off it," Meyers said.

Meyers said she had planned to eliminate the program, probably as part of the Small Business Administration authorization bill, before affirmative action became a hot topic this year.

The Supreme Court ruling yesterday, which effectively raises the standard under which minority businesses can qualify for set-asides, did not involve the 8(a) program directly. But the federal program that was involved — one that helps minority-owned businesses win road construction contracts — makes some use of the 8(a) grants.

House Republican leaders are now crafting broad legislation to end minority preferences and set-asides across the country. But a raft of narrow bills such as Meyers' could also subject affirmative action to a slower, more gradual death.

One effort (HR 1716), by Rep. Wally Herger, R-Calif., would prohibit the Forest Service from hiring workers based on race, gender, or ethnic background.

And Harris Fawell, R-Ill., chair of the Economic and Educational Opportunities Subcommittee on Employer-Employee Relations, will hold a hearing next week to discuss the possible overhaul or elimination of the Office of Federal Contract Compliance Program, which enforces federal affirmative action programs.

Come Into the Cloakroom So I Can Show You My (Digital) Etchings

The hottest book in the Capitol these days isn't by House Speaker Newt Gingrich, and it's not published by Rupert Murdoch.

Instead, it's a collection of racy computerized photographs and other suggestive material that Sen. Jim Exon, D-Neb., took from the Internet computer networks. Exon compiled his "blue book" to bolster his arguments for the "communications decency" section he wrote for the bill (S 652) to promote competition and deregulation in telecommunications.

No fan of the range of adult material that flows with few restrictions over the Internet, Exon has told his colleagues that he will open the pages "to any who want to see how bad this is." He also read from the floor an excerpt from a list in the book: "Multimedia erotica; erotica fetish; nude celebrities.... Here is a good one: erotica cartoons."

Exon's provisions would bar the transmission of obscene material to anyone over telecommunications networks, or the transmission of indecent material to minors. It has drawn protests from the Justice Department, computer users, civil libertarians and even conservative Christian groups.

Air Force General Fires Into An Attack on Defense Centrist Spratt

Members who try to hold the nuanced middle ground on hotly politicized issues can expect to get caught in the cross-fire. And as the House today begins debating the annual Pentagon authorization bill (HR 1530), such a fusillade is enveloping John Spratt, D-S.C.

Spratt's centrist views on anti-missile defense offend both liberal Democrats, who are skeptical of erecting a missile defense of U.S. territory, and conservative Republicans, who want more extensive defenses than allowed by the 1972 U.S-Soviet anti-ballistic missile (ABM) treaty.

Senior Republicans on the National Security Committee insist vehemently that the defense bill does not mandate abrogation of the treaty. But Spratt contends that it includes several provisions that gratuitously telegraph a U.S. intention to scrap the pact. He argues that the U.S. should negotiate clarifications of the treaty with Russia to permit more robust defenses. So he will offer an amendment, probably tomorrow, that would explicitly bring the bill's provisions into conformity with the treaty.

Yesterday, Spratt complained that conservative critics were bombarding him with bogus ammunition: A home-district television station carried an ad last week, sponsored by a pro-missile coalition run by Frank Gaffney, which criticized Spratt's position on missile defense and featured a brief appearance by retired Air Force Gen. Chuck Horner, commander of the 1991 air war against Iraq.

In the spot, Horner warned that the country was undefended against missile attack and urged them to "send a message to Washington."

On Friday, however, Horner said he never intended to imply criticism of Spratt. The general said he did not know, when his comments were taped, that they would be used against the congressman. Horner, who once commanded the 9th Air Force headquartered at Shaw Air Force Base in Spratt's district, said he could attest that Spratt "is, in fact, leading the charge in an informed, credible and effective manner to protect our nation."

Quick Insights

• ***Quantity and quality***

Lawmakers employed the usual props, charts and arguments on the opening day of congressional testimony before the Base Closure and Realignment Commission Monday. Then there were the folks from California. An estimated 180,000 letters from employees at McClellan Air Force Base and residents of the surrounding area arrived in 20 boxes wheeled in on a cart that usually hauls Congressional Record deliveries. They were the product of an electronic plea on a World-wide Web page. And there was the guy from Guam. Del. Robert Underwood pleaded that he should have as much time as Kato Kaelin's "15 minutes of fame" to champion a Navy repair depot on his Pacific territory. Commission Chairman Alan Dixon gave Underwood less time to testify than O.J. Simpson's housemate spent in court, but Dixon added, "Fortunately for the people of Guam, we find you more believable in what you're telling us."

— by Karen Foerstel and Steve Langdon, with Pat Towell, Jon Healey and Donna Cassata.

Representatives from the Defense Department and the four military services are slated to testify tomorrow. The commission begins voting on the final list on June 22.

LAW/JUDICIARY

COURT MOVES TO RESTRICT FEDERAL AFFIRMATIVE ACTION PROGRAMS

The Supreme Court yesterday adopted tough new rules for federal affirmative action programs, ruling 5-4 that Congress is limited by the same "strict scrutiny" standard as the states in offering special help to minorities.

"Federal racial classifications, like those of a state, must serve a compelling governmental interest and must be narrowly tailored to further that interest," Justice Sandra Day O'Connor wrote for the majority.

The court did not overturn a federal program that offered special help to small businesses owned by racial and ethnic minorities. Instead, it sent *Adarand Construction v. Peña* back to the 10th U.S. Circuit Court of Appeals for further study. The Colorado dispute centered on a program for awarding federal highway contracts.

And the court rejected the urgings of some that it outlaw all affirmative action as unconstitutional "reverse discrimination" against whites.

On Capitol Hill, affirmative action critics applauded the decision, while allies of such programs tried to play down the significance of the ruling.

Majority Leader Bob Dole, Kan., said the decision "is one more reason for the federal government to get out of the race-preference business."

Saying he was not dismayed at the ruling, however, Rep. Kweisi Mfume, D-Md., a former chairman of the Congressional Black Caucus, said the decision correctly suggests "that racism is real and that government has a role in eradicating it."

The ruling appears to reverse a 1980 decision in which the court had used a more lenient standard of review in judging congressional attempts at affirmative action, as well as a 1990 decision that had allowed federal officials to favor minorities in awarding broadcast licenses.

The ruling could jeopardize programs under which federal agencies award more than $10 billion a year in contracts to minority-owned firms to comply with congressional affirmative action orders. The Clinton administration lawyers had defended the affirmative action plan at issue.

POLITICS

PANEL PONDERS NORTH CAROLINA ELECTION CHALLENGE

A contested election task force of the House Oversight Committee is expected to vote sometime in the next few weeks on what to do next about a challenge to the 1994 election of Rep. Charlie Rose, D-N.C., according to a panel staff member.

When the three-member task force reconvenes, it can either agree to dismiss the challenge or deny the motion to dismiss and thus go forward with a complete investigation.

Republican Robert C. Anderson, defeated by Rose in North Carolina's 7th District, has charged that there were voter irregularities in the November 1994 election.

At a field hearing last Friday in Lumberton, N.C., Anderson's witnesses testified, among other things, that an unusually high Native American voter turnout raised suspicions of fraud. But James Brazier, a professor at Pembroke State University, told the task force that that population's high turnout could be explained by the candidacy of a Native American for sheriff.

• **Harman task force.** Another contested election task force of the House Oversight Committee is slated to hold a field hearing on a challenge to Democratic Rep. Jane Harman, Calif., on June 26. That seat is being contested by Republican Susan Brooks.

ECONOMIC AFFAIRS

CLINTON PROMISES REGULATORY RELIEF FOR SMALL BUSINESSES

President Clinton yesterday kicked off the White House Conference on Small Business by vowing to slash federal regulations and unveiling a plan to make employee pension plans more appealing to small businesses.

Clinton reminded small-business owners of the steps his administration has taken to make their businesses profitable, and he promised more of the same.

"We know that small business is the engine that will drive us into the 21st century," Clinton said. "You employ most of the people, create more than half of what we produce and sell and create most of the new jobs."

A handful of lawmakers, including the leaders of the House and Senate Small Business committees, also pledged their support for small businesses.

"We created this White House conference because we wanted to hear your voices, we needed to hear your voices," said New York Rep. John J. LaFalce, the top Democrat on the House committee.

Clinton said his administration already has cut 16,000 pages, or 39 pounds worth, of regulations from the government books.

The president said he would seek to "reform the laws and regulations governing pension plans" so that plans would be offered by more than the 15 percent of small businesses that now provide them to their workers.

Clinton's proposal would exempt companies with 100 or fewer employees from anti-discrimination rules if they guarantee employees a certain contribution to an Individual Retirement Account-based plan. ■

Blacks in the 104th Congress

Senate (1)

Illinois: Carol Moseley-Braun, D

House (39)

Alabama: Earl F. Hilliard, D
California: Ronald V. Dellums, D; Julian C. Dixon, D; Walter R. Tucker, III D; Maxine Waters, D
Connecticut: Gary A. Franks, R
District of Columbia: Eleanor Holmes Norton, D (delegate)
Florida: Corrine Brown, D; Carrie P. Meek, D; Alcee L. Hastings, D
Georgia: Sanford D. Bishop, D; John Lewis, D; Cynthia A. McKinney, D
Illinois: Cardiss Collins, D; Bobby L. Rush, D; Mel Reynolds, D
Louisiana: Cleo Fields, D; William J. Jefferson, D
Maryland: Kweisi Mfume, D; Albert R. Wynn, D
Michigan: Barbara-Rose Collins, D; John Conyers Jr., D
Mississippi: Bennie Thompson, D
Missouri: William L. Clay, D
New Jersey: Donald M. Payne, D
New York: Floyd H. Flake, D; Edolphus Towns, D; Major R. Owens, D; Charles B. Rangel, D
North Carolina: Eva Clayton, D; Melvin Watt, D
Ohio: Louis Stokes, D
Oklahoma: J.C. Watts, R
Pennsylvania: Chaka Fattah, D
South Carolina: James E. Clyburn, D
Tennessee: Harold E. Ford, D
Texas: Eddie Bernice Johnson, D; Sheila Jackson-Lee, D
Virginia: Robert C. Scott, D

SenateFutureMeetings

ENVIRONMENTAL CLEANUP AT HANFORD NUCLEAR SITE
Senate Energy and Natural Resources Committee (Chairman Murkowski, R-Alaska) will hold a hearing on pending legislation.
9:30am SD-366 Dirksen Bldg. **June 15**
Agenda:
S 871 - A bill to provide for the management and disposition of the Hanford Reservation, to provide for environmental management activities at the reservation, and for other purposes.

OIL PRODUCTION IN ALASKA
Senate Energy and Natural Resources Committee (Chairman Murkowski, R-Alaska) will hold a hearing on existing oil production at Prudhoe Bay and opportunities for new production on the coastal plain of Arctic Alaska.
9:30am SD-366 Dirksen Bldg. **June 20**

DOWNSIZING THE ENERGY DEPARTMENT
Senate Energy and Natural Resources Committee (Chairman Murkowski, R-Alaska) will hold a hearing on the secretary of Energy's downsizing proposal and to explore other changes to the existing structure of the agency.
9:30am SD-366 Dirksen Bldg. **June 21**

UNIFORM MANAGEMENT OF LIVESTOCK GRAZING
Forests and Public Land Management Subcommittee (Chairman Craig, R-Idaho) of Senate Energy and Natural Resources Committee will hold a hearing on pending legislation.
9:30am SD-366 Dirksen Bldg. **June 22**
Agenda:
S 852 - A bill to provide for uniform management of livestock grazing on federal land, and for other purposes.

FUTURE OF PRESIDIO
Parks, Historic Preservation and Recreation Subcommittee (Chairman Campbell, R-Colo.) of Senate Energy and Natural Resources Committee will hold a hearing on pending legislation.
2pm SD-366 Dirksen Bldg. **June 29**
Agenda:
S 594 - A bill to provide for the administration of certain Presidio properties at minimal cost to the federal taxpayer.

ENERGY NOMINATION
Senate Energy and Natural Resources Committee (Chairman Murkowski, R-Alaska) will hold a confirmation hearing on the nomination of Charles William Burton to be a member of the board of directors of the U.S. Enrichment Corporation.
Time TBA SD-366 Dirksen Bldg. **date TBA**
Note: This hearing was originally scheduled for May 10.

Environment & Public Works 224-6176

SAFE DRINKING WATER
Drinking Water, Fisheries and Wildlife Subcommittee (Chairman Kempthorne, R-Idaho) of Senate Environment and Public Works Committee will hold hearings on safe drinking water legislation.
Time TBA SD-406 Dirksen Bldg. **date TBA**

ENDANGERED SPECIES REAUTHORIZATION
Drinking Water, Fisheries and Wildlife Subcommittee (Chairman Kempthorne, R-Idaho) of Senate Environment and Public Works Committee will hold hearings on the successes, failures and possible changes to the Endangered Species Act of 1973.
Time TBA SD-406 Dirksen Bldg. **(JUNE DATES TBA)**

Finance 224-4515

AARP'S TAX STATUS ■
Social Security and Family Policy Subcommittee (Chairman Simpson, Wyo.) of Senate Finance Committee will hold a series of hearings on the tax status of the American Association of Retired Persons.
10am SD-215 Dirksen Bldg. **June 13, 20**
Witnesses scheduled:
June 13
Natwar Ghandi - General Accounting Office; Paul Hewitt - executive director, National Tax Payers Union Foundation; Mancur Olsson - economics professor, University of Maryland; Roy Goldberg - Gallan, Kharasch, Morse & Garfinkel
Note: This hearing was originally scheduled for May 25.

Foreign Relations 224-4651

SUPPORTING DEMOCRACY IN CUBA
Senate Foreign Relations Committee (Chairman Helms, R-N.C.) will hold a hearing on legislation that would strengthen sanctions against the Castro government in Cuba and help that island nation make the transition to democracy.
10:30am & 2pm SD-419 Dirksen Bldg. **June 14**
Agenda:
S 381 - A bill to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes.

Governmental Affairs 224-4751

FEDERAL PENSION SYSTEM
Post Office and Civil Service Subcommittee (Chairman Stevens, R-Alaska) of Senate Governmental Affairs Committee will hold a hearing on proposals to revise the federal pension system.
2pm SD-342 Dirksen Bldg. **June 19**

Indian Affairs 224-2251

INDIAN GAMING
Joint Hearing
Senate Indian Affairs Committee (Chairman McCain, R-Ariz.) and Native American and Insular Affairs Subcommittee (Chairman Gallegly, R-Calif.) of House Resources Committee will hold a joint hearing on legislation that would revise the federal oversight of Indian gaming operations.
9:30am SD-G50 Dirksen Bldg. **June 22**
Agenda:
S 487 - A bill to amend the Indian Gaming Regulatory Act, and for other purposes.

BIA REORGANIZATION
Senate Indian Affairs Committee (Chairman McCain, R-Ariz.) will hold a hearing on legislation that would revise operations at the Bureau of Indian Affairs.
9:30m SR-485 Russell Bldg. **June 28**
Agenda:
S 814 - A bill to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes.

TRIBAL RECOGNITION
Senate Indian Affairs Committee (Chairman McCain, R-Ariz.) will hold a hearing on a bill that would revise the procedures used by tribes to seek federal recognition.
9:30am SR-485 Russell Bldg. **July 13**
Note: This hearing was originally scheduled for May 23.

Judiciary 224-5225

SUBCOMMITTEE MARKUP: IMMIGRATION CONTROL X
Immigration Subcommittee (Chairman Simpson, R-Wyo.) of Senate Judiciary Committee will mark up pending legislation.
9am SD-226 Dirksen Bldg. **June 14**
Agenda:
S 457 - A bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of U.S. immigration laws.
S 269 - A bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigator personnel; improving the verification system for employer sanctions; increasing penalties for alien smuggling and for document fraud; reforming asylum, exclusion, and deportation law and procedures; instituting a land border user fee; and to reduce use of welfare by aliens.
Note: This markup is a continuation of the June 8 markup.

MILITIA MOVEMENT IN THE U.S.
Terrorism, Technology and Government Information Subcommittee (Chairman Specter, R-Pa.) of Senate Judiciary Committee will hold a hearing on the militia movement in the United States.
9:30am S-215 Hart Bldg. **June 15**
Witnesses scheduled:
Sen. Baucus, D-Mont.; Rep. Chenoweth, R-Idaho; Jim Brown - deputy associate director, Bureau of Alcohol, Tobacco and Firearms; John O'Neill - section chief, Federal Bureau of Investigations; Col. Fred Mills - superintendent, Missouri State Highway Patrol; Roy Vellbloom - Florida Department of Law Enforcement; John DeCamp - DeCamp Legal Services; Leroy Crenshaw - Springfield, Mass.; Mark Korenke - Augusta, Mich.; Robert Fletcher and John Trochtmann - Noxon, Mont.; Norman Olson - Alanson, Mich.

CRIME BILL ISSUES
Senate Judiciary Committee (Chairman Hatch, R-Utah) will hold a hearing on issues related to the crime bill (S 3), focusing on federal funding

★ *New listing*

■ *Revised listing*

HouseFutureMeetings

1995 FARM BILL: FARM POLICY
Field Hearing
Department Operations, Nutrition and Foreign Agriculture Subcommittee (Chairman Emerson, R-Mo.) of House Agriculture Committee will hold a field hearing on federal farm policy from the perspective of farmers and ranchers.
9am Convention Center, Pendleton, Ore. **June 24**

SUBCOMMITTEE MARKUP: 1995 FARM BILL
General Farm Commodities Subcommittee (Chairman Barrett, R-Neb.) of House Agriculture Committee will mark up draft legislation that would reauthorize farm programs and subsidies for another five years.
9:30am 1302 Longworth Bldg. **June 27, 28, 29, 30**

Appropriations

APPROPS FULL COMMITTEE MARKUP
House Appropriations Committee (Chairman Livingston, R-La.) will mark up pending legislation.
4pm room TBA **June 13**
Time and room TBA **June 15, 19, 22, 29, 30, July 10,11, 12**
Time and room TBA **July 20**
Agenda:
June 13
602 (b) allocations
HR - - - FY96 Military Construction Appropriations
June 15
HR - - FY96 Legislative Branch Appropriations
HR - - FY96 Foreign Operations Appropriations
June 19
HR - - - FY96 Energy and Water Appropriations
June 22
HR - - - FY96 Agriculture Appropriations
HR - - - FY96 Interior Appropriations
June 29
HR - - - FY96 Treasury/Postal Service Appropriations
June 30
HR - - - FY96 Transporation Appropriations
July 10
HR - - FY96 Commerce, Justice, State Appropriations
July 11
HR - - FY96 VA-HUD Appropriations
July 12
HR - - - FY96 Defense Appropriations
July 20
HR - - FY96 Labor/HHS Appropriations

SUBCOMMITTEE MARKUP: FY96 AGRICULTURE APPROPS ■
Agriculture, Rural Development, FDA and Related Agencies Subcommittee (Chairman Skeen, R-N.M.) of House Appropriations Committee will mark up draft legislation that would appropriate funds for programs under its jurisdiction for fiscal 1996.
9:30am 2362-A Rayburn Bldg. **June 14**

DISTRICT OF COLUMBIA FINANCIAL CONDITION
District of Columbia Subcommittee (Chairman Walsh, R-N.Y.) of House Appropriations Committee will hold a hearing on the financial condition of the District of Columbia.
10am H-144 Capitol Bldg. **June 14**
Note: This hearing was originally scheduled for June 7.

MILITARY CONTINGENCY OPERATIONS
National Security Subcommittee (Chairman Young, R-Fla.) of House Appropriations Committee will hold a hearing on military contingency operations, focusing on Bosnia.
10am 2360 Rayburn Bldg. **June 14**
Witnesses scheduled:
William Perry - secretary of Defense; Gen. John Shalikashvili - chairman, Joint Chiefs of Staff; John Hamre - comptroller general, Department of Defense

SUBCOMMITTEE MARKUP: FY96 INTERIOR APPROPRIATIONS ■
Interior Subcommittee (Chairman Regula, R-Ohio) of House Appropriations Committee will mark up draft legislation that would appropriate funds for programs under its jurisdiction for fiscal 1996.
1pm B-308 Rayburn Bldg. **June 15**
This markup was originally scheduled for June 13

APPROPS SUBCOMMITTEE MARKUP: TRANSPORTATION
Transportation Subcommittee (Chairman Wolf, R-Va.) of House Appropriations Committee will mark up draft legislation that would appropriate funds for programs under the jurisdiction of the subcommittee for FY96.
Time and room TBA (TENTATIVE) **June 21**

APPROPS SUBCOMMITTEE MARKUP: TREASURY/POSTAL SERVICE
Treasury, Postal Service and General Government Subcommittee (Chairman Lightfoot, R-Iowa) of House Appropriations Committee will mark up draft legislation that would appropriate funds for programs under the jurisdiction of the subcommittee for FY96.
Time TBA H-163 Capitol Bldg. **June 22 (TENTATIVE)**

APPROPS SUBCOMMITTEE MARKUP: VA-HUD
Veterans Affairs, Housing and Urban Development and Independent Agencies Subcommittee (Chairman Lewis, R-Calif.) of House Appropriations Committee will mark up draft legislation that would appropriate funds for programs under the jurisdiction of the subcommittee for FY96.
Time and room TBA (TENTATIVE) **June 22**

APPROPS SUBCOMMITTEE MARKUP: COMMERCE, JUSTICE, STATE
Commerce, Justice, State and Judiciary Subcommittee (Chairman Rogers, R-Ky.) of House Appropriations Committee will mark up draft legislation for fiscal 1996 appropriations for programs under its jurisdiction.
Time TBA H-309 Capitol Bldg. **June 27**

SUBCOMMITTEE MARKUP: FY96 DEFENSE APPROPS
National Security Subcommittee (Chairman Young, R-Fla.) of House Appropriations Committee will mark up draft legislation that would appropriate funds for programs under its jurisdiction.
Time TBA H-140 Capitol Bldg. **June 27, 28, 29, 30**

APPROPS SUBCOMMITTEE MARKUP: LABOR-HHS
Labor, Health and Human Services, and Education Subcommittee (Chairman Porter, R-Ill.) of House Appropriations Committee will mark up draft legislation to make appropriations for programs under its jurisdiction.
Time TBA 2358 Rayburn Bldg. **July 10**

Banking & Financial Services

BANKING REGULATORY REVISIONS
Financial Institutions and Consumer Credit Subcommittee (Chairman Roukema, R-N.J.) of House Banking and Financial Services Committee will mark up legislation that would revise federal regulation of depository institutions.
10am 2128 Rayburn Bldg. **June 14, 15**
Agenda:
HR 1362 - A bill to reduce paperwork and additional regulatory burdens for depository institutions.

DC HOUSING PROBLEMS ■
Housing and Community Opportunity Subcommittee (Chairman Lazio, R-N.Y.) of House Banking and Financial Services Committee will hold a hearing on problems in the District of Columbia's public housing system. The federal government recently took over the administration of the system.
10am 2220 Rayburn Bldg. **June 14**
Witnesses scheduled:
David Gilmore - receiver, D.C. Department of Public and Assisted Housing; James Stockard - former Housing and Urban Development (HUD) Special Master, D.C. Department of Public and Assisted Housing; Susan Gaffney - inspector general, HUD; Bob Moore - president, and chief executive officer, Development Corporation of Columbia Heights, Washington, D.C.; Merrick Malone - director, D.C. Department of Housing and Community Development; John Ray - member, D.C. City Council; Frank Smith - member, D.C. City Council, chairman, D.C. Council Committee on Housing; Charlene Drew Davis - member, D.C. City Council

SUBCOMMITTEE MARKUP: FHLB SYSTEM
Capital Markets, Securities and Government Sponsored Enterprises Subcommittee (Chairman Baker, R-La.) of House Banking and Financial Services Committee will mark up legislation that would revise the Federal Home Loan Banking System.
10am 2128 Rayburn Bldg. **June 28**
Note: This markup was originally scheduled for June 7.

STATUS OF THE DOLLAR
Domestic and International Monetary Policy Subcommittee (Chairman Castle, R-Del.) of House Banking and Financial Services Committee will hold a hearing on the state of the U.S. dollar.
Time and room TBA **date TBA**
Note: This hearing was originally scheduled for March 23.

★ *New listing*

■ *Revised listing*

in a mobile workforce; to increase purchasing power for employers and employees by removing barriers to the voluntary formation of multiple employer health plans and fully-insured multiple employer arrangements; to increase health plan competition providing more affordable choice of coverage by removing restrictive state laws relating to provider health networks, employer health coalitions, and insured plans and the offering of medisave plans; to expand access to fully-insured coverage for employees of small employers through fair rating standards and open markets; and for other purposes.

HR 996 - A bill to improve portability, access, and fair rating for health insurance coverage for individuals.

Note: This hearing was originally scheduled for April 6.

Government Reform & Oversight 225-5074

OFFICE OF PERSONNEL MANAGEMENT OVERSIGHT

Civil Service Subcommittee (Chairman Mica, R-Fla.) of House Government Reform and Oversight Committee will hold an overisght hearing on the Office of Personnel Management.

9:30am 2154 Rayburn Bldg. **June 14**
9am 2154 Rayburn Bldg. **June 15**
Agenda:
June 14 Federal Investigations Policy
June 15 Contracting Federal Investigations

POSTAL SERVICE OVERSIGHT

Postal Service Subcommittee (Chairman McHugh, R-N.Y.) of House Government Reform and Oversight Committee will hold an oversight hearing on the U.S. Postal Service.

10am 2247 Rayburn Bldg. **June 14**
Witnesses scheduled:
John V. Maraney - executive director, National Star Route Mail Contractors Association; Robert Williamson - executive director, National Association of Presort Mailers; Barry Brennan - international director, Postal Affairs, Mail Advertising Service Association; Maynard Benjamin - executive vice president, Envelope Manufacturers Association; Anthony DeSio - president and CEO, Mail Boxes, Etc.; George Harvey - president and CEO, Pitney Bowes Inc.; Neal Mahlstedt - president, Friden Neopost; Michael Allocca - president, Ascom; George Gelfer - vice president, Postalia Inc.; James Rogers - vice president, UPS; A. Doyle Cloud - vice president, Federal Express; Peter Hiebert - representing DHL Airways Inc.; Joseph Morris - executive director, Air Courier Conference of America

MEDICARE AND MEDICAID FRAUD

Human Resources and Intergovernmental Relations Subcommittee (Chairman Shays, R-Conn.) of House Government Reform and Oversight Committee will hold a hearing on enforcement efforts to keep fraudulent vendors out of the Medicare and Medicaid programs.

10am 2247 Rayburn Bldg. **June 15**
Witnesses scheduled:
PANEL 1:
Bruce Vladeck - administrator, Health Care Financing Administration (HCFA); Judy Berek - senior advisor, Program Integrity, HCFA
PANEL 2:
June Gibbs Brown - Inspector General, Health and Human Services Department; Gerald Stern - special counsel, Financial Institution Fraud, Justice Department
PANEL 3:
Jonathan Ratner - assistant director, Health Financial Issues, General Accounting Office; Rufus Noble, Inspector General, Agency for Health Care Administration, State of Florida; William Mahon - executive director, National Health Care Anti-Fraud Association

NATIONAL PERFORMANCE REVIEW OVERSIGHT
Field Hearing

Government Management, Information and Technology Subcommittee (Chairman Horn, R-Calif.) of House Government Reform and Oversight Committee will hold a field hearing to review the Clinton administration's National Performance Review and ideas for reorganizing government.

Time TBA Chicago, Ill. **June 19**
Agenda:
Streamlining Federal Field Structures

NATIONAL PERFORMANCE REVIEW OVERSIGHT

Government Management, Information and Technology Subcommittee (Chairman Horn, R-Calif.) of House Government Reform and Oversight Committee will hold oversight hearings on the Clinton administration's National Performance Review and ideas for reorganizing government.

9am 2154 Rayburn Bldg. **June 13**
Time TBA 2154 Rayburn Bldg. **June 20, 27**
Agenda & witnesses scheduled:
June 13 *See "Committee Meetings Scheduled Today" section for witnesses*
June 20
Performance Measurement, Benchmarking & Reengineering: Quantifying Governmental Results
June 27
Government Performance and Results Act: Oversight of GPRA Compliance

FEDERAL ACTIONS AT WACO, TEXAS
Joint Hearing

National Security, International Affairs and Criminal Justice Subcommittee (Chairman Zeliff, R-N.H.) of House Government Reform and Oversight Committee and Crime Subcommittee (Chairman McCollum, R-Fla.) of House Judiciary Committee will hold a joint hearing on actions taken by the federal government in the siege on a religious compound in Waco, Texas in April 1993.

Time and room TBA **July 12**

International Relations 225-5021

DRUGS IN ASIA: THE HEROIN CONNECTION

Asia and the Pacific Subcommittee (Chairman Bereuter, R-Neb.) of House International Relations Committee will hold a hearing on the drug trade in Asia, focusing on heroin distribution.

10am 2200 Rayburn Bldg. **June 21**
Witness scheduled:
Robert Gelbard - assistant secretary of State
Note: This hearing was originally scheduled for May 23.

ASIAN REGIONAL SECURITY

Asia and the Pacific Subcommittee (Chairman Bereuter, R-Neb.) of House International Relations Committee will hold a hearing on regional security issues in Asia.

2pm 2172 Rayburn Bldg. **June 27**

Judiciary 225-3951

FULL COMMITTEE MARKUP: COUNTER-TERRORISM ★

House Judiciary Committee (Chairman Hyde, R-Ill.) will mark up pending legislation.

9:30am 2141 Rayburn Bldg. **June 14**
Agenda:
HR 1710 - A bill to combat terrorism.

LEGAL SERVICES CORPORATION REAUTHORIZATION

Commercial and Administrative Law Subcommittee (Chairman Gekas, R-Pa.) of House Judiciary Committee will hold a hearing on the reauthorization of the Legal Services Corporation, a private, non-profit organization authorized by Congress to ensure equal access to the legal system for the poor. The House budget resolution (H Con Res 67) would zero out funding for the LSC by fiscal 1998.

10am 2226 Rayburn Bldg. **June 15**
Time TBA 2226 Rayburn Bldg. **date TBA**
Witnesses scheduled:
June 15
PANEL 1:
David Keene - American Conservative Union; Howard Phillips - chairman, Conservative Caucus; Ken Boehm - chairman, National Legal and Policy Center
PANEL 2:
Harry Bell - president, South Carolina Farm Bureau, representing American Farm Bureau; Jodie Stearns - attorney, Mitchell, Stearns & Hammer, Bowling Green, Ohio; Libby Whittley - Farm Business Coalition, Monroe, Va.; Individual farmers TBA
PANEL 3:
Housing Authority Directors TBA

PARTIAL-BIRTH ABORTIONS

Constitution Subcommittee (Chairman Canady, R-Fla.) of House Judiciary Committee will hold a hearing on partial-birth abortions.

10am 2237 Rayburn Bldg. **June 15**

FEDERAL ACTIONS AT WACO, TEXAS

Crime Subcommittee (Chairman McCollum, R-Fla.) of House Judiciary Committee and National Security, International Affairs and Criminal Justice Subcommittee (Chairman Zeliff, R-N.H.) of House Government Reform and Oversight Committee will hold a joint hearing on actions taken by the federal government in a siege on a religious compound in Waco, Texas in April 1993.

Time and room TBA **July 12**

FULL COMMITTEE MARKUP: TELECOMMUNICATIONS

House Judiciary Committee (Chairman Hyde, R-Ill.) will mark up pending legislation.

Time TBA 2141 Rayburn Bldg. **(JUNE OR EARLY JULY)**
Agenda:
HR 1555 - A bill to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

REVIEW OF GUN LAWS

Crime Subcommittee (Chairman McCollum, R-

★ *New listing*

■ *Revised listing*

CONFERENCE COMMITTEES Future Listings

FY96 BUDGET RESOLUTION
Conferees will meet on a resolution (H Con Res 67) setting the congressional budget for the United States Government for fiscal years 1996, 1997, 1998, 1999, 2000,2001 and 2002.
Time and room TBA **date TBA**

MEDIGAP LEGISLATION
Conferees will meet on legislation (HR 483) that would encourage senior citizens to buy additional health coverage through managed-care facilities such as Health Maintenance Organizations. It would expand a 15 state pilot program.

Time and room TBA **date TBA**
Senate Conferees: Sen. Bob Dole, R-Kansas; Sen. Bob Packwood, R-Ore.; Sen. Daniel Patrick Moynihan, D-N.Y.

OTHER EVENTS Future Listings

The *Monitor* has received notice of the following events scheduled to take place in Washington. Associations, non-profit organizations and public interest groups who wish to have events listed in the section should send pertinent information to: The Congressional Monitor, Other Events Editor, 1414 22nd St. N.W., Washington, D.C. 20037. Notices must include a telephone number. Notices may be transmitted by facsimile to 202-728-1862, attn: Robert Healy. Only events related to Congress can be listed. Deadline is noon two days before the date of issue (i.e. Monday noon for Wednesday issue). The editors reserve the right to edit or reject any submission. For further information call 202-887-8686.

"CHILD EXCLUSION" FROM WELFARE BENEFITS ★
The American Civil Liberties Union, Catholic Charities USA, Feminists for Life and the NOW Legal Defense and Education Fund will hold a joint news conference to discuss their opposition to provisions in proposed welfare revision legislation that would deny public assistance to children born while that families are already receiving public assistance, children born to single mothers or mothers under the age of 18, children whose mothers are under 18 and are not living with their parents and children with uncertain paternity.

8:30am National Press Club, 14th and F Sts. N.W. **June 14**
Contact: 212-944-9800, ext. 424 (ACLU); 703-549-1390 (Catholic Charities); 202-737-3352 (Feminists for Life); 212-925-6635 (NOW Legal Defense and Education Fund)

AFFIRMATIVE ACTION X
National Press Foundation will sponsor a forum entitled "Affirmative Action: Where Do We Go From Here?"
9am National Press Club, Main Lounge, 529 14th St. N.W. **June 14**
Contact: Donna Washington at 202-662-7350
Participants:
Sen. Carol Moseley-Braun, D-Ill.; Rep. Charles Canady, R-Fla.; Christopher Edley - director, White House Office of Affirmative Action Review; Linda Chavez - president, Center for Equal Opportunity; Jesse Jackson - president, National Rainbow Coalition; Eduardo Pena - chairman, LULAC Foundation; Gwen Daye Richardson - editor, National Minority Politics Magazine; William Raspberry - Washington Post

MEDICAL INNOVATION
Progress and Freedom Foundation will sponsor a briefing for members of Congress on innovative medical techniques, including surgical lasers, genetic engineering, molecular transports and surgery in cyberspace.
8:30am HC-5 Capitol Bldg. **June 15**
Contact: 202-484-2312

PUTTING PRISONERS TO WORK ★
Sen. Richard Shelby will hold a news conference to introduce legislation that would require prisoners to spend the majority of their incarceration time working and studying.
10am S-325 Capitol Bldg. **June 15**
Contact: Laura Cox at 202-224-6518

MEDICARE ISSUES ★
National Center for Policy Analysis will sponsor a forum covering the history and the current state of Medicare, ides for change, and the actuarial evidence underlying free-market proposals.
9am SDG-11 Dirksen Bldg. **June 15**
2pm 2168 Rayburn Bldg. **June 15**
Contact: Windi Fuller at 214-386-6272 or Jan Faiks at 202-638-4600
Note: This event will be presented twice. In the morning for Senate members and staff, in the afternoon for House members and staff.

Other FutureMeetings

PARTIAL BIRTH ABORTIONS ★
Rep. Charles Canady, R-Fla., will hold a news conference to discuss introduction of legislation that would prohibit partial-birth abortions, performed in the second and third trimester of pregnancy.
9am HC-6 Capitol Bldg. **June 15**
Contact: Michelle Morgan at 202-225-1252

COASTAL ZONE ISSUES ★
Rep. Jim Saxton, R-N.J., along with the Coastal Alliance will hold a news conference to discuss a report that provides a state-by-state breakdown of the importance of coastal areas to state economies and the national economy.
10:30am 2220 Rayburn Bldg. **June 15**
Contact: Gary Gallant at 202-225-4765

JOB PROTECTION FOR GAY AND LESBIAN PEOPLE X ★
Human Rights Campaign Fund will sponsor a news conference with Gay and Lesbian family members of U.S. Senators and Representatives as well a current members of Congress and victims of anti-gay job discrimination to announce introduction of the Employment Non-Discrimination Act that would prohibit job discrimination based on sexual orientation.
1:30pm S-207 Capitol Bldg. **June 15**
Contact: David Smith at 202-628-4160
Participants:
Sens. James Jeffords , R-Vt.; Ted Kennedy, D-Mass.
Reps. Connie Morella, R-Md.; Gerry Studds, D-Mass.; Barney Frank, D-Mass.; Peter Torkildson, R-MAss.
Richard Womack - acting executive director, Leadership Council on Civil Rights; Elizabeth Birch - Human Rights Campaign Fund

U.S. TRADE PRIORITIES ★
Congressional Competitiveness Caucus in cooperation with theCongressional Economic Leadership Institute will sponsor a luncheon discussion on "The Crowded Trade Agenda: What Are the United State's Priorities?"
12:15pm B-339 Rayburn BLdg. **June 15**
Contact: Gordon Maginnis at 202-546-5007
Note: Reservations are required, call the number listed above for further information.

NATIONAL SECURITY BREAKFAST SEMINARS
National Defense University Foundation and the American Defense Preparedness Association will sponsor a series of national security breakfast briefings for members of Congress and their staff. The theme of the series is "Ballistic Missile Defense: Its Role In Counter-Proliferation, Arms Control and Deterrence."
8am Capitol Hill Club **June 13, 15, 16, 20, July 12,27, July 27**

★ *New listing* ■ *Revised listing*

WASHINGTON POST 6-13-95

OSHA Abandons Rules Effort on Repetitive Injury

Opposition by GOP, Business Cited

By Cindy Skrzycki
Washington Post Staff Writer

The Occupational Safety and Health Administration is abandoning plans to issue tough regulations aimed at protecting thousands of American workers from repetitive strain injuries.

OSHA will continue to study the problem. But it says that intense political pressure and opposition from business groups forced it to back down.

"In the face of congressional intervention in OSHA standard setting, it is not possible now to publish a standard which has the breadth necessary to attack this problem," said Joseph Dear, OSHA administrator, in a prepared statement distributed yesterday by the National Repetitive Strain Injury Foundation at an office furniture conference in Chicago.

Business groups and congressional Republicans contend that draft regulations were based on unsound medical research and would be an unreasonable, costly interference in how companies manage the workplace.

Yesterday, the National Coalition on Ergonomics, a group representing 300 companies, said in a statement that "experimental ergonomic regulation would have assumed that every workplace and every job is a potential disorder waiting to happen."

There is much disagreement about what causes RSI, which doctors consider to be a musculo-skeletal disorder that can cause pain, numbness and tingling in the arm, neck, back and shoulders.

Such injuries cost employers about $100 billion annu-

See OSHA, D4, Col. 4

1/2

THE WASHINGTON POST

6-13-95

OSHA Abandons Rule Effort On Repetitive Strain Injuries

2/2

OSHA, From D1

ally in worker compensation claims and lost time, according to some studies. Many of the complaints come from employees who work long hours at computer keyboards or on assembly lines.

Dear told a reporter yesterday that because repetitive stress injuries affect some 700,000 workers annually in factories, offices and a variety of other workplaces, OSHA was not giving up the fight altogether.

"OSHA has to work on a standard that is likely to be a narrower proposal on a slower timetable," Dear said. He said the agency is exploring "cooperative approaches" with industries with high numbers of musculoskeletal disorders and has kept its team of ergonomic rule-making experts intact. He said the agency also would consider enforcement actions if the partnership approach did not work.

In the past few months, OSHA has been pummeled by Republicans who hold the agency up as an example of everything that is wrong with the federal regulatory system.

One indication that OSHA was backing off from the issue was the departure of Barbara Silverstein,special assistant for OSHA's ergonomic program, who was brought in by Dear to develop the standard. Her last day on the job was Friday.

In the past few months, OSHA has been pummeled by Republicans who hold the agency up as an example of everything that is wrong with the federal regulatory system. The proposed RSI rule drew particular attention. "The Republicans won't let it happen," said Debbie Berkowitz, director of safety and health for the United Food and Commercial Workers, one of many labor unions that support establishing RSI rules. "They have totally boxed the agency in."

Rep. Tom DeLay (R-Tex.), for example, proposed in March to carve $3.5 million out of OSHA's budget so work on an ergonomic standard would be crippled. At the time, DeLay said: "This would force OSHA to cease its activities on the promulgation of an ergonomics standard that is paternalistic in concept and a menace in its implementation."

That storm passed, but OSHA faces far more serious threats in the cuts that the House and Senate want to make to its 1996 budget. Hearings also are about to begin on how to "reform" OSHA and how the agency issues and enforces workplace standards.

Business groups yesterday welcomed Dear's decision, which was reported in the New York Times yesterday.

"It's an acknowledgment on their part that the template they set forth wasn't based on sound science," said Peter Lunnie, senior policy director for the National Association of Manufacturers. "It was too broad in scope and too intrusive."

The NAM created the National Coalition on Ergonomics to give business input on the rule and press for access to the "objective data" OSHA was using to develop the rule.

Last March, OSHA released a draft of the rule it was considering. That version, which labor and businesses reviewed, was in itself a much milder version of a proposal it was working with the previous summer.

Neal Taslitz, executive director of the National Repetitive Strain Injury Foundation, accused OSHA of dragging its feet on issuing a standard before the November election. He said now the agency has "sacrificed" an ergonomics rule.

"I think they will push something, but they have sent a clear message that the administration is backing down," Taslitz said.

On the Side of Workers

By Mike Causey
Washington Post Staff Writer

Fifteen Republican House members, who represent districts chock-full of federal workers and retirees, have urged the House Budget Committee not to single out federal employees as targets for budget cuts.

The Senate and House are working on recommendations—which probably won't be firmed up until September or October—that could affect future pay raises, annuities, health insurance premiums and the take-home pay of federal workers.

Congress is looking at proposals to increase employee contributions to the retirement system by 2.5 percent of salary and to base annuities of workers who retire after this year on a less generous formula. It is likely to endorse the Clinton administration's five-year reduced-pay plan and perhaps force workers and retirees to pay increasingly bigger shares of their health insurance premiums. Pay of senior executives—making $92,000 to $115,700—also would be frozen.

In a letter to House Budget Committee Chairman **John R. Kasich** (R-Ohio), the GOP members said they voted for the balanced budget amendment but not for balancing the budget on federal workers who must operate downsizing—and keep a smaller government running smoothly. During downsizing, they said, "it is of critical importance that we continue to improve the ability of the government to recruit and retain talented and experienced" people. The House members who signed are **Frank R. Wolf, Thomas M. Davis III** and **Herbert H. Bateman**, of Virginia; **Constance A. Morella, Robert L. Ehrlich Jr., Wayne T. Gilchrest** and **Roscoe G. Bartlett**, of Maryland; **Ileana Ros-Lehtinen, Charles Joseph Scarborough** and **Tillie Fowler**, of Florida; and **Benjamin A. Gilman** (N.Y.), **Jon D. Fox** (Pa.), **Steven Schiff** (N.M.), **Don Young** (Alaska) and **James V. Hansen** (Utah).

Emergency-Leave Banks

Congress is on track to give quick approval to legislation creating a permanent emergency leave program. It would allow federal workers to donate some of their excess annual leave to employees in other agencies who face special emergencies requiring them to take time off. It is modeled after the quickie program set up to help families and survivors of the Oklahoma City bombing.

The building that was destroyed housed civilian federal workers from the Treasury, Health and Human Services, Housing and Urban Development, Justice, Veterans Affairs, Transportation and Labor departments and the Army, the General Services Administration and the Office of Personnel Management. Most agencies now have internal leave transfer programs, but they don't allow leave transfers to federal workers in other agencies or departments. The program also would let employees who need emergency leave use donated leave and keep their vacation time.

Guest List

Rep. **Steny H. Hoyer** (D-Md.) is fuming because the House civil service subcommittee refused to let him testify against proposals that would cut some nontraditional charitable groups, with legislative or social agendas, out of the annual Combined Federal Campaign fund drive. It's the nation's biggest employer-backed I-give-at-the-office program. Being on the the campaign's checklist can be worth a lot.

To add insult to injury, the panel invited **Donald Devine**, Reagan-era director of the Office of Personnel Management, to give his views. Devine ran against Hoyer last year but didn't benefit from the GOP sweep.

Labor Diplomacy

The Federal Times says **John N. Sturdivant** turned down a request from AFL-CIO President **Lane Kirkland** to run for secretary-treasurer of the labor group. Sturdivant said he was happy as president of the American Federation of Government Employees. Safer, too! He realized that running on a ticket with the embattled Kirkland would have been like signing up to be first mate on the Titanic. Kirkland yesterday announced plans to resign.

Tuesday, June 13, 1995

THE FEDERAL DIARY

WASHINGTON POST

6-13-95

EEOC News Clips

for

July 21, 1995

Compiled by
The Office of Communications and Legislative Affairs

Leading the News

Affirmative Action

SOME PROGRAMS WILL FAIL *Adarand* TEST, PATRICK TELLS HOUSE OVERSIGHT PANEL

Notwithstanding the Clinton administration's ringing endorsement of affirmative action, Assistant Attorney General for Civil Rights Deval Patrick acknowledged July 20 that some federal affirmative action plans will not meet the stricter standards set in the U.S. Supreme Court's *Adarand* decision.

But despite persistent questioning from Republican legislators, Patrick declined to identify which ones may fall.

In an appearance before a House oversight committee the day after President Clinton's major affirmative action address, Patrick reiterated the administration's support for the concept, while striving to portray it as a limited part of civil rights enforcement by the federal government.

"The goal is not affirmative action, it is equal employment opportunity. Affirmative action is an effective tool to work toward that goal," Patrick told the House Judiciary Subcommittee on the Constitution and Civil Rights.

In a directive to federal agencies July 19, Clinton reaffirmed his support for affirmative action and ordered federal officials to review existing programs for evidence of quotas, preferences for unqualified individuals, reverse discrimination, or continuation after their purpose has been achieved, and to determine if they meet the stricter constitutional standards set by the Supreme Court (139 DLR AA-1, 7/20/95).

Under *Adarand*, federal programs are subject to "strict scrutiny"—they must serve a compelling governmental interest, and they must be narrowly tailored. The court had set a similar standard for state and local government programs in its 1989 *Richmond v. J.A. Croson* decision.

"Some programs will have to end and others will have to be reformed" as a result of *Adarand*, Patrick told the subcommittee, promising a "thoughtful analysis" of the programs that would be done "with dispatch and integrity."

If the *Croson* decision is an indication, he responded to panel questioning, "there are [federal] programs that will not meet the higher standard."

Subcommittee Chairman Charles Canady (R-Fla), who has promised to introduce legislation that would bar preferences in federal programs, pressed Patrick to be more explicit about which programs might be called into question under the review.

"There's absolutely no question that some need to be improved. There will be some changes as a result of *Adarand*," he replied. "Programs that don't have flexibility, that use quotas, that use numbers in ways that are inflexible won't survive."

But he declined to pinpoint any specific programs for the panel.

"I'm not going to get ahead of the process," he told Canady. "I don't spend my time thinking of the nuances of affirmative action."

"You'll probably be thinking more about those in the coming days," the congressman responded.

A Small Part Of The Caseload

Rep. John Conyers (D-Mich) asked about the prevalence of affirmative action cases in the division's litigation caseload, but Patrick responded that it was minimal—accounting for only two or three of the cases in the current docket.

"Affirmative action is a very small part" of the workload, Patrick said. "The vast majority of our cases are about discrimination—the underlying exclusion from opportunity"—in employment, education, lending, and voting rights cases.

"Affirmative action is taken out of context in society in general," he said.

Following nearly two hours of questioning Patrick on an array of programs under his jurisdiction, ranging from busing to abortion to education, the panel heard brief presentations from two opponents and a proponent of the administration's approach to civil rights

Clint Bolick, litigation director for the Institute for Justice, and William Perry Pendley, the head of Mountain States Legal Foundation, who represented Adarand Constructors in its Supreme Court challenge, both spoke out against preference programs and the positions taken by the Clinton administration.

"Racial preferences are the tools of the 1960s and are utterly impotent in the 1990s," Bolick said. He characterized the president's approach as a "divisive civil rights agenda following policies that are drastically different from those favored by the overwhelming majority of Americans."

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Theodore Shaw, associate director of the NAACP Legal Defense and Education Fund, said the debate over affirmative action is "rooted neither in history nor fact" and is "Orwellian in nature—as if the history of discrimination is one against white Americans."

"Race discrimination continues to be a reality in America," he said.

—By *Nancy Montwieler*

End of Section

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THE WASHINGTON POST
FRIDAY, JULY 21, 1995

Senate Rejects Gramm Bid to Bar Affirmative Action Set-Asides

By Kevin Merida
Washington Post Staff Writer

A day after President Clinton strongly embraced the principles of affirmative action, the Senate soundly rejected an effort by Sen. Phil Gramm (R-Tex.) to eliminate set-asides for minorities and women in federal contracting.

The 61 to 36 vote was the first action this Congress has taken on the issue and followed a two-hour debate last night that evoked passionate arguments about the legacies of racism and sexism, and the principles of merit and fairness.

Gramm, who attached the amendment to the appropriations bill governing expenditures for the legislative branch, said he would continue his effort on the other 12 spending bills for fiscal 1996. In an attempt to counter Gramm, Sen. Patty Murray (D-Wash.) offered an alternative amendment specifying that contracts would not go to "unqualified persons" and that the awarding of them would be consistent with the Supreme Court's recent ruling in *Adarand v. Pena*, that federal affirmative action programs be "narrowly tailored" and serve a "compelling" government interest. Her amendment was overwhelmingly approved, 84 to 13.

The defeat of the Gramm initiative indicated that the Senate—including a majority of Republicans—wants to consider affirmative action in a more deliberative manner and was unprepared to move so hastily, especially on an appropriations bill.

"Frankly, I don't think this is the way we ought to handle a matter of this importance," said Senate Budget Committee Chairman Pete V. Domenici (R-N.M.), adding there had been no hearings and little notice of Gramm's amendment.

Five months ago, Senate Majority Leader Robert J. Dole (R-Kan.) announced on national television that he had ordered an accounting of all federal affirmative action programs and followed with promises to end federal programs that grant "preferential treatment" to minorities and women. But since then, Republican plans for a major overhaul of affirmative action have been slowed by disagreements over timing and tactics. Both Dole and Gramm are seeking the Republican presidential nomination.

In numerous meetings on the subject and in circulating drafts of various bills, Republican congressional leaders in both houses have found that the issue is more divisive within their party than some had initially believed. In addition, some key committee chairmen who have jurisdiction over federal affirmative action programs have either been swamped with other issues or have demonstrated little enthusiasm for an emotionally wrenching debate.

Moreover, having been wounded in the public relations battle over proposed changes in child nutrition programs, even some Republicans who want to overhaul affirmative action have urged a go-slow approach. "We're not ready to move until we have a clear understanding of where we're going and why, and making sure we can communicate that," said House Republican Conference Chairman John A. Boehner (Ohio). "We can do the right thing and get killed if we're not careful."

Gramm called his effort a "surgical amendment" designed to reform one corner of the affirmative action landscape. Rep. Gary A. Franks (R-Conn.) is scheduled to introduce a similar amendment in the House on the defense appropriations bill.

But Sen. Paul Simon (D-Ill.) argued that the Gramm-Franks effort is "just one step down the road to knocking out the other affirmative action things."

And though Gramm said he was addressing only set-asides, the debate focused on the larger questions of lingering discrimination and special preferences. "Whenever you give somebody a special advantage that means someone else is discriminated against because they don't get that benefit," Gramm argued.

But Murray countered that it was Gramm who was "twisting" the debate about affirmative action. "This program is about giving people a chance to make it in this country," she said, challenging Gramm's motives by saying that at the Library of Congress, for example, his amendment would affect only five contracts for a total of $10 million. The Gramm amendment would have prohibited federal funds from being used to award any federal contract or to "require or encourage" the awarding of any subcontract based on the race, color, gender or national origin of the contractor or subcontractor. Gramm said his amendment would not have affected money spent on "outreach and recruitment activities" aimed at women and minorities or override court orders.

After the vote, the GOP's leading presidential contender, Dole, took a veiled shot at his chief rival, Gramm, who have both been waging rhetorical warfare against affirmative action programs. Dole plans to introduce sweeping legislation next week that would eliminate race- and gender-based federal programs, and he noted last night that his bill would be "broad-based" rather than "narrow" like Gramm's amendment. Dole said his bill is the product of long discussions that he hopes will serve as "a starting point in this discussion."

As Dole found out in gathering feedback on his proposal, which has gone through numerous drafts and is still not in final form, some Republicans felt he had gone too far and others felt he did not go far enough: Why not extend the prohibitions to the private sector, some conservatives asked.

Other Republicans have cautioned that the schedule is already crammed with tough issues—why add affirmative action, which many feel unprepared to debate? "A lot of us have a lot to learn," said Sen. Don Nickles (Okla.), chairman of the Republican Policy Committee.

Perhaps the most interesting element of this unfolding drama is the conflicting signals being sent by Dole and House Speaker Newt Gingrich (R-Ga.), who has been telling people that Republicans need to craft a positive message for minorities before trying to dismantle affirmative action programs.

Clinton stands firm on affirmative action

By ANGIE CANNON
And DONNA ST. GEORGE
Herald Washington Bureau

WASHINGTON — President Clinton on Wednesday forcefully reaffirmed his commitment to affirmative action programs, strengthening ties to his political base of minorities and women.

But Clinton also said some programs have problems and directed government agencies to crack down on abuses in racial or gender-based preference programs.

Clinton's long-awaited, 45-minute speech at the National Archives was aimed at satisfying his traditional Democratic supporters as well as voters who believe affirmative action is a form of discrimination and may no longer be needed.

It was unclear how much practical effect Clinton's words will have and whether he may be outdone by others. Republicans in Congress want to do more to end affirmative action. The Supreme Court recently tightened standards for such programs. And more than a dozen states have proposals to end them.

'Good for America'

"Let me be clear: Affirmative action has been good for America," Clinton declared as he stood in the rotunda before the Declaration of Independence, the Constitution and the Bill of Rights. "We should have a simple slogan: 'Mend it, but don't end it.'"

But many opponents of affirmative action programs attacked Clinton's position. "He squandered his opportunity to advance the American ideal of a color-blind nation," said GOP presidential candidate Patrick Buchanan.

While the president didn't spell out the kinds of programs he seeks, the greatest effect of his message may be its sheer tone, some analysts said.

"He's put his foot down, and he's said the current system is fair," said William Dickens, a senior fellow at the Brookings Institution. But he added that the speech "may give some people the power to rein in what may be some more outrageous practices."

banned many preferences in his state's government.

Today, the University of California will consider doing away with preferences in admissions. Civil rights leader Jackson plans to protest the meeting, and Wilson has threatened to arrest him.

Other states, including Florida, Massachusetts, Illinois and Pennsylvania, have drafted bills or started citizen initiative campaigns against racial preferences.

Republicans in Congress and on the presidential campaign trail continued to push to abolish most preferences in federal hiring and contracts.

Five months ago, amid strong public sentiment against affirmative action, Clinton directed White House staffers to review affirmative action programs. But minoritics and women, concerned that he was retreating, pressured the White House to keep such programs intact.

"This review concluded that affirmative action remains a useful tool for widening economic and educational opportunity," Clinton said.

Speech lauded

On Wednesday, leaders of civil rights and women's groups praised Clinton's speech.

"People were feeling adrift and angry and that there needed to be some leadership," said Barbara Arnwine, executive director of the Lawyers Committee for Civil Rights Under Law. "His coming out and giving a speech has probably elevated people's comfort levels."

Jesse Jackson, who has been considering challenging Clinton for the Democratic presidential nomination, told reporters the president's remarks were "one of his finer hours as a leader of the country." Yet Jackson also noted the shift in the president's position. "What we heard today is not where the White House was three months ago," he said.

Clinton also directed federal agencies to eliminate or reform any program that creates a quota, creates a preference for unqualified individuals, creates reverse discrimination or continues after achieving its equal-opportunity goal.

Clinton also ordered all government agencies to obey the Supreme Court's 5-4 ruling last month that made it tougher to defend federal affirmative action programs.

California initiative

Nationally, the push to end affirmative action came from California, home of a popular proposed ballot initiative to end all race and gender preferences. California Gov. Pete Wilson, a GOP presidential candidatc, has

MIAMI HERALD

7-20-95

WASH TIMES

Civil rights enforcer probed on set-asides

ASSOCIATED PRESS

Congressional Republicans yesterday grilled the Clinton administration's civil rights chief about minority set-asides, apparently in search of a place to begin dismantling affirmative-action programs.

Deval Patrick, assistant attorney general for civil rights, spent the bulk of his testimony before a House Judiciary subcommittee explaining affirmative action in the context of President Clinton's new directive and recent Supreme Court rulings.

"We don't intend to abandon common sense," Mr. Patrick said. "The president recognizes, as the courts have, that the goal . . . is not affirmative action. The goal is equal opportunity."

Giving a clue to the direction their legislation will take, Republicans focused on a case from Piscataway, N.J., in which the Justice Department switched sides.

Two years ago, the Justice Department sued the Piscataway school board on behalf of a white teacher who was furloughed in favor of a black teacher with equal qualifications. The case was brought by the Bush administration and prosecuted by the Clinton administration.

Under Mr. Patrick, the Justice Department decided to back the school board in its appeal, arguing that a court judgment in favor of the white teacher was wrong.

Senate Majority Leader Bob Dole of Kansas has sharply criticized the reversal.

A GOP presidential candidate, Mr. Dole has promised to introduce a bill next week that would eradicate affirmative-action programs. He is working with Rep. Charles T. Canady, Florida Republican and chairman of the House Judiciary subcommittee that convened yesterday's hearing.

Mr. Patrick was asked to make distinctions between quotas and set-asides. Rep. Robert W. Goodlatte, Virginia Republican, asked whether a stated goal of "diversity" justified firing someone "because they are not a member of the black race."

"If a set-aside is, in theory or in practice, an exclusive reservation of opportunity for particular individuals . . . then that is problematic," Mr. Patrick said. "But what we saw in the president's review is very, very few programs actually operate that way."

Clint Bolick of the Institute for Justice said Mr. Patrick has "thumbed his nose" at Supreme Court rulings on affirmative action and is forcing his own view of diversity "upon the rest of us in the guise of civil rights."

UC Regents Vote to End Preferences in Hiring, Admissions

LA TIMES 1/64

■ Diversity: California's state university system rolls back affirmative action policies after a day of debate and protests. Gov. Wilson and Jesse Jackson square off.

By AMY WALLACE and DAVE LESHER, TIMES STAFF WRITERS

SAN FRANCISCO—After a daylong meeting marked by emotional debate, peaceful protests and political grandstanding, University of California Board of Regents took a historic step late Thursday, abolishing race-based preferences in both hiring and student admissions.

In the midst of a growing national debate over the merits and fairness of affirmative action, the regents' vote signals the end of an era in which the state made special efforts to open its prestigious university campuses to minorities, setting a standard for diversity in higher education in America.

"July 20 will live a long time in California history," said the Rev. Jesse Jackson, who led opposition to the movement to end the 1960s-era policy.

The rollback of affirmative action "will have a negative impact across the country" and result in fewer blacks and Latinos on college campuses nationwide, he said. "California casts a long shadow or a long sunbeam. This is a long shadow."

The 12-hour meeting, held on the campus of UC San Francisco, was interrupted twice, once by a bomb threat and later, by a demonstration by students and others unhappy with the regents 15-10 vote to eliminate race and gender preferences in hiring.

The protest led regents to leave the meeting room and reconvene in a separate part of the building, where they then voted 14-10, with one regent abstaining, on the admissions issue.

It was Republican Gov. Pete Wilson who set the tone for the debate at the start of the meeting, using his position as president of the panel to portray the issue as one of fairness or favoritism.

Please see REGENTS, A8

Continued from A1

"Are we going to treat all Californians equally and fairly? Or are we going to continue to divide Californians by race?" he asked.

Jackson—like Wilson, a potential presidential candidate—urged the board not to drop its policy requiring officials to consider race and gender in admissions decisions.

"The consequence of going backwards is the loss of hope, the furthering of despair, the hardening of cynicism we can ill afford," Jackson said in an emotional 42-minute address.

Outside, six demonstrators were arrested on civil disobedience charges, and a bomb threat forced evacuation of the meeting room for 40 minutes as the regents neared a vote in the late afternoon.

The threat was only the latest reminder of how emotional the issue has become in California and the nation. And it only served to put more pressure on a board that has been lobbied hard on both sides of the issue.

UC is the first college system in the country to formally consider scaling back its affirmative action programs.

At the center of the debate are two proposals that would require UC to stop using "race, religion, gender, color, ethnicity or national origin" as criteria in its admission decisions, unless applicants could prove that race or other factors had been barriers to their success. The policy change would take effect Jan. 1, 1997.

A similar provision would govern hiring and contracting practices as of Jan. 1, 1996. The proposals, made by Regent Ward Connerly, a Wilson appointee, also recommend that UC increase the percentage of students it admits solely on the basis of academic achievement, and call for a marked increase in funding for outreach programs to better prepare students from underrepresented ethnic groups to become eligible to attend UC.

Wilson lobbied for the proposals and was credited with marshaling support among an anxious board uncomfortable with its spot at the center of a national controversy. A Wilson victory—a vote by the board against its current race-and-gender preference policies—would help solidify his presidential bid and further establish affirmative action as the cornerstone of his campaign.

But the board was far from unified Thursday, as it listened to impassioned and poignant speeches from both sides of the issue.

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Fierce Disagreement

Regents were told they should delay their vote and, conversely, that to do so would be to evade their responsibilities. One speaker said affirmative action was an essential tool to protect equal opportunity. The next called it a flawed mechanism that promoted racial separatism, not broke it down.

Everyone urged the board to summon the moral courage to steer UC on the right course, but there was fierce disagreement about what that was. To make their cases, speakers quoted everyone from Thomas Jefferson to Michael Jordan to God.

Advocates on both sides of the issue invoked the name of Martin Luther King Jr., and both bolstered their arguments by recalling his plea that America might someday be a place where individuals would be judged by the content of their character, not the color of their skin.

As of late Thursday it appeared the vote would be so close that it might come down to a single regent. Of the 18 appointed regents on the 26-member board, 17 have been appointed by Republican governors—five of them by Wilson.

Assembly Speaker Doris Allen, the board's 26th voting member, was absent. Her office released a statement saying she had flown to Colorado at the request of her mother, who has suffered a stroke. And Allen, reached in Colorado, indicated that she would probably have voted with Wilson had she been present.

Wilson, who serves as the board's president but who has not attended a regular board meeting since 1992, used the occasion to solidify his image as a fiscal conservative eager to show his support for middle-class taxpayers and their children.

"It takes all the state taxes paid by three working Californians to provide the public subsidy for a single undergraduate at [UC]," he said. "The people who work hard to pay those taxes and who play by the rules deserve a guarantee that their children will get an equal opportunity to compete for admission to this university regardless of their race or gender."

Wilson's voice often cracked as he spoke, sounding weaker than it had in recent weeks, as he recovers from throat surgery.

Wilson praised Connerly, who is black, for having the courage to propose "essential" changes to the system that determines who gets to benefit from the education offered by the state's premier public universities.

Several legislators and other speakers took the podium to argue against affirmative action, but dozens more defended the university policies, which require the nine campuses to enroll a student body that represents the cultural, racial, economic and social diversity of California.

Now, admission decisions are made based on academic criteria as well as geographic location, ethnicity, gender and special talents or experience. No student is supposed to be admitted on the basis of race alone.

Jackson was among several speakers who compared Wilson to former Alabama Gov. George Wallace, who once stood in the doorway of the University of Alabama to block black students from entering.

And, despite the fact that he himself is considering a presidential bid, Jackson struck out at Wilson for using affirmative action as a tool in his presidential campaign.

Attacks on affirmative action were "a platform for the governor of Alabama and now, Mr. Governor, it is your platform here," said Jackson, who scolded Wilson for using such words as "tribalism" in his discussion of the issue. "Connotations like 'tribalism' go deep to the heart of racism. . . . But there are larger social and historical forces at work than . . . merely lazy, shiftless 'tribes.' "

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UC Leadership's Support

Haile Debas, the dean of UC San Francisco School of Medicine, reminded the regents that if they dismantled affirmative action they would do so in defiance of UC's president, vice presidents, faculty, academic senate and the student leadership—all of whom have expressed strong support for maintaining programs that seek to ensure diversity at UC.

"It would be an outrage if 13 or 14 regents, acting alone, destroyed a historic instrument of social progress in a moment of political frenzy," he said. When he finished speaking, many in the audience rose to applaud him, and Student Regent Edward P. Gomez saluted him with a raised fist.

State Sen. Tom Hayden (D-Santa Monica) said the affirmative action debate should be evaluated within a larger context of what is happening to higher education in California, where years of budget cuts have led to what Hayden called "disastrous downsizing."

"We need to reframe this debate to focus on the loss of educational opportunity instead of a Darwinian rationing of seats," he said, calling upon the regents to delay their decision. "One can have legitimate concerns about categorical 'preferences' or 'set asides'.... But to prohibit even the 'consideration' of race or gender ... is to depart from reality."

Later, Hayden told reporters that he found Wilson's position particularly surprising because the governor had himself considered race as a factor when he chose the five regents that he has appointed since becoming governor.

"The governor has taken race into consideration on each and every appointment," Hayden said, claiming that Wilson had met with the Senate leadership and "explicitly agreed" to do so to ensure that the board became more diverse.

"To ask the regents to ban the criteria that were employed to choose them is an unbelievable hypocrisy," Hayden said. "They know it. . . . The governor knows it."

More than 100 additional people had requested time to speak, but board Chairman Clair W. Burgener told the audience that time constraints prevented everyone from airing their views.

UC officials said six people were arrested outside the building, five for blocking a driveway, one for trespassing. All were cited and released.

At the request of Student Regent Gomez, who argued that the lottery system that determined which members of the public would speak had not allowed for sufficient input from students, four additional students were granted permission to speak at the last minute. All urged the board not to retreat from its current policies.

There were a few moments of levity. When Regent-designate Richard Russell took the microphone, he lamented that because he was only a designate, "I don't have a vote, I do have a voice."

Wilson interjected, "I have a vote, but no voice."

Russell responded, "I guess we're opposites."

To which Wilson quipped: "I'm willing to trade."

Regent Ralph C. Carmona, a supporter of affirmative action who had been working throughout the day to help fashion a compromise that would preserve UC policies, chimed in: "Trade!.... Trade!"

LANDMARKS

1964: Civil Right Act bars discrimination in employment.

1965: President Lyndon B. Johnson lays groundwork for any company with federal contractors to follow affirmative action policies.

1978: Supreme Court rules that Allan Bakke, a white male student who was denied admission to the UC Davis medical school, must be admitted because he was unfairly discriminated against because of his race. At the same time, the court approved the principle of affirmative action.

1989: Supreme Court rules that city and state officials may not steer contracts toward minorities, except to make up for clear history of discrimination.

1995: Supreme Court limits use of affirmative action programs to correct only specific, provable cases of discrimination.

CHANGES SINCE 1980

Percentage of UC system students covered by affirmative action in the fall classes of:

IMPACT ON WHITE MALES

Proportion of white males in UC system:

GRADUATION RATES

Graduation rates, within four years, for minority students:

Admitted on affirmative action **7%**
Admitted on regular standards **18%**

PUBLIC OPINION

Proportion who feel that affirmative action has gone too far:

Sources: University of California, Times files
Researched by NONA YATES / Los Angeles Times

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How the Regents Voted

The Board of Regents has 26 members: 18 appointed by the governor, one student regent appointed by the regents and seven ex-officio members. The board voted on two proposals that would require UC to stop using "race, religion, gender, color, ethnicity or national origin" as criteria in its admissions policies and hiring and contracting practices. Here is how the regents voted on the two proposals.

		Admissions		Hiring/contracting	
REGENTS EX-OFFICIO (By virtue of their position or office)		YES	NO	YES	NO
■ **PETE WILSON**, Governor		✔		✔	
■ **GRAY DAVIS**, Lieutenant governor			✖		✖
■ **DORIS ALLEN***, Speaker of the Assembly					
■ **DELAINE EASTIN**, Superintendent of public instruction			✖		✖
■ **JACK W. PELTASON**, President, University of California			✖		✖
■ **JUDITH WILLICK LEVIN**, President, Alumni Assns. of UC			✖		✖
■ **RALPH C. CARMONA**, Vice president, Alumni Assns. of UC			✖		✖
APPOINTED REGENTS	Appointed by	YES	NO	YES	NO
■ **WILLIAM T. BAGLEY** San Rafael attorney, former state Assembly member	Deukmejian	Abstained			✖
■ **ROY T. BROPHY** Sacramento developer	Deukmejian		✖		✖
■ **CLAIR W. BURGENER** Former five-term Republican congressman	Deukmejian	✔		✔	
■ **GLENN CAMPBELL** Director emeritus, Hoover Institution	Reagan	✔		✔	
■ **FRANK W. CLARK, JR.** Los Angeles attorney	Brown Jr.	✔		✔	
■ **WARD CONNERLY** Sacramento land use consultant	Wilson	✔		✔	
■ **JOHN G. DAVIES** San Diego attorney	Wilson	✔		✔	
■ **TIRSO DEL JUNCO** Los Angeles businessman, founded Los Angeles National Bank	Deukmejian	✔		✔	
■ **ALICE J. GONZALES** Former head of Employment Development Department	Deukmejian		✖		✖
■ **S. SUE JOHNSON** Co-owner, Johnson Tractor Co., Riverside, active in UC Riverside alumni affairs	Deukmejian	✔		✔	
■ **MEREDITH KHACHIGIAN** San Clemente community volunteer	Deukmejian	✔		✔	
■ **LEO S. KOLLIGIAN** Fresno attorney and developer	Deukmejian	✔		✔	
■ **HOWARD H. LEACH** Agribusiness leader	Deukmejian	✔		✔	
■ **DAVID S. LEE** Milpitas businessman, chairman of Cortelco Systems Holding Co.	Wilson	✔		✔	
■ **VELMA MONTOYA** College professor, active in civic and Latino organizations	Wilson		✖	✔	
■ **S. STEPHEN NAKASHIMA** San Jose attorney, accountant	Deukmejian	✔		✔	
■ **TOM SAYLES** Vice president, governmental and regulatory affairs, Pacific Enterprises, parent of Southern California Gas Co.	Wilson		✖		✖
■ **DEAN A. WATKINS** Palo Alto businessman, former Stanford professor	Reagan	✔		✔	
■ **EDWARD P. GOMEZ** Student regent, graduate student at UC Riverside			✖		✖

The Washington Post 7/21/95

U. of Calif. Ends Racial Preferences

Pioneer in Diversity Adopts Stance Urged By Gov. Pete Wilson

By William Booth
Washington Post Staff Writer

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

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

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

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

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

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

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

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

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

Connerly said racial preferences no longer serve their original purpose of righting old wrongs and have instead become an "obsessive preoccupation." Nowhere is the preoccupation as great as at universities, he said.

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

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

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

Many speakers said the regents should not be forced to tackle such a highly politicized issue—especially one being pushed by a presidential contender. "We're in the cross-fire between national campaign politics and the politics of protest," caught in "the rhetoric of anger," said Ralph Carmona, a regent who supports affirmative action.

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

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

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

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

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

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

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

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

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

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

USA TODAY 7-21-95

Calif. to end college entry, hiring by race

Protests erupt as regents eliminate affirmative action

By Gale Holland
and Maria Goodavage
USA TODAY

SAN FRANCISCO — University of California regents voted Thursday night to end affirmative action programs in admitting students and hiring workers at the nine-school system.

The triumph for Republican Gov. Pete Wilson, the regents' president, ignited an angry protest that forced regents into a side room for their final vote.

Jesse Jackson, who was among demonstrators who disrupted the meeting, later joined 100 people blocking a busy intersection nearby.

They disbursed after it became clear they wouldn't be arrested. "They won't arrest us because we're too strong," Jackson said.

What regents did:

▶ By a 14-10 vote, they eliminated race as a criteria for admission starting in 1997. They also reduced the percentage of students admitted for reasons other than their high school grades and test scores.

▶ By a 15-10 vote, they agreed as of January hiring no longer will include "race, religion, sex, color, ethnicity or national origin as criteria."

They confirmed California's place at the front of a national debate over how equal opportunity should be guaranteed:

▶ Opponents of affirmative action, such as Wilson, who has put rolling back the policies at the heart of his presidential campaign, say they discriminate against non-minorities.

"It means the beginning of the end of racial preferences," said Wilson after the votes.

▶ Backers, such as Jackson, who also has had presidential aspirations, say they redress centuries of discrimination.

California made race a factor in admissions and hiring in the 1960s. After the Supreme Court struck down that standard, other factors were added, including socioeconomic status, talents or handicaps.

"This is huge," said student Regent Ed Gomez, a backer of affirmative action. "In Indiana, Michigan — all across the country, they are watching us."

▶ Effort rolls on, 3A

Wall St. Journal

CALIFORNIA REGENTS VOTED to end racial preferences in student admissions.

The University of California's governing Board of Regents voted 14-10 after protesters halted a meeting on the resolution. Jesse Jackson and others disrupted the meeting by singing "We Shall Overcome," and six people were arrested on civil disobedience charges. Earlier, the regents had voted 15-10 to end affirmative action in the university's employment and contracting practices by Jan. 1, 1996.

Gov. Wilson, campaigning for the 1996 GOP presidential nomination, has urged repeal of affirmative action throughout the nine-campus university.

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NEW YORK TIMES 7-21-95

University Regents in California Battle Over Affirmative Action

By B. DRUMMOND AYRES Jr.

SAN FRANCISCO, July 20 — With President Clinton's strong defense of affirmative action on Wednesday still ringing in their ears, the governing regents of the University of California hotly debated today whether to stop admitting students, hiring professors and awarding contracts on the basis of race and sex.

The debate, heavily tinged with Presidential politics and marked by angry rhetoric and street demonstrations, constituted still another sharp escalation in the growing national furor over how best to insure equal opportunity.

Gov. Pete Wilson had pushed the board to take up the divisive issue, leaving no doubt that he intended to make affirmative action a major stepping stone in his quest for the 1996 Republican Presidential nomination.

A moderate on most social issues, Mr. Wilson has been an outspoken opponent of quotas and set-asides since he announced his candidacy, though earlier in his political career he favored them.

But whatever his past views, a vote to do away with quotas and other preference programs likely would help his shaky standing with the powerful conservative element that dominates the Republican nominating process.

Mr. Clinton, with his strong defense of affirmative action on Wednesday, similarly aimed to shore up his standing with blacks and other liberals who control the Democratic nominating process.

Outside the hearing hall today several hundred supporters of affirmative action demonstrated, a few so energetically and noisily that they were arrested.

Inside, it was a non-Californian, the Rev. Jesse Jackson, who offered the strongest defense of preference programs and who, not incidentally, further raised the political stakes of the debate.

Mr. Jackson, who has hinted he might challenge Mr. Clinton or run as an independent in 1996 if Democrats do not continue to mount a strong defense of affirmative action, argued that "the promise of equality in America is unfulfilled" and therefore remedial outreach must continue to insure equal opportunity for all citizens.

Most polls indicate that about 60 percent of all voters have deep reservations about the fairness of affirmative action. That was a point Mr. Wilson made at the outset of today's debate as he exercised his prerogative to serve as chairman of the

Continued on Page A14, Column 1

meeting of the 26-member Board of Regents, which oversees a nine-campus, 152,000-student state education system that is not only one of the largest but also one of the most highly regarded in the country.

"We cannot tolerate university policies or practices that violate fundamental fairness, trampling individual rights to create and give preference to group rights," he said in urging the board to dismantle the university's affirmative action programs.

"Race has played a central role in the admissions practices at many University of California campuses," he added. "Indeed, some students who don't meet minimum academic requirements are admitted solely on the basis of race. Are we going to continue to divide Californians by race? The answer we owe the people and the change we must make are clear."

The actual proposal to change the policies was made by Ward Connerly, a Wilson appointee who is one of two blacks on the board.

"Our system of preferences is becoming entrenched as it builds its own constituency," Mr. Connerly said. "Our obsessive preoccupation with race continues to add to the divide."

Several dozen state legislators, educators, students and interested citizens appeared before the board to defend affirmative action, many accusing Mr. Wilson of compromising academic freedom with politics, others calling Mr. Connerly a traitor to his race.

The defenders pointed out repeatedly that California, the largest state, already is the nation's most ethnically diverse. The pleaded with the Governor and regents not to take any action that might increase ethnic tensions.

(MORE)

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NEW YORK TIMES 7-21-95

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(CONTINUED)

Affirmative Action Tears U. of California

Some suggested that the regents need not take any action because the issue of statewide affirmative action plans likely would be on the 1996 ballot in California. Let the people, not the regents, decide, they urged.

In his remarks, Mr. Jackson said that other governors, such as Orville Faubus of Arkansas and George Wallace of Alabama, had failed the equal rights tests when challenged back in the 1950's and 1960's. Looking directly at Gov. Wilson, Mr. Jackson said: "Stand on right! You can go forward or you can go backwards. Going backwards means denying race and gender as factors."

The Governor stared back at Mr. Jackson, his face a mask. Mr. Jackson changed course.

"Academic freedom is being polluted by a political agenda," he asserted.

Many of the regents confronting the affirmative action issue, Mr. Jackson said, had been placed on the board by the Governor, a number after making substantial contributions to the Wilson campaign.

"This is politics at its lowest," Mr. Jackson declared. "I appeal to you to rise above this and save our children."

The impact of the Connerly proposal on University of California admissions had been projected by state officials before the meeting. They said it would significantly increase the percentage of students admitted to the university system strictly on the basis of academic merit.

In recent years, between 40 and 60 percent of all freshmen have been admitted on the basis of academic merit alone, with the remaining freshmen admitted on the basis of many other factors, including athletic ability, other extracurricular activities and in many instances, ethnic origin.

Under the Connerly measure, between 50 and 75 percent of all freshmen would be admitted solely on the basis of academic merit. The others would be admitted on the basis of other factors, including socioeconomic status, but in no case could membership in a racial or ethnic group play a role.

According to one study commissioned by the board, the number of Asian students admitted would rise, the number of whites would remain the same and the number of blacks and Hispanics would decline.

Assemblyman Willie L. Brown of San Francisco, the best known and most powerful black politician in California, offered the regents another defense of affirmative action.

"I am a product of affirmative action," Mr. Brown, a Democrat, said, pounding the lectern and recalling that when he first moved to California in 1951, from Texas, kindly white officials gave him a "break" and allowed him to enroll in college and achieve his dream of a degree despite an "inadequate" high school education.

"But today," he continued, "the university now offers something that is still short of the American dream for many. So keep this body free of politics and save affirmative action."

A fellow legislator, Assemblywoman Marilyn Brewer, a white Republican from Orange County, entirely disagreed.

"We have gone from an era of colorblindness to an era of color-coordination," she said.

At one point in today's debate, Mr. Connerly, who is a Sacramento housing developer, offered a brief personal comment on its heated nature.

He proposed eliminating affirmative action as it has been practiced, he said, because he was interested in raising "the level of maturity in the demographic process."

"But this," he concluded, ache in his voice, "has been a long painful journey for me. My detractors have often been unkind."

USA TODAY 7-21-95

Affirmative action takes a hit

Vote in Calif. adds impetus to GOP issue

By Richard Benedetto
USA TODAY

The University of California regents' vote Thursday to scrap affirmative action adds momentum to the escalating drive against preferential treatment for minorities.

And for California Republican Gov. Pete Wilson, the vote lends needed credibility to his effort to ride the anti-affirmative action sentiment into the GOP presidential sweepstakes.

"It's a tremendous launch for Wilson," said California Assemblyman Tom Hayden, a liberal Democrat. "It's been a whole week of national publicity, certainly more than he's gotten from anything else."

The vote also is a boost for Republican drives in Congress to end at least some of the programs, despite President Clinton's call this week to "mend it, but don't end it."

"Affirmative action is a key wedge issue for Republicans and they're going to play it for the long game," said independent analyst Charles Cook.

Democratic consultant Gary Nordlinger said affirmative action will be the Republicans' 1996 equivalent of their 1994 "pledge to cut taxes."

GOP National Committee Chairman Haley Barbour said Republicans in Congress are "committed to thoughtful and deliberate reform, and we'll do it in this Congress."

Pool photo by Lacy Atkins, AP

TUMULTUOUS SCENE: Demonstrators and church leaders led by Jesse Jackson disrupt a meeting of University of California regents in San Francisco, forcing the panel from its meeting room.

Rep. Gary Franks, R-Conn., said he will introduce an amendment to an appropriations bill next week to ban government agencies from awarding contracts for racial and gender reasons. "My amendment will be the opening salvo against affirmative action," said Franks, one of two black GOP House members.

Other minorities, however, were devastated.

"We don't have friends anymore," said Matt Barnes Jr., a member of the NAACP national board of directors who lives in Richmond, Calif. "We don't have the friend of the Supreme Court. We don't have friends of liberal white people."

Just last month, the Supreme Court narrowed the scope of affirmative action preferences. In the first challenge since the ruling, C.S. McCrossan Construction Inc., a white-owned contractor based in Maple Grove, Minn., filed a suit June 21 in U.S. District Court in Las Cruces, N.M. The target is a Defense Department program setting aside contracts for minorities for work at the White Sands Missile Range.

Although Clinton Wednesday defended affirmative action, he ordered the end or overhaul of any program that "creates a quota, creates preferences for unqualified individuals, creates reverse discrimination or continues even after its equal opportunity purposes have been achieved."

Back in California, the regents' vote set off celebrations by supporters of a state constitutional ban on preferences.

Joe Gelman, campaign manager for the initiative drive, said the passage is "motivation for us to continue on the path to enshrine the civil rights initiative in our state's constitution. ... That's not an easy thing."

Contributing: Gary Fields, Richard Wolf, Gale Holland

▶ California vote, 1A

Protesters disrupt meeting

SAN FRANCISCO — Political screaming reminiscent of the 1960s disrupted a University of California regents meeting Thursday as the board scrapped '60s-era affirmative action policies.

More than 100 students and ministers erupted in clapping before the board could vote to throw out race as a criteria for admissions.

Singing the civil rights anthem *We Shall Overcome*, protesters locked arms and encircled the room as most of the 25 regents — including Gov. Pete Wilson — fled the room. The board finished the vote elsewhere.

"We must fight back," Jesse Jackson said. "You must contain this virus and stop it here."

Jackson led protesters downtown, where they briefly blocked an intersection. When they weren't arrested, they headed back to the school.

"I can't believe the future of young minorities is going to be determined by old white men," said Gabriel Avina, 19, a student at UC-Santa Barbara.

The protest was the second disruption. In the afternoon, the room was emptied for 40 minutes after a bomb threat. No bomb was found.

— *Gale Holland*

California protesters wreck regents' meeting

Preferences rejected in first of 2 votes

By Michelle Locke
ASSOCIATED PRESS

SAN FRANCISCO — Singing "We Shall Overcome," Jesse Jackson and other demonstrators took over a University of California Board of Regents meeting last night after the panel voted to end affirmative-action hiring policies.

The takeover came before regents had a chance to vote on another proposal to end race-based admissions at the nine-campus university system.

The demonstrators pushed to the front of the room where the regents had been wrangling over affirmative action for 11 hours, linked arms and sang the civil rights protest anthem.

Most regents left the room, but some stayed to sing with the demonstrators. Joining the group, which included students, ministers and others protesters, was Democratic Lt. Gov. Gray Davis, a regent and political enemy to Gov. Pete Wilson. The governor has made ending affirmative-action programs the centerpiece of his struggling campaign for the 1996 Republican presidential nomination.

The takeover came after the regents voted 15-10 to halt affirmative action in hiring. A woman stood in the back of the room and yelled in protest.

The regents suggested clearing the room, prompting Mr. Jackson, who had pledged to commit civil disobedience if necessary, to stand and fold his arms across his chest. The demonstrators surged forward.

Mr. Jackson, who faced off with Mr. Wilson in two days of protest and debate on the issue, stood on a chair to address the crowd. "We must fight back," he said. "You must contain this virus and stop it here."

Earlier, six persons were arrested on civil-disobedience charges and a bomb threat forced evacuation of the meeting room for 40 minutes as the regents neared the first vote.

At the start of the meeting, Mr. Wilson tried to set the terms for debate from his vantage point as president of the panel. "Are we going to treat all Californians equally and fairly?" he asked. "Or are we going to continue to divide Californians by race?"

Mr. Jackson, himself a potential presidential candidate, urged regents not to drop race-based admissions. "The consequence of going backwards is the loss of hope, the furthering of despair, the hardening of cynicism we can ill afford," Mr. Jackson said in an emotional 45-minute address.

As Mr. Jackson left, he made a point of pushing to Mr. Wilson's seat and shaking his hand. Mr. Wilson rose and the two spoke for a moment, the taciturn governor smiling faintly. Seventy people addressed the regents, who began discussing the issue late in the afternoon.

During the debate, about 500 demonstrators marched and chanted, and some were let inside to watch the proceeding on TV monitors. One hanged Mr. Wilson in effigy. Another wore a shirt saying "PETE — Public Enemy To Education."

About 300 law officers stood by.

Five people, including the Rev. Cecil Williams, a San Francisco activist, were arrested when they sat in the entrance to the UC Laurel Heights campus and refused to move. As police led the five away, about 300 people crowded around, chanting, "Justice yes! Wilson no!"

Another person was arrested for refusing to move aside.

Outside, the only sign of support for ending affirmative action was a plane towing a sign that said "End Race and Gender Based Preferences Now."

"Put an end to the madness," thundered Republican Assemblyman Bernie Richter, urging the Board of Regents to adopt the proposals. "We must rededicate ourselves to ending government-enforced racism before it tears our society apart."

"Don't rush to judgment," countered Democratic Assemblyman John Vasconcellos, urging regents to put off a vote.

The meeting begat a series of demonstrations, speeches and a student-regent forum Wednesday, with nearly 1,000 people packing a church for an emotional rally.

AP

The Rev. Jesse Jackson hugs Hastings law student Vernon Goins for his impassioned speech supporting affirmative action.

WASH. TIMES

Publix accused in sex-bias lawsuit

Case may become biggest in U.S.

By SUSANA BARCIELA
Herald Staff Writer

Eight Florida women are charging that Publix Super Markets, the state's biggest private employer, has systematically discriminated against women in assigning jobs, promotions, pay and other employment practices.

The women on Wednesday filed a class-action lawsuit in Tampa federal court against Publix in what could become the country's largest sex discrimination suit.

Crafted by an Oakland law firm with a track record of winning multimillion dollar discrimination cases, the lawsuit comes as the EEOC conducts an investigation of Publix's employment practices.

It is at least the fourth class-action discrimination lawsuit filed against a major grocery chain over the treatment of women.

Publix denied the allegations. "This is preposterous," Publix lawyer Charles Shanor said in a statement. Shanor is a former general counsel for the U.S. Equal Employment Opportunity Commission, the federal agency that enforces anti-discrimination employment laws.

"They are attempting to escalate eight diverse and individualized complaints about various local store employees into a class action covering nearly 500 supermarket locations," the statement said.

In the lawsuit, six former and two current Publix employees from different areas of the state allege that the company assigned women to lower-paying jobs such as cashiers, meat wrappers, cake decorators, and deli and bakery counter workers. Once hired, the women said, it was virtually impossible to advance. All eight had previously filed EEOC complaints against Publix.

"Publix maintains two 'career tracks:' one, for men, which leads to promotions and management positions, and another for women, which leads to dead-end, lower-paying, nonmanagement positions," the lawsuit alleges.

"Publix has a way, when they no longer feel that you are advantageous, they will not fire you, they will make you quit," said Melodee Shores, who worked 12 years for Publix in South Dade and Lakeland.

Hired as a part-time cashier in 1981, Shores later worked as a full-time teller and stock person. She said Publix repeatedly denied her promotions given to less-qualified men. Shore, 32, said she became the family's primary breadwinner after her husband became disabled.

"I decided I couldn't raise my children on a cashier's salary, and Publix managers make good money," she said. But when she asked for managerial opportunities, Publix managers would ask her what she was going to do about child care, she said.

'What do I have to do?'

In 1992, after Shores was passed over for five managerial jobs, she asked: "What do I have to do different to get promoted?"

Shores said, "The store manager looked at me square in the eye and said, 'It wouldn't hurt you to lose 20 pounds.'" Another manager suggested make up would help, she said.

Today, Shores said her job in a Lakeland doctor's office pays half of what she made at Publix. Shores was the only one of the eight women who had worked in South Florida for Publix. The grocery chain is based in Lakeland.

In the last several years, Publix has been both lauded and blasted for its employment practices.

In 1993, Publix appeared on the top 10 list of the book *The 100 Best Places to Work for in America*. Employees own 80 percent of the company through an employee-stock plan.

In 1994, Publix was recognized by the Florida Commission on the Status of Women and others for progressive employee programs. Last year, Publix began running full-page newspaper ads featuring women and minority employees in positions of authority.

In 1993, the Florida Consumer Federation criticized the chain as a "bastion of the good-old-boys club," after a visual survey in Publix stores found few women, blacks and Hispanics in management. The consumer federation is a statewide consumer advocacy group.

The claims

In the Publix lawsuit, the women charge that Publix managers:

- Made sexual advances and remarks.
- Paid them less than male employees for the same job.
- Denied them training and other advancement opportunities offered to men.
- Retaliated against employees for complaining about discrimination.

"It's hard to imagine a female employee who hasn't been touched by one of these actions," said Charles Burr, a Tampa lawyer representing the women along with the Oakland, Calif., law firm Saperstein, Goldstein, Demchak & Baller.

Publix did not respond to any specific allegations.

The Saperstein firm is noted in legal circles for its class-action discrimination lawsuits.

"They've brought most of the big ones," said Helen Norton, director of equal opportunity programs for the Women's Legal Defense Fund, a Washington, D.C., advocacy group.

EEOC probe

The EEOC has been conducting a broad investigation of Publix's employment practices since 1992. According to court records, the agency believed that, since at least 1986, Publix has violated the law "discriminating against women with respect to job assignments, and promotions."

Stan Kiszkiel, EEOC regional attorney for Florida, said Wednesday's civil lawsuit will not affect the EEOC investigation.

Publix employs about 95,000 people. It has 470 stores, most of them in Florida. Publix does not disclose how many women it employs, although the company has said that 30 percent of its management staff consists of women and minorities.

The class-action lawsuit estimates that Publix currently employs as many as 45,000 women. It asks the court to represent all current and former female employees of Publix.

Given the size of the company and the potential number of women involved, the Publix case is likely to be a landmark.

"What this clearly shows is that the grocery-store industry is suffering from longstanding, institutionalized sex discrimination," Norton said. "It's the classic glass ceiling, where women and people of color are steered into low-paying jobs with no hopes of advancement."

MIAMI HERALD

Immigration

HOUSE IMMIGRATION PANEL CLEARS BILL BY VOICE VOTE

The House Judiciary's Immigration and Claims Subcommittee approved an ambitious immigration bill by voice vote on July 20.

Late the previous evening, the subcommittee approved an amendment to the bill that would allow the government to use testers to ferret out immigration-related employment discrimination.

The subcommittee spent four days marking up HR 1915, sponsored by Chairman Lamar Smith (R-Texas). The bill would implement broad-ranging changes in the country's immigration laws.

The bill calls for vast improvements in border security, enhanced methods of apprehending illegal aliens, and new procedures to prevent illegal aliens from obtaining employment and public benefits. It would reduce the number of immigrants to the United States by severely restricting the immigration of extended family members.

Most of the bill, including the provisions relating to employers, survived intact. Early in the markup, slight changes were made in the bill's proposals for the H-1B program (135 DLR A - 8, 7/14/95). The subcommittee resisted proposed changes in the investor visa program. The subcommittee approved an amendment that would give employers 10 days to fix errors made in filling out I-9 verification forms (138 DLR A - 3, 7/19/95).

The tester amendment, offered by Rep. Xavier Becerra (D-Calif), would allow the attorney general to implement tester programs similar to those used in enforcing the Fair Housing Act. The amendment would allow the use of testers to determine whether employers were discriminating against people who looked or sounded foreign. The amendment was approved by voice vote.

The bill now goes to the full Judiciary Committee, which is expected to begin work on the measure in September.

GLASS CEILING DIRECTOR TOUTS DIVERSITY

The executive director of the federal Glass Ceiling Commission weighed in on the subject of affirmative action July 20, saying such programs help qualified people achieve success in the workplace and can boost companies' competitiveness.

"Workforce diversity—from the executive suite to the shop floor—is good business," Rene Redwood said in comments released by the Labor Department.

Smart companies use the talents of all their workers to compete in the global economy, Redwood said, adding, "the color of business is green."

Her comments came one day after President Clinton's speech on the subject and one day before the commission was to meet in Washington, D.C. The 21-member panel hopes to hammer out recommendations for the president and Congress on how to break barriers keeping women and minorities from advancing into top management positions.

"Affirmative action helps qualified people achieve their full employment potential and this is good for America," she said.

The commission that Redwood serves as executive director is expected to begin meeting 4 p.m. July 21 to draft recommendations that are due to policy-makers Nov. 21. Labor Secretary Robert B. Reich, who chairs the commission, is scheduled to open the meeting.

The commission, in its fact-finding report issued in March, found that 97 percent of the senior managers in *Fortune* 1,000 industrial and *Fortune* 500 companies are white and 97 percent are male (51 DLR A-1, 3/16/95).

The panel was created in 1991 as part of the Civil Rights Act and includes representatives of business, advocacy groups, and congressional parties.

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The Daily Item July 13, 1995
(Gannett Suburban Newspapers)

Grounded by age

Pilot's court victory could let older fliers take off.

Staff photo/Laura Seitz

Chet Glowinski, a 35-year pilot forced to retire at age 60, successfully sued for age discrimination. Behind Glowinski is a Falcon-50 three-engine jet, the kind he flew for International Paper.

Randy Whitestone
Staff Writer

Chet Glowinski will never forget his last flight as a pilot for International Paper Co.

He taxied the 10-passenger, Falcon-50 jet up to the company's hangar at the Westchester County Airport, then walked out onto the concrete ramp as company Chairman John Georges collected his bags.

"I said to him, Mr. Georges, if you don't change your mind, that's the last time I fly an International Paper plane," Glowinski said. "He just shook his head and walked away."

The date was Aug. 29, 1990. Glowinski had turned 60 the day before, marking his birthday in an Albany hotel room, knowing that the company's retirement policy for pilots meant his career at Purchase-based International Paper would end as soon as he flew back to Westchester.

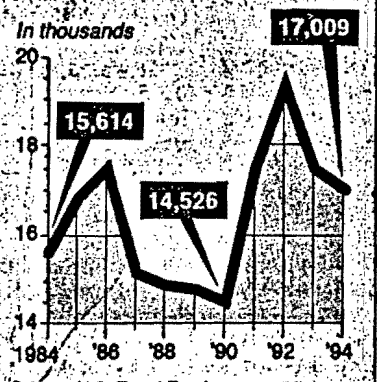
Now, however, Glowinski's career could be gaining new life in the hands of U.S. District Judge Barrington D. Parker Jr. In June, Glowinski and the U.S. Equal Employment Opportunity Commission won a five-week jury trial against International Paper in White Plains federal court. The six-person jury awarded Glowinski back pay of $75,219.36 after four hours of deliberations.

Last week, the EEOC asked that Parker order the company to reinstate the now-64-year-old

Please see AGE, 2A

Age discrimination cases cresting?

The number of cases filed with the U.S. Equal Employment Opportunity Commission under the Age Discrimination in Employment Act peaked in 1992, but are still historically high.



Source: U.S. Equal Employment Opportunity Commission

Staff graphic/Marco Doelling

Age: Ruling may favor older pilots

Continued from page 1A

Glowinski as an International Paper pilot, or award him $338,000 in "front" pay — compensation equal to what he would have earned had he worked until age 67. International Paper's lawyers have until July 24 to respond to the motion.

Both legal and workplace experts say the Glowinski case shows a federal government at odds with itself over how to regulate older pilots. At the same time as the EEOC is promising to use the verdict to help force other corporations to eliminate their age 60 pilot retirement policies, the Federal Aviation Administration is seeking to widen its 36-year-old ban on airline pilots older than 60 to include small commuter airlines.

"The law is in a state of flux at this point and probably it will require a Supreme Court resolution," said Paul Grossman, head of the employment law department for Paul, Hastings, Janofsky & Walker in Los Angeles, and co-author of the American Bar Association's textbook on age discrimination.

Amid an aging population and widespread corporate cutbacks, older people like Glowinski who are forced to retire or are laid off have grown increasingly aggressive about pursuing legal remedies.

"We as a firm see more age claims than any other kind," said Margaret Bryant of Jackson, Lewis, Schnitzler & Krupman, a national law firm based in White Plains that represents management exclusively. "It's an increasing trend. Before you know it, we're all over 40."

In the courts

David Block, a Jackson, Lewis partner, said age discrimination cases, in general, are now harder to settle and are attracting top lawyers — often because older plaintiffs have more money with which to pursue cases.

Employment law experts estimate there are 750 corporate aviation departments nationwide employing 5,000 pilots. At least 50 corporations have air operations at the county airport, a major jet fleet hub for Fortune 500 companies based in Manhattan and in Westchester and Fairfield (Conn.) counties, manager Joel Russell said.

Robert Unitas, the EEOC's lead lawyer on the International Paper case, is jubilant about the verdict. "We think it's a major win for the commission," he said. "Hopefully, we can use this case as a springboard to start settling other cases that have been lingering for a while."

International Paper said it was "disappointed" with the jury verdict, but it had nment on a possible appeal. Joyce es, senior human resources coun- International Paper, said the poli- ted in 1982, remained in effect. pany cited FAA rules as one

> "We as a firm see more age claims than any other kind. It's an increasing trend. Before you know it, we're all over 40."
>
> **— Margaret Bryant, attorney**

reason for the policy, which it argued is not in violation of the 1967 Age Discrimination in Employment Act because that law allows for "bona fide occupational qualifications," or BFOQs.

The Supreme Court has held that age-related BFOQs — which are designed for jobs in which age is a key factor in whether a person can perform — must be proved on a case-by-case basis. Among the few BFOQs that have been upheld by courts are those for school bus drivers, police officers and firefighters. Although IP did win a pilot retirement case brought by a former pilot in Pennsylvania, no pilot case is considered to have set a legal precedent.

Glowinski and the EEOC argued that individual medical testing of pilots is a much better way to determine fitness for duty than a blanket age-based rule.

"Everybody should be judged on their own physical and mental abilities," said Glowinski, who lives in Iselin, N.J. "It's not just, 'OK, you're finished.' "

Other companies' policies

Other major corporations in the area have avoided pilot retirement policies. IBM Corp. dropped its own age 60 policy more than three years ago, spokesman Tom Beermann said. The company, which has seven planes, requires pilots to take physicals every six months.

PepsiCo Inc., which has four planes, has never had a pilot retirement policy, but it requires annual pilot physicals, spokeswoman Elaine Franklin said.

Reader's Digest Association Inc. has had no retirement age for its pilots for a "long time," spokesman Craig Lowder said. The publishing company has one plane based in Westchester.

NYNEX Corp. has avoided the issue by contracting with an outside company for the management of its three-plane fleet.

International Paper, which employs about 70,000 nationally and 120 in Westchester, has 15 pilots and three jets. Two of the pilots are based at Westchester.

The continuing battle over corporate pilots' retirement age has only had a small impact compared with the FAA ban on airline pilots flying past 60. The EEOC estimates that, on average, 2,000 of the nation's 70,000 airline pilots are required to retire each year.

Major pilot unions, however, back the airline retirement rule.

Corporate pilots lead different lives from schedule-bound airline pilots, said James G. Sovich, a captain with American Airlines and president of the 10,600-member Allied Pilots Association in Arlington, Texas. Airline pilots often have as many as four or five overnight flights a month. Corporate pilots rarely have to fly overnight.

Deep love of flying

The International Paper case has its roots in Chet Glowinski's deep love for a job he didn't want to give up.

Glowinski joined the Air Force as a mechanic in 1949, was honorably discharged in 1953, and became a civilian mechanic. He began pilot training in 1954-55, and he joined International Paper in 1964. In all, he has logged 35 years in the cockpit, as well as 17,000 accident- and violation-free hours — but none in the past four years. He said it is too expensive for him to maintain his certification independently, and finding a new job has been difficult for a pilot in his 60s.

Glowinski, married for 38 years and the father of four grown sons, now helps run errands at one son's nearby transmission shop. But he fondly remembers his years on the flight deck, carrying seven different International Paper chief executives and celebrities like Henry Kissinger, Robert F. Kennedy and Benny Goodman to places like Europe, South and Central America, Canada, the Caribbean and Alaska.

"It was a great job. It's probably in the top 5 percent of aviation in the corporate field," he said recently. "I felt I had it. I really felt right on top."

The EEOC approached Glowinski about taking his case because it wanted to win a high-profile verdict to help speed the demise of other companies' pilot retirement policies, and sought to counterbalance International Paper's victory in the Pennsylvania suit.

The jury returned a unanimous verdict in Glowinski's favor, but gave him less than a third of his requested back pay damages because it did not feel he had tried hard enough to land a new job. Glowinski said he made one flight on a contract basis in 1991, but family concerns made it difficult for him to travel overnight, which ruled out several other jobs.

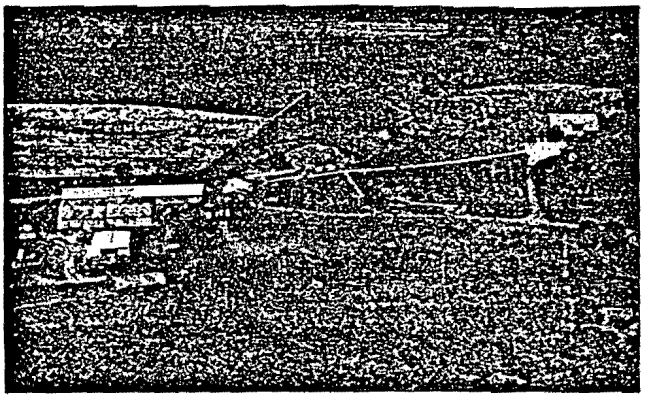
Now Glowinski hopes for a chance to once again don his captain's jacket — even though it would now require several weeks of retraining.

"Why not?" he said. "It's a peach of a job."

Christianity today July 17, 1995

DOWNSIZING

Last Days Ministries Closes Commune



On the block: LDM's Texas campus is for sale as the ministry shifts gears.

Last Days Ministries (LDM), founded by Keith and Melody Green in 1977, is reducing its staff by nearly two-thirds and selling 400 acres of its ranch headquarters.

The ministry, based in Lindale, Texas, since 1979, will be headquartered in the Monterey Bay area of California. Some staff will remain in Lindale while another group will set up offices in Boone, North Carolina. In all, 40 of 116 staff will keep their jobs.

Andrew and Melody Sievright

In the future, LDM will focus on evangelistic tracts, music ministry, and an expanded and redesigned magazine. However, in downsizing moves to cut overhead costs, LDM will no longer provide a discipleship living environment.

"It's been a real struggle to keep both the ministry and community afloat," says Melody Green Sievright, who has headed LDM since the deaths of her Christian musician husband, three-year-old son Josiah, and two-year-old daughter Bethany in 1982. They were killed with nine others when their overloaded plane crashed after takeoff from the Lindale ranch. She married Andrew Sievright in 1991.

"The season of LDM living as a community—all living on common land—has come to a close," she told CT. "We are pruning back to the essentials, to the core of our call. We had lost the cutting edge that God wanted us to have and that had been such a part of the earlier years of Last Days."

LDM's 17-year-old bi-monthly magazine at one point had a circulation of 500,000, but that has fallen to 133,000. Only one issue was published last year because of too few skilled staff. LDM has been an affiliate of Youth With a Mission (YWAM) since 1991, and many of the released volunteers have joined Mercy Ships, another YWAM ministry based in Lindale. CT

BEESON DIVINITY SCHOOL

Professor Files Religious Bias Suit

John Killinger is suing Birmingham's Baptist-affiliated Samford University for alleged religious discrimination and breach of contract.

The 61-year-old Killinger contends Samford administrators have not allowed him to teach courses in the university's Beeson Divinity School as promised at his hiring five years ago. Killinger says his theological views caused dean Timothy George to deny him teaching privileges.

Killinger, a Presbyterian, says he had been assured that the beliefs prominent in his books on preaching and his 15-year tenure at Vanderbilt University would not be a problem at Beeson. But, Killinger says, George in 1993 canceled a course that he had planned to teach while Killinger was on a research leave in England. And more recently, Killinger says he was not invited to move into a new campus building with the rest of the faculty. "I would not have accepted a position at Samford if I had known I would not be permitted to teach homiletics in the divinity school."

In the suit, Killinger charges that Beeson is not an interdenominational school as it claims, but "advocates the theology, liturgy, and biblical interpretation of the fundamentalist wing of the Southern Baptist Convention."

George, a CHRISTIANITY TODAY senior editor and Southern Baptist historical theologian, says, "I have nothing negative to say about Dr. Killinger. The matter is now in the hands of our attorneys." CT

DISCRIMINATION

Baptist School Pays for AIDS

According to the Campbell University statement of purpose, the Buies Creek, North Carolina, Baptist school seeks to help students develop "a sensitive awareness of the world and society in which they live and work with persons." Despite this aim, the school—fearing a medical threat—in 1993 fired a physical education teacher when officials discovered he had AIDS.

But the Equal Employment Opportunity Commission (EEOC) disagreed with the school's action and in April 1994 filed a lawsuit on behalf of the teacher, identified as "John Doe," saying the plaintiff had been wrongfully discriminated against because of a disability. The case is one of the first in the country to apply the 1991 Americans with Disabilities Act to people with AIDS.

"There is no reason that a person with AIDS can't teach physical education," says EEOC attorney Adele Rapport. "If the school had interviewed a medical expert, they would have found this out."

The two sides recently reached a settlement just before the case was scheduled for trial. The school agreed to several measures, including the reinstatement of Doe at the university and reimbursement for emotional damages totaling $325,000.

Campbell University, which also agreed to provide AIDS-awareness and sensitivity training for employees involved in personnel decisions, released a statement saying the school's money could "be better spent upon the education of its students" than on legal fees. The plaintiff is now coordinating student internships in the Campbell Exercise Science Department and is no longer teaching. CT

Equal Employment Opportunity Commission
4520 N. Central, Suite 300
Phoenix, Arizona 85012-1842

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE
July 10, 1995

CONTACT: Richard R. Trujillo
Regional Attorney
Phoenix District Office
Telephone: (602) 640-2599

MICROCHIP TECHNOLOGY INC. SUED BY FEDERAL GOVERNMENT FOR DISABILITY DISCRIMINATION

Phoenix, Arizona -- The Phoenix District Office of the Equal Employment Opportunity Commission (EEOC) has filed a lawsuit under the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, in the United States District Court in Phoenix, Arizona against Microchip Technology Inc. for failing to hire an applicant because it perceived her as disabled and because of her record of a disability.

The lawsuit alleges Microchip hired an applicant for the position of layout designer contingent upon the successful completion of a medical examination. After the examination revealed she had suffered a work-related injury at her former place of employment and had received worker's compensation for the injury, Microchip rescinded its job offer. The Commission is seeking reinstatement, back pay, compensatory damages, punitive damages, and injunctive relief.

Richard R. Trujillo, Regional Attorney, stated: "As this case illustrates, employers may not refuse to hire an applicant simply because he or she may pose increased worker's compensation costs in the future or because of a perceived disability."

The EEOC enforces Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector; Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, race, color, religion, or national origin. The Commission also enforces the Age Discrimination in Employment Act of 1967; the Equal Pay Act; and the provisions of the Rehabilitation Act of 1973 which prohibit discrimination affecting people with disabilities in the federal sector.

# # # #

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE
July 18, 1995

CONTACT: C. LARRY WATSON
REGIONAL ATTORNEY
(216) 522-7455

EEOC SETTLES NATIONAL ORIGIN DISCRIMINATION SUIT AGAINST THE UNIVERSITY HOSPITALS OF CLEVELAND

CLEVELAND, OHIO -- The Cleveland District Office of the United States Equal Employment Opportunity Commission today announced that a Consent Decree has been entered which settles the Commission's National Origin lawsuit against The University Hospitals of Cleveland.

In its Complaint filed on March 7, 1994, the Commission alleged that University Hospitals violated Title VII by denying Dr. Vinod Kumar Vinjamuri an interview for a Cardiology Fellow position because of his national origin, East Indian. Under the terms of the Consent Decree filed on May 25, 1995 by U.S. District Court Judge Lesley Brooks Wells of the U.S. District Court for the Northern District of Ohio, Eastern Division, University Hospitals agreed to pay Dr. Vinjamuri the sum of $6,500.00, as well as to interview Dr. Vinjamuri for the July, 1997 Cardiology Fellowship Program. University Hospitals has also agreed not to discriminate in application procedures, including job interviews, against any applicant for employment because of the applicant's national origin. All terms and conditions of employment will be maintained and conducted by University Hospitals in a manner which does not discriminate in violation of Title VII. University Hospitals further agreed to post Notices to all of its employees regarding unlawful discrimination in the workplace. University Hospitals, finally, will submit to the Commission, during the term of this Decree, annual reports. The term of the Decree is two and one-half (2½) years.

The Commission enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin or retaliation; The Commission also enforces the Age Discrimination in Employment Act; the Equal Pay Act; prohibitions against discrimination affecting individuals with disabilities in the federal sector; sections of the Civil Rights Act of 1991, and Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments.

eeoc U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE

JUL 18 1995

CONTACT: Michelle Eisele
Senior Trial Attorney
(317) 226-7059

EEOC SUES PREFERRED HOSE AND COUPLING, A DIVISION OF PREFERRED TECHNICAL GROUP, INC. FOR DISCRIMINATION BASED ON DISABILITY

NEW ALBANY, INDIANA -- The United States Equal Employment Opportunity Commission has filed a lawsuit alleging disability discrimination against Preferred Hose and Coupling, a Division of Preferred Technical Group, Inc.

According to the Complaint filed in the United States District Court for the Southern District of Indiana, Preferred Technical Group, located in Mitchell, Indiana, violated the Americans with Disabilities Act of 1990 by failing to make reasonable accommodation to the disability of an employee and forcing him to terminate his employment.

The Commission alleges that the effect of Preferred Technical Group's action has been to deprive the employee of equal employment opportunities because of his disability. The Commission has asked the Court to grant a permanent injunction to prevent Preferred Technical Group from engaging in any employment practice which discriminates on the basis of disability. The Commission has requested that the Court order Preferred Technical Group to pay the employee backpay, prejudgment interest, compensatory and punitive damages.

The Commission also seeks an order from the Court requiring Preferred Technical Group to institute and carry out policies, practices and programs which provide equal employment opportunities for qualified individuals with disabilities and which eradicate the effects of its past and present unlawful employment practices.

EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin; the Age Discrimination in Employment Act; the Equal Pay Act; prohibitions against discrimination affecting individuals with disabilities in the federal sector; sections of the Civil Rights Act of 1991, and Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments.

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FRIDAY JULY 21, 1995 VOLUME 31, NUMBER 125

Congressional MONITOR

CQ

Final Action Expected On Rescissions Bill

Reported agreement on amendments would clear long-stalled bill; House continues push on fiscal 1996 appropriations measures

The Senate is expected to take action today on a long stalled $16.3 billion rescissions bill.

The bill would rescind a variety of funds not spent yet from various government accounts.

DAY BOOK TODAY

Democrats Paul Wellstone, Minn., and Carol Moseley-Braun, Ill., have blocked previous attempts by Senate leaders to clear the bill (HR 1944) for the president.

Under an unofficial agreement reached yesterday, the Senate would act on two amendments by Wellstone today followed by a vote on final passage.

One of Wellstone's amendments would restore about $320 million for low-income energy assistance for cold weather states. Another would restore a variety of funds for job training programs at the Labor Department.

Leaders are putting pressure on members to reject the amendments, so the bill can be cleared for the president. If it is amended at all, the bill would require further action by the House; time is running out in the fiscal year.

The measure also contains some $7.2 billion in spending for disaster relief, aid to victims of the Oklahoma City bombing and Jordanian debt relief. Clinton vetoed the original measure June 7, forcing negotiations that yielded the current bill.

• The Senate today may consider legislation (S 641) that would reauthorize the federal government's key AIDS treatment program for another five years.

HOUSE FLOOR

TRANSPORTATION SPENDING BILL ON TODAY'S FLOOR AGENDA

Once the House completes action on the fiscal 1996 agriculture appropriations bill (HR 1976), members will turn to the fiscal 1996 transportation appropriations bill (HR 2002).

The Republican leadership hopes to get members on their way home by 6 p.m. today, so it is unlikely that they could complete action on the $12.8 billion transportation spending bill.

The measure also would permit the expenditure of $22.6 billion from transportation trust funds.

There is almost certain to be a big fight on the rule governing consideration of the transportation bill. The original rule proposed for the transportation spending bill would have left 15 mass-transit programs open to a procedural challenge, which could strike them from the bill.

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Democrats Halt Regulatory Process Overhaul

After Republicans fail in third cloture vote, Dole pulls bill; House condemns China; action on Bosnia delayed until next week

Summary. Democrats once again defeated an attempt to invoke cloture on a regulatory overhaul bill, leading Majority Leader Bob Dole of Kansas to pull the bill from the floor. Republican leaders said they were suspending negotiations with Democrats on the bill, which has been on the floor for 10 days.

Meanwhile, another measure that had been left for dead several times over the last three weeks — a fiscal 1995 rescissions and supplemental spending package — was apparently revived last night with an agreement to permit two amendments and vote today.

HILL NEWS YESTERDAY

On the other side of Capitol Hill, the House passed a bill condemning China's human rights and trade policies.

SENATE FLOOR

DEMOCRATS REBUFF CLOTURE AND GOP SHELVES REGULATORY BILL

The Senate last night refused for the third time to shut off debate on legislation to overhaul the federal regulatory process, prompting sponsors to suggest the measure had died.

The cloture vote was 58-40, two votes short of the required supermajority. Four Democrats and all Republicans voted to end the debate.

After an impasse that has kept the bill (S 343) on the floor 10 days, the two sides had narrowed their differences in private negotiations the last two days. But Democratic leaders said they could not support the bill and Republicans said they could yield no more to demands by Democrats to lessen the bill's scope.

Majority Leader Bob Dole, Kan., said he wanted a thorough bill or no bill at all. "I assume we could have put

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WASHINGTON DC 20507

DAYBOOK TODAY

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It also would have left a provision of the bill, which would eliminate federal labor protections for mass-transit workers, open to the same challenge.

But yesterday, House leaders reversed that decision and will propose an amendment to the rule that would give protection from points of order to the projects and the worker provision.

The amendment to the rule also would protect a provision of the bill that would temporarily bar new funding or contracts for a controversial, multi-billion-dollar highway/tunnel project in Boston.

APPROPRIATIONS

DEFENSE SPENDING BILL MOVES TO FULL HOUSE COMMITTEE

The House Appropriations panel today is scheduled to take up the $244 billion defense spending bill for fiscal 1996.

The draft measure would provide funds for an array of military projects, including $493 million for the B-2 stealth bomber, $2.1 billion for the new F-22 fighter and $3.5 billion for anti-missile defenses.

The bill also would provide $650 million to cover the cost of ongoing military operations in Iraq.

When combined with defense-related funding in the appropriations bills for military construction and the Department of Energy, the fiscal 1996 total for military spending would rise to $265 billion — $7.7 billion more than requested by the administration. ■

HILL NEWS YESTERDAY

continued from page 1

together a regulatory reform bill that could get 100 votes but accomplish nothing," he said.

Minority Leader Tom Daschle, S.D., said he hoped to continue negotiations once the Senate moves on to other business.

The bill would rewrite the way federal agencies develop and issue most regulations, requiring agencies to perform cost benefit studies, subject to court review, for regulations with an annual economic impact above $100 million. It would require agencies to justify major regulations when they are petitioned to do so by private sector interests.

SENATE FLOOR

WORKS BEGINS ON HILL FUNDS BILL; GRAMM SEEKS TO END SETASIDES

The Senate last night was working late on the first of the 13 annual spending bills to come to the Senate floor, and Republican Phil Gramm of Texas launched the first of what will undoubtedly be many attacks on affirmative action.

Gramm offered an amendment to prevent any of the funds in the $2.2 billion Legislative Branch appropriations bill (HR 1854) from being set aside for contracts to individuals based on race, color, national origin or gender.

Gramm, and Rep. Gary Franks, R-Conn., have vowed to press such amendments on many bills.

The Legislative Branch spending bill funds the operations of Congress and a number of support agencies, including the Library of Congress and the Government Printing Office.

The Senate gave voice vote approval to an amendment by Hank Brown, R-Colo., that would ban the replacement of elevator operators in the Senate when vacancies occur.

The Senate also accepted, 60-39, an amendment urging consideration of legislation to require reporters covering Congress to disclose their outside sources of income.

• **Bosnia embargo.** At the request of President Clinton, Senate Majority Leader Bob Dole put off until next Tuesday further consideration of legislation (S 21) to lift the arms embargo on Bosnia.

The legislation (S 21) was pending on the floor on Wednesday, but Dole said the president urged him not to act on the measure until after a high level meeting between NATO leaders and U.S. diplomats this weekend.

HOUSE FLOOR

IN WORK ON AGRICULTURE BILL, HOUSE REMOVES WIC RECIPIENT CAP

The House yesterday voted to remove from the $62.7 billion fiscal 1996 agriculture appropriations bill (HR 1976) a cap on the number of people that could receive benefits under a popular feeding program for poor women and infants. The vote was 278-145.

At press time last night, the House was debating the final amendments to the bill and Republicans said they were trying to complete action on the measure last night.

The House vote last night did not

Congressional Leadership

House

Republicans

Speaker of the House — Newt Gingrich, Ga.
Majority Leader — Dick Armey, Texas
Majority Whip — Tom DeLay, Texas
Conference Chairman — John A. Boehner, Ohio
Conference Vice Chairman — Susan Molinari, N.Y.
Conference Secretary — Barbara F. Vucanovich, Nev.
Chief Deputy Whip — Dennis Hastert, Ill.
Policy Committee Chairman — Christopher Cox, Calif.
Steering Committee Chairman — Newt Gingrich, Ga.
National Republican Congressional Committee Chairman —Bill Paxon, N.Y.

Democrats

Minority Leader — Richard A. Gephardt, Mo.
Minority Whip — David E. Bonior, Mich.
Caucus Chairman — Vic Fazio, Calif.
Caucus Vice Chairman — Barbara B. Kennelly, Conn.
Chief Deputy Whips — Rosa DeLauro, Conn.; Chet Edwards, Texas; John Lewis, Ga.; Bill Richardson, N.M.
Steering and Policy Committee Chairman — Richard A. Gephardt, Mo.
Democratic Congressional Campaign Committee Chairman — Martin Frost, Texas

Senate

Republicans

President Pro Tempore — Strom Thurmond, S.C.
Majority Leader — Bob Dole, Kan.
Majority Whip — Trent Lott, Miss.
Conference Chairman — Thad Cochran, Miss.
Conference Secretary — Connie Mack, Fla.
National Republican Senatorial Committee Chairman — Alfonse M. D'Amato, N.Y.
Policy Committee Chairman — Don Nickles, Okla.
Chief Deputy Whip — Judd Gregg, N.H.
Committee on Committees Chairman — Larry Craig, Idaho

Democrats

Minority Leader — Tom Daschle, S.D.
Minority Whip — Wendell H. Ford, Ky.
Conference Chairman — Tom Daschle, S.D.
Conference Secretary — Barbara A. Mikulski, Md.
Democratic Senatorial Campaign Committee Chairman —Bob Kerrey, Neb.
Chief Deputy Whip — John B. Breaux, La.
Policy Committee Chairman — Tom Daschle, S.D.
Policy Committee Co-Chairman — Harry Reid, Nev.
Steering Committee Chairman — John Kerry, Mass.

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The committee-approved bill would establish a "deficit reduction lock box account" in which budget cuts would be credited. The idea is to strengthen House and Senate cuts in spending bills by allowing the cuts be used to lower the overall spending cap on an appropriations bill.

"When this Congress cuts spending, it should lock up those savings for deficit reduction purposes and not let them be spent later for other purposes," said Rules Chairman Gerald B.H. Solomon, R-N.Y.

The House is expected to vote on the measure next week; the bill would then be attached to a future appropriations bill. Action in the Rules Committee came only after a group of GOP freshmen threatened to defeat rules governing debate on future spending bills. Democratic deficit hawks having also been agitating hard for the measure.

SOCIAL POLICY

HOUSE PANEL OKS BILL RESTRICTING IMMIGRATION, LIMITING BENEFITS

The House Judiciary panel's Immigration Subcommittee yesterday approved by voice vote legislation to overhaul U.S. immigration policy.

Panel members completed work on the legislation (HR 1915) late Wednesday but put off a final vote until yesterday.

The bill, proposing the most sweeping changes in immigration policy in three decades, would lower the annual caps on legal immigration, restrict immigrants' access to public benefits, seek to deter illegal immigration and speed deportation of foreigners who enter illegally.

On Wednesday, members agreed by voice vote to delete a section in the bill authorizing civil asset forfeiture for alien smuggling and unlawful hiring of aliens. Subcommittee Chairman Lamar Smith, R-Texas, offered the amendment, saying he had learned that the provision in his bill could possibly be used to seize the entire home or business of someone who had employed a single illegal alien.

The bill, which the panel began marking up July 13, would lower annual legal immigration limits from 675,000 to 535,000 people, primarily by restricting family reunification visas to immediate relatives and by restricting the number of refugees who can be admitted.

To crack down on illegal immigration, the bill would authorize 1,000 new border patrol agents, order the Immigration and Naturalization Service to build fences and other barriers along certain stretches of the border with Mexico and make illegal aliens ineligible for virtually all federal benefits.

The bill also would make it easier to turn away foreigners who arrive without proper documents and claim they are fleeing persecution — setting up a screening mechanism that makes it harder for such arrivals to enter the asylum system and receive a full-fledged hearing on their case.

The bill is not expected to move to the full committee until after Labor Day.

LAW/JUDICIARY

PROPOSAL TO BAR DESECRATION OF U.S. FLAG GAINS IN SENATE PANEL

A resolution aimed at preventing flag desecration won the solid backing of the Senate Judiciary Committee yesterday but faces a more uncertain fate on the floor.

The resolution (S J Res 31), which was approved 12-6, would propose an amendment to the Constitution to give federal and state governments the authority to "to prohibit the physical desecration of the flag of the United States." A resolution (H J Res 79) with the same language passed the House June 28.

In the Senate, the resolution will need a two-thirds majority to pass when it comes to the floor sometime after the August recess. There, Democratic support is thinner than in the House.

Critics of the resolution maintain that it would impinge on free speech rights guaranteed in the First Amendment.

"This nation was founded on dissent and has enjoyed a history of free speech," said Russell D. Feingold, D-Wis.

Supporters argue that the flag, as the nation's most important symbol, deserves special protection. "There has to be in this nation some things that are sacred," said Howell Heflin, D-Ala.

LAW/JUDICIARY

PANEL QUESTIONS MILITARY'S ROLE IN ASSAULT ON BRANCH DAVIDIANS

In the second day of House hearings into the assaults by federal agents on the Branch Davidian compound in Waco, Texas, Republicans yesterday questioned the Defense Department's involvement in assisting the Bureau of Alcohol, Tobacco and Firearms.

The Republicans focused on the ATF's claim that there was evidence of a methamphetamine lab in the compound. The ATF used that allegation to obtain training from the military for the initial raid on Feb. 28, 1993, during which they were allowed to use helicopters and vehicles from the military for free.

But testimony at the joint hearings of subcommittees of the Judiciary and Government Reform panels has so far cast doubt on the credibility of the ATF's contention.

Several Republicans suggested the ATF had lied about the drug lab to obtain military support. But a panel of military witnesses yesterday said they had no reason to doubt the civilian agency's claim, and they said they had done nothing illegal in providing assistance.

The panel remained divided over Democratic concerns that the proceedings may be tainted by involvement of the National Rifle Association in their preparation. Democrats again called on the chairmen of the Judiciary and Government reform committees to subpoena NRA officials and others to testify before the two subcommittees.

The hearings resume today and will continue all next week.

• **Clinton's defense.** President Clinton yesterday defended the agents who were involved, conceding their mistakes but saying "there is no moral equivalency between the disgusting acts which took place inside that compound in Waco and the efforts law enforcement officers made to protect the lives of innocent people." He also said: "It is irresponsible for people in elected positions to suggest that the police were some sort of armed bureaucracy acting on private grudges."

WHITEWATER

PARK POLICE RETELL FRUSTRATIONS IN PROBING FOSTER'S DEATH

U.S. Park Police officers told the Senate's special Whitewater committee yesterday that they were frustrated by White House officials when they attempted a straightforward investigation of Vincent Foster's death.

"We were not looking for national secrets," Detective John Rolla told the panel. "We were looking for something that said, 'Goodbye, cruel world.' "

Describing an 80-minute visit to Foster's home to break the grim news to his family exactly two years before, Sgt. Cheryl Braun said she asked W. David Watkins, an assistant to the president, to secure Foster's White House office. She said she made the request at 11:10 p.m.

At issue in the hearings is activity in Foster's office that night from 10:42 p.m. to 11:41 p.m. White House Counsel Bernard Nussbaum; Margaret Williams, chief of staff to Hillary Rodham Clinton; and Patsy Thomasson, a White House aide, were in the office during those 59 minutes.

"I did not ask Watkins to be sure no one went into the office," Braun said. "I asked him in general terms to secure the office." When asked if it would be unusual for those having regular access to the office to be in it, she said no.

Maj. Robert Hines said that Park Police and FBI agents were not permitted into Foster's office until July 22, and their examination was controlled by Nussbaum. "I would not call it obstruction, but they could have handled it better," Hines said.

Investment Decision Time

By Mike Causey
Washington Post Staff Writer

Government workers with money in the C-fund (stock market) of their tax-deferred thrift savings plan got a whopping 26 percent return in the 12 months that ended in June. Money invested in the F-fund (bond market) returned 12.42 percent, and federal employees who stuck with the super-safe G-fund (Treasury securities) got 7.67 percent for the 12-month period.

For the 12 months that ended in May, the C-fund was up 20.11 percent, the F-fund 11.36 percent and the G-fund 7.73 percent. Those 12-month look-back figures naturally change each month as the most recent month is added to the list and the oldest month is dropped.

On a calendar-year basis, the C-fund paid 1.33 percent in 1994 (when the stock and bond markets were down), 10.13 percent in 1993, 7.7 percent in 1992 and 30.77 percent in 1991, and it lost 3.15 percent in 1990. The F-fund lost 2.96 percent in calendar year 1994 and paid 9.52 percent in 1993, 7.2 percent in 1992, 15.75 percent in 1991 and 8 percent in 1990. The G-fund paid 7.22 percent in 1994, 6.14 percent in 1993, 7.23 percent in 1992, 8.15 percent in 1991 and 8.9 percent in 1990.

The C-fund goes like gangbusters when the stock market is up (and like ghostbusters when it is down) because it is invested in the Wells Fargo Equity Index Fund, which tracks the S&P 500 stock index. The F-fund is invested in the Wells Fargo U.S. Debt Index Fund, which tracks the Lehman Brothers Aggregate bond index. The G-fund is invested in special issues of U.S. Treasury securities that are not available to the general public.

Workers have until the end of this month to sign up for the tax-deferred thrift savings plan or to reallocate where their future payroll deduction contributions will go. Employees can invest in any or all three funds. Although they can switch money from one fund to another during the year, they can sign up for the thrift savings plan or reallocate where future contributions will go only during the two open seasons held each year.

Because they get a less generous civil service benefit, workers under the Federal Employees Retirement System (nearly everyone hired in the last 12 years) can invest as much as 10 percent of their salary on a tax-deferred basis and get a matching contribution of as much as 5 percent from the federal government. Workers under the Civil Service Retirement System can invest 5 percent but do not get any match. Workers in the savings plan at the time of retirement can remain in it, but retirees cannot add to their accounts or join the plan.

Some financial planners now estimate that half the post-retirement income available to FERS retirees will come from their savings account contributions and earnings.

Layoffs and Retirements

Thousands of federal workers in once-secure jobs are dusting off their résumés, as Congress and the White House downsize government. Most agencies will offer employees early retirement next year, but Defense is the only agency that can offer both early-outs and buyouts. Many agencies are making plans for substantial job cuts that could begin as early as October. At 10 a.m. tomorrow on WUST radio (1120 AM), **Bob Liens**, a CPA, and benefits consultant **Tammy Flannigan** will look at the impact of proposed benefit changes for federal workers and retirees.

Big Hits Coming?

Metropolitan Washington has gotten off easy—so far—as the rest of government cuts jobs and programs. But specialists are bracing for potentially massive job cuts in the next couple of years. For an update on the numbers, and a forecast, check this space Sunday.

Friday, July 21, 1995

FOR MORE INFORMATION

To post questions or comments for Mike Causey, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 9000.