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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Speechwriting, White House Office of
Series: Speech File Backup Files
Subseries: Chron File, 1989-1993

OA/ID Number: 13719
Folder ID Number: 13719-005

Folder Title:
U.S. Civil Rights Members' Swearing-in 5/17/90 [**OA** 6898] [1]

Stack:	Row:	Section:	Shelf:	Position:
G	26	20	5	7

THE WHITE HOUSE
WASHINGTON

ADD:
Secretary Sullivan + Cabinet Counsel Newman

delete Regional Directors

Document Originally
Attached to
Following Page

Final Copy to check

(Lange/Cawley)
May 16, 1990
3:30 p.m.
[AFFIRM.DOC]

PRESIDENTIAL REMARKS: NATIONAL COMMISSION ON CIVIL RIGHTS
THE ROSE GARDEN
THURSDAY, MAY 17, 1990
10:00 A.M.

Cavazos: 732-3043
Thornburgh:
Civil Rights Comm:
(Mary Baltimore)

Thank you all. Attorney General Thornburgh. Chairman Fletcher, Commissioners Buckley, Ramirez, and Redenbaugh [RED-in-bao]; Wilfredo Gonzalez, ~~Regional Directors~~ and State Advisory Committee Chairpersons:

Cavazos
Sullivan
Connie Newman

It's an honor to have you here today. We meet at a very hopeful moment worldwide. A time when the thundering cry for freedom is being heard and answered from Panama to Johannesburg to Warsaw. Around the world, peoples warring against tyranny, citizens struggling against state control, economies weary of bureaucratic central planning, all are looking to America as reason for hope -- the bright star by which to chart their course to freedom.

So it's all the more crucial now that we look carefully to the kind of country we are -- to the state of democracy here in the land of liberty. **We are called upon to ensure that <u>this</u> democracy <u>means</u> opportunity, for all who call it home.** \\

Few have worked harder to deliver the promise of democracy, to make an enduring dream a living reality, than the men and women assembled here today -- and particularly, these men and women behind me.

From its earliest origins, the Commission on Civil Rights has been an independent, bipartisan voice for justice. The

Commissioners, the Directors, the Advisory Committees, all share a cultural diversity, and an intellectual and moral conviction, that are truly America's best. **These men and women have earned our admiration. Today, they deserve our thanks.**

Joining a new Chairman, and my friend of many years, Art Fletcher, are two outstanding additions: Carl Anderson and Russell Redenbaugh [RED-in-bao]. I know Bob Dole shares my admiration for Russell -- a man of impressive credentials -- who knows, as all Americans should know, that physical disability will not be a barrier to service in this Administration. That's why **I remain firmly committed to the landmark "Americans with Disabilities Act" to help ensure equal rights and opportunities for these Americans.** Today I'd like to announce a new member of the Civil Rights Commission: Mr. Charles Pei Wang [PAY WAING] -- President of the China Institute in America, and an outstanding new addition.

Over the last few days I've met to discuss pending civil rights legislation with leaders representing America's rich tapestry of cultural, religious, and ethnic diversity. I got, as I knew I would, a great deal of sound advice. These leaders, this Commission, the Congress, and this Administration, all share a common conviction for equal opportunity. It's a responsibility I have always taken very seriously -- especially now, when our most vital export to the world is democracy.

We must make sure that we as a nation lead by example. We must see that true affirmative action is not reduced to an empty

slogan -- and that this principle has real, living meaning, for all Americans. **We will leave nothing to chance, and no stone unturned, as we work to advance America's civil rights agenda.**

This nation's progress against prejudice -- from the 1964 Civil Rights Act, to the Voting Rights Act, to the Fair Housing and Age Discrimination in Employment Acts -- it has all hinged on the principle that no one in this country should be excluded from opportunity. So, we're committed to ~~enacting~~ enforcing new measures -- like the Hate Crimes Statistics Act, the HOPE initiative, and revitalized enforcement of our fair housing laws and restrictions against employment bias.

This Administration seeks equal opportunity and equal protection under the law for all Americans -- goals that I know are shared by Senator Kennedy and Representative Hawkins. So we've supported efforts to ensure an individual's ability to challenge discriminatory seniority systems. We've also moved to stiffen the penalties for racial discrimination in setting or applying the terms and conditions of employment.

Today, as we work to ensure that America represents democracy's highest expression, I want to begin by offering three principles that must guide any amendments to our civil rights laws.

These principles are firmly rooted in the spirit of our current laws -- and after the extensive discussions we've had this week, I think they're principles on which all of us -- including the leadership on the Hill -- can agree. So **I will enthusiastically support legislation that meets these principles.**

First, civil rights legislation must operate to obliterate consideration of race, color, religion, sex, nation of origin, age, or disability from employment decisions. **We seek civil rights legislation that is more effective, not less.** The focus of employers in this country must be on providing equal opportunity for all workers -- not on developing strategies to avoid litigation. No one here today would want me to sign a bill whose unintended consequences are quotas -- because quotas violate the most basic principles of our civil rights tradition, and the promise of democracy.

The surest, most insidious symptom of the perpetuation of injustice was well understood by Dr. Martin Luther King, Jr. Nearly 30 years ago he knew, as Americans of all walks of life know today, that quotas are wrong. He wrote, in fact, that "tokenism can now be seen not only as a useless goal, but as a genuine menace. It is a palliative which relieves emotional distress, but leaves the disease and its ravages unaffected."

We want to eradicate the disease. And America's minority communities deserve more than symptomatic relief. They deserve systematic solutions -- strategies that transcend statistics.

We should empower and ennoble our minority communities. We should seek systematic change that allows every American to excel. During my meetings this week, I invited the civil rights leadership to work with me to craft a bill, in the spirit of our record of civil rights legislation, that moves us toward this

goal. I am confident that this can be done. **I want to sign a civil rights bill; I cannot sign a quota bill.**

Second, civil rights legislation must reflect fundamental principles of fairness that apply throughout our legal system: individuals who believe their rights have been violated are entitled to their day in court, and an accuser must shoulder the burden of proof. In every case involving a civil rights dispute, constitutional protections of due process must be preserved.

And third, Federal law should provide an adequate deterrent to sexual or religious harassment, or harassment on the basis of disability in the workplace, and should ensure a speedy end to such discriminatory practices. In improving the remedies, however, our civil rights laws should not be turned into a bonanza for lawyers, encouraging litigation at the expense of conciliation, mediation, or settlement.

Let me add that Congress should subject itself to the same requirements it prescribes for others. In 1972, the Civil Rights Act of 1964 was justly applied to executive agencies and state and local governments. Congress, however, is not yet covered. This inconsistency must be remedied, to give Congressional employees and applicants the full protection of the law. The Congress should join the Executive Branch in setting an example for private employers.

We seek strategies that work -- putting power where it belongs: in the hands of people. And that means new ideas, like giving poor parents the power of an alternative, and choice in

where to send their kids to school -- so that all can have access to the best. It means more tenant control and ownership of public housing. Tax credits for child care, to give parents more flexibility and choice. And policies that underwrite prosperity, by encouraging capital flow to businesses in poor neighborhoods.

The door is open wider now than it has ever been -- and together we can open it still wider. Today, an expanding economy is working in the service of civil rights. Let's not set back the clock. Let us look past the differences that divide us, to the shared principles and better natures we have within us.

To the Civil Rights leadership assembled here today: I have offered you my hand, and my word, that together we will make America "open and equal to all." This administration is committed to action that is truly affirmative -- positive action, in every sense -- to strike down all barriers to advancement, of every kind, for all people. We will tolerate no barriers, no bias, no inside tracks, no two-tiered systems, no glass ceilings, and no rungless ladders. \\

Now is the time to extend a hand to all ~~that~~ who struggle on the other side -- and to devote our energies to a broader agenda of empowerment, that all might join in this new age of freedom.

Thank you, and God bless you all.

# # #

ADA VOC – call Jack Howard ! Jack Howard X7766

Hope/Fair Housing initiatives: a difference?
Gary Andres X7766

Acknowledgements

THE WHITE HOUSE
WASHINGTON

(Lange/Cawley)
May 16, 1990
8:50 a.m.
[AFFIRM.DOC]

PRESIDENTIAL REMARKS: NATIONAL COMMISSION ON CIVIL RIGHTS
THE ROSE GARDEN
THURSDAY, MAY 17, 1990
10:00 A.M.

Cavazos 732 3043

Thank you all. Attorney General Thornburgh, ~~Secretary~~ Cavazos; Chairman Fletcher, Commissioners Buckley, Ramirez, and Redenbaugh; Willie Gonzalez, Regional Directors and State Advisory Committee ~~Members~~... Chairperson

Mary Baltimore

Wilfredo

It's an honor to have you here today. We meet at a very hopeful moment worldwide. A time when the thundering cry for freedom is being heard and answered from Panama to Johannesburg to Warsaw. Around the world, peoples warring against tyranny, citizens struggling against state control, economies weary of bureaucratic central planning, all are looking to America as reason for hope -- the bright star by which to chart their course to freedom.

So it's all the more crucial now that we look carefully to the kind of country we are -- to the state of democracy here in the land of liberty. Whatever the nations of the world decide about their futures, **we are called upon to ensure that <u>this</u> democracy <u>means</u> opportunity, for all who call it home.** \\

Few have worked harder to deliver the promise of democracy, to make an enduring dream a living reality, than the men and women assembled here today -- and particularly, these men and women behind me.

From its earliest origins, the Commission on Civil Rights has been an independent, bipartisan voice for justice. The Commissioners, the Directors, the Advisory Committees, all share a cultural diversity, and an intellectual and moral conviction, that are truly America's best. **These men and women have earned our admiration. Today, they deserve our thanks.**

Joining a new Chairman, and my friend of many years, Art Fletcher, are two outstanding additions: Carl Anderson and Russell Redenbauch. I know Bob Dole shares my admiration for Russell -- a man of impressive credentials -- who knows, as all Americans should know, that physical disability will not be a barrier to service in this Administration. That's why **I remain firmly committed to the landmark "Americans with Disabilities Act" to help ensure equal rights and opportunities for these Americans.**

Over the last few days I've met to discuss pending civil rights legislation with leaders representing America's rich tapestry of cultural, religious, and ethnic diversity. I got, as I knew I would, a great deal of sound advice. These leaders, this Commission, the Congress, and this Administration, all share a common conviction for equal opportunity. It's a responsibility I have always taken very seriously -- especially now, when our most vital export to the world is democracy.

We must make sure that we as a nation lead by example. We must see that true affirmative action is not reduced to an empty slogan -- and that this principle has real, living meaning, for

all Americans. **We will leave nothing to chance, and no stone unturned, as we work to advance America's civil rights agenda.**

This nation's progress against prejudice -- from the 1964 Civil Rights Act, to the Voting Rights Act, to the Fair Housing and Age Discrimination in Employment Acts -- it has all hinged on the principle that no one in this country should be excluded from opportunity.

So, we're committed to enacting new measures -- like the Hate Crimes Statistics Act, our fair housing initiatives, the HOPE initiative, and revitalized enforcement of restrictions against employment bias.

Gary Andres x7766

This Administration seeks equal opportunity and equal protection under the law for all Americans -- goals that I know are shared by Senator Kennedy and Representative Hawkins. So we've supported efforts to ensure an individual's ability to challenge discriminatory seniority systems. We've also moved to stiffen the penalties for racial discrimination in setting or applying the terms and conditions of employment.

Today, as we work to ensure that America represents democracy's highest expression, I want to begin by offering three principles that must guide any amendments to our civil rights laws.

These principles are firmly rooted in the spirit of our current laws -- and after the extensive discussions we've had this week, I think they're principles on which we all of us -- including the leadership on the Hill -- can agree. So **I will**

enthusiastically support legislation that meets these principles.

First, civil rights legislation must operate to obliterate consideration of race, color, religion, sex, nation of origin, age, or disability from employment decisions. [[Some provisions of the Kennedy-Hawkins bill, with the best of intentions, still have an unintended consequence: they encourage employers to make decisions on the basis of these irrelevant characteristics to avoid costly litigation. In spite of recent amendments, the bill encourages employers to base hiring decisions on the very considerations our civil rights laws direct them to ignore.]]

We seek civil rights legislation that is more effective, not less. The focus of employers in this country must be on providing equal opportunity for all workers -- not on developing strategies to avoid litigation. No one here today would want me to sign a bill whose unintended consequences are quotas -- because quotas violate the most basic principles of our civil rights tradition, and the promise of democracy.

The surest, most insidious symptom of the perpetuation of injustice was well understood by Dr. Martin Luther King, Jr. Nearly 30 years ago he knew, as Americans of all walks of life know today, that quotas are wrong. He wrote, in fact, that "tokenism can now be seen not only as a useless goal, but as a genuine menace. It is a palliative which relieves emotional distress, but leaves the disease and its ravages unaffected."

We want to eradicate the disease. And America's minority communities deserve more than symptomatic relief. They deserve systematic solutions -- strategies that transcend statistics.

We should empower and ennoble our minority communities. We should seek systematic change that allows every American to excel. During my meetings this week, I invited the civil rights leadership to work with me to craft a bill, in the spirit of our record of civil rights legislation, that moves us toward this goal.

Second, civil rights legislation must reflect fundamental principles of fairness that apply throughout our legal system: individuals who believe their rights have been violated are entitled to their day in court, and an accuser must shoulder the burden of proof. In every case involving a civil rights dispute, constitutional protections of due process must be preserved.

And third, Federal law should provide an adequate deterrent to sexual or religious harassment, or harassment on the basis of disability in the workplace, and should ensure a speedy end to such discriminatory practices. In improving the remedies, however, our civil rights laws should not be turned into a bonanza for lawyers, encouraging litigation at the expense of conciliation, mediation, or settlement.

Let me add that Congress should subject itself to the same requirements it prescribes for others. In 1972, the Civil Rights Act of 1964 was justly applied to executive agencies and state and local governments. Congress, however, is not yet covered.

This inconsistency must be remedied, to give Congressional employees and applicants the full protection of the law. The Congress should join the Executive Branch in setting an example for private employers.

We seek strategies that work -- putting power where it belongs: in the hands of people. And that means new ideas, like giving poor parents the power of an alternative, and choice in where to send their kids to school -- so that all can have access to the best. It means more tenant control and ownership of public housing. Tax credits for child care, to give parents more flexibility and choice. And policies that underwrite prosperity, by encouraging capital flow to businesses in poor neighborhoods.

The door is open wider now than it has ever been -- and together we can open it still wider. Today, an expanding economy is working in the service of civil rights. Let's not set back the clock. Let us look past the differences that divide us, to the shared principles and better natures we have within us.

To the Civil Rights leadership assembled here today: I have offered you my hand, and my word, that together we will make America "open and equal to all." This administration is committed to action that is truly affirmative -- positive action, in every sense -- to strike down all barriers to advancement, of every kind, for all people. We will tolerate no barriers, no bias, no inside tracks, no two-tiered systems, no glass ceilings, and no rungless ladders. \\

Now is the time to extend a hand to all that struggle on the other side -- and to devote our energies to a broader agenda of empowerment, that all might join in this new age of freedom.

Thank you, and God bless you all.

NBC

Michael Jackson
- acknowledgements
  + time
    place
- p. 2

Mark
~~p. 1 – Panama City~~
~~p. 3 –~~
~~p. 4 – 1962~~
p. 6 Fletcher
chair

GE 30B (1/87)

Document Originally
Attached to
Following Page

Rm 23

Staffed

(Lange/Cawley)
May 14, 1990
5:00 P.M.
[AFFIRM.DOC]

PRESIDENTIAL REMARKS: NATIONAL COMMISSION ON CIVIL RIGHTS
[450 OEOB]
THURSDAY, MAY 17, 1990
[TIME]

Thank you all. Arthur Fletcher, Mary Frances Berry, Esther Gonzalez-Arroyo Buckley, Blandina Cardenas Ramirez, Russell Redenbauch; Dick Thornburg, Secretary Cavazos; Regional directors and State Advisory Committee Members...

Michael Jackson

It's an honor to have you here today. We meet on an auspicious day -- the anniversary of the landmark Brown v. Board of Education decision. And we meet at a very hopeful moment worldwide. A time when the thundering cry for freedom is being heard and answered from Panama to Johannesburg to Warsaw.

Encyc. Britannica

city

Around the world, people wary of state control, economies weary of bureaucratic central planning, all are looking to America as reason for hope -- the bright star to follow as they chart their course to freedom.

So it's all the more crucial now, that we look carefully to the kind of country we are -- to the state of democracy here in the land of its birth. Whatever the nations of the world decide about their futures, **We are called upon to ensure that this democracy means opportunity, for all who call it home.** \\

No one in America -- no one -- has worked harder to deliver the promise of democracy, to make an enduring dream a living reality, than the men and women in this room today.

From its earliest origins, the Commission on Civil Rights

Commission Fact Sheet

Commission Fact sheet

has been an independent, bipartisan voice for justice. The Commissioners, Directors, and volunteers who serve on Advisory Committees, all share an intellectual caliber, a moral conviction, and a cultural diversity that are truly America's best. **These men and women have earned our admiration. Today, they deserve our thanks.**

WPost 8-D-90 p.A-1

Over the last few days I've met with leaders representing America's rich tapestry of cultural, religious, and ethnic diversity. I got, as I knew I would, a great deal of sound advice -- and as I imagined I would, just a little constructive criticism. But these leaders, this Commission, and this Administration, all share a common conviction for equal opportunity. It's a responsibility I have always taken very seriously -- and it's especially serious now, when our most vital export to the world is democracy.

We must make sure that we as a nation lead by example. We must see that affirmative action is not reduced to a slogan -- and that the principle of equal opportunity has real, living meaning, for <u>all</u> Americans.

To the Civil Rights leadership assembled here today: I have offered you my hand, and my word, that together we will make America "open and equal to all." Today, I want to explore in greater depth our commitment to equal opportunity.

Jackson

To begin with, this administration is committed to action that is <u>truly</u> affirmative -- positive action, in every sense -- to strike down <u>all</u> barriers to advancement, of every kind, for

all people. We will tolerate no barriers, no bias, no inside tracks, no two-tiered systems, no glass ceilings, and no rungless ladders. \\ Now, let me tell you what we're against. \\

We're against any action or lack of action that would perpetuate or exacerbate injustice. And I know the leadership in the Congress shares this conviction.

This nation's progress against prejudice -- from the 1964 Civil Rights Act, to the Voting Rights Act, to the Fair Housing Act, to the Age Discrimination in Employment Act -- it has all hinged on the principle that no one in this country should be excluded from opportunity.

That's why I remain firmly committed to the enactment this year of **landmark legislation to extend protections to those Americans with disabilities.** \\ And we're committed to new measures, like the Hate Crimes Statistics Act, fair housing initiatives, and revitalized enforcement of restrictions against employment bias.

Many of this Administration's proposals, in fact, share common goals with the legislation being offered by Senator Kennedy and Representative Hawkins -- goals of equal opportunity and equal protection under the law. So we've supported efforts to ensure an individual's ability to challenge discriminatory seniority systems. We've also moved to stiffen the penalties for racial discrimination in setting or applying the terms and conditions of employment.

Today, as we work to ensure that America represents

democracy's highest expression, I want to offer four principles that ought to guide any amendments to our civil rights laws.

These principles are firmly rooted in the spirit of our current laws -- and after the extensive discussions we've had this week, I think they're principles on which we all of us -- including the leadership on the Hill -- can agree. So **I will enthusiastically support legislation that meets these principles.**

4 Points Draft — McGettigan

First, civil rights legislation must operate to obliterate consideration of race, color, religion, sex, nation of origin, age, or disability from employment decisions. As you know, Title VII encourages hiring on the basis of ability and qualifications, not race or religion.

Some provisions of the Kennedy-Hawkins bill, with the best of intentions, still have an unintended consequence: they encourage employers to make decisions on the basis of these irrelevant characteristics. In spite of recent amendments, the bill encourages employers to base hiring decisions on the very considerations our civil rights laws direct them to ignore.

So **we seek civil rights legislation that is more effective, not less.** Because the focus of employers in this country must be on providing equal opportunity for all workers -- not on developing strategies for avoiding litigation -- strategies that are likely to result in quota schemes violating the most basic principles of our civil rights tradition, and the promise of democracy.

The surest, most insidious symptom of the perpetuation of

injustice was well understood by Martin Luther King in 1962. He knew then, as Americans of all walks of life know today, that quotas are wrong. He wrote, in fact, that "tokenism can now be seen not only as a useless goal, but as a genuine menace. It is a palliative which relieves emotional distress, but leaves the disease and its ravages unaffected."

We want to eradicate the disease. And America's minority communities deserve more than symptomatic relief. They deserve systematic solutions -- through strategies that transcend statistics and quotas.

Rather than perpetuate the demoralizing stigma of preferential distinctions, we should empower and ennoble our minority communities. Rather than sowing the seeds of self-doubt and questions of competence in anyone's heart, we should seek systematic change that allows every American to excel. And I'm confident the leadership will work with me to craft a bill, in the spirit of our record of civil rights legislation, that moves us toward this goal.

Second, civil rights legislation must reflect fundamental principles of fairness: individuals who believe their rights have been violated are entitled to their day in court, and an accused is innocent until proven guilty. In every case of civil rights dispute, constitutional protections must be preserved.

Third, Congress must subject itself to the same requirements it prescribes for others. In 1972, the Civil Rights Act of 1964 was justly applied to executive agencies and state and local

governments. Congress, however, is not yet covered. This inconsistency must be remedied, to give Congressional employees and applicants the full protection of the law. These people, too, are entitled to their rights, and the Congress should join the Executive Branch in setting an example for private employers.

And fourth, Federal law should provide an adequate deterrent to sexual or religious harassment on the basis of disability in the workplace, and ensure a speedy end to such discriminatory practices. In improving the remedies, however, our civil rights laws should not be turned into a bonanza for lawyers, encouraging litigation at the expense of conciliation, mediation, or settlement. Ultimately, cooperation will serve the interests of all parties far better than litigious conflicts.

W.Post 5-14-90 p.A12

Chair Arthur Fletcher said recently, "I'm looking for a more comprehensive response. You can't go a quarter-mile in this time in our nation's history when the full mile is needed." I agree. A moment ago, I spoke of my conviction that America's minority communities deserve more than symptomatic relief. I believe they deserve systematic solutions -- an agenda of change that transcends statistics and quotas.

We seek strategies that work -- putting power where it belongs: in the hands of people. And that means new ideas, like school vouchers to give poor parents the power of an alternative, and choice in where to send their kids -- so that all can have access to the best. It means more tenant control and ownership of public housing. Tax credits for child care without restrictions

of any kind, to give parents more flexibility and choice. And policies that underwrite prosperity, by encouraging capital flow to build more businesses in poor neighborhoods.

Affirmative action and equal opportunity must be more than issues of social responsibility, and more than matters of legal compulsion. Because as labor markets tighten, people of every walk of life, of every kind, all will be in growing demand in this new decade. All will be needed. In any field, those who know how to apply sources of talent once left untapped; who know how to recruit, how to train, re-train, and retain talent; how to educate, how to motivate, and promote -- those with that knowledge will prosper.

This broader agenda must be part of a more comprehensive effort of affirmative action. The interests of economics and justice are coinciding now like never before. The door is open wider now than it has ever been -- and we can open it still wider.

So let us look past the superficial differences that divide us, to the shared principles and better natures we have within us. Now is the time to extend a hand to all that struggle on the other side -- and to devote our energies to a broader agenda of empowerment, that all might join in this new age of freedom.

Thank you, and God bless you all.

# # #

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Resume	Re: Charles Pei Wang. (1 pp.)	n.d.	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Speechwriting, White House Office of
Series: Speech File, Backup
Subseries:
WHORM Cat.:
File Location: U.S. Civil Rights Members' Swearing-In 5/17/90 [1]

Date Closed:	10/18/2004	**OA/ID Number:**	06898
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Re-review Case #:	2004-2265-S	**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

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

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

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

PRM. Removed as a personal record misfile.

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

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

CHARLES PEI WANG

SUMMARY

- Over 20 years of experience in human services.
- Seventeen years in a management capacity.
- Major accomplishments in program development and grantsmanship.
- Comprehensive knowledge of social services.
- Strong skills in employment and training, program conception and implementation.
- Expertise includes cultural affairs, health planning and affirmative action.

EXPERIENCE
1982-Present

Currently, China Institute in America; President (1989-present) (New York, NY)

CHINESE-AMERICAN PLANNING COUNCIL, INC.
480 Broadway, New York, NY

Executive Director (1982-~~Present~~ 1989)
Manage the largest social service agency serving Chinese Americans in New York City. Provided executive leadership during a period of budget growth from $4 million to $19 million annually. Work closely with Board of Directors; monitor finance and administration for a total of 47 different programs and activities, such as adult education, manpower training and placement, multi-social services, culture and arts, day care, youth, family and senior citizen services.

Managing Director (1978-1982)
13 Elizabeth Street, New York, NY
Responsible for the agency's fiscal management and day to day operation of eight day care programs, five employment training and placement programs, three multi-social service programs, and culture and arts programs. Reported directly to the Board of the agency.

Assistant Executive Director - Project Director (1975-1978)
Adult Education Center, 27-29 Division Street, New York, NY

Assisted the Executive Director to supervise eleven different program accounts. Responsible for the day to day operation of the Adult Education center, a comprehensive educational center providing ESL, GED, and job training instruction and a CUNY-credited Chinatown Mini-university program leading to an A.A. or B.A. degree.

Assistant Executive Director - Social Service Coordinator (1972-1975)
45 East Broadway, New York, NY

Assisted the Executive Director to supervise eleven different program accounts including Youth, Drug Prevention, English Language, Day Care, Culture, Senior Citizens, Housing, and Social Services.

Social Service Coordinator (1970-1972)
27-29 Division Street, New York, NY

In addition to the responsibilities as the Community Organization Coordinator, served as the administrative assistant to the Executive Director of the agency.

Community Organization Coordinator (1968-1970)
3 Pell Street, New York, NY

Responsible for planning and implementing day care, day camp, and recreation programs; oversaw tutoring services for elementary school children and ESL for adults; managed manpower training, placement, and housing programs. Supervise community workers and immigration workers to carry out a multi-social service program for newly-arrived immigrants.

1968

CHILDVILLE, INC., Brooklyn, NY
Child Care Worker

Responsible for supervising six emotionally disturbed children in an institutional setting and working under a psychiatrist and a psychiatric social worker to see that these children return to normal living situations.

1967-1968

RIVERDALE CHILDREN'S ASSOCIATION, INC., New York, NY
Case Worker

Responsible for supervising 16 foster children in 10 foster homes and providing the linkage among the children, their foster parents, and their real parents.

CONSULTING

January 1975
-June 1977

NEW YORK STATE COUNCIL ON THE ARTS, New York,NY
Panel Consultant

Reviewed, evaluated, and made recommendations for the funding of art service organizations to the amount of two million dollars annually for the Art Service Organization Division of the New York State Council on the Arts.

August 1973
-April 1974

U.S. COMMISSION ON CIVIL RIGHTS, New York, NY
Staff Consultant, Eastern Regional Office

Responsible for planning and implementing the first public hearing ever held by a U.S. government agency in New York on Asian American concerns.

CIVIC INVOLVEMENT

U.S. Census Bureau Asian Advisory Board - Chairman
New York State Human Rights Department Advisory Committee - member
New York City Youth Board - Member
New York City Task Force on Human Services - Member
New York City Health Systems Agency Board - Secretary
New York City Mayor's Ethnic Advisory Council - Member
New York City Private Industry Council - Secretary
New York Council of Senior Citizen Centers - Board Member
New York City Partnership - Member
Pan American Airways Minority Advisory Board - Member

EDUCATION

M.A., 1967
St. John's University, Jamaica, New York
Major: Asian History

B.A., 1964
National Chengchi University, Taipei, Taiwan
Major: Chinese Language and Literature

POST GRADUATE STUDIES

1968 — Management Planning, St. John's University
School of Business Administration

1969-1970 — Social Services, Columbia University
School of Social Work

1974-1976 — New York City Manpower Resources, New School for Social Research Certificate

1972 — Management of Community Organizations, New York Community Training Institute

1981 — Management of Non-Profit Organizations
New York University, School of Public Administration

PROFESSIONAL MEMBERSHIPS

American Management Association
Association of Teachers of Chinese Language and Culture
American Planning Association
Licensed Notary Public

AWARDS

1989 — Who's Who in the East

1988 — Movers Award, NY State NAACP

1986 — Staten Island Medallion, Borough President of Staten Island

1985 — Man of the Year Award
Organization of Chinese Americans Long Island Chapter

1982 — Dynamic Achiever's Award
Organization of Chinese Americans - Westchester Chapter

1980 — Distinguished Service Award
Federal Asian American Heritage Week Celebration Committee

PERSONAL DATA

Birth date: November 20, 1939
Citizenship: U.S. Citizen
Marital Status: Married, 1 child

REFERENCES

Available upon request.

Charles P. Wang
Executive Director
Chinese-American Planning Council

Management Skills

Over 20 years experience in human services management and has helped build the largest, most comprehensive service agency for Asian-Americans in the country. The agency is cited by United Way - New York City as one of the six best-managed human service agencies for 1988.

Involvement in Employment and Training

Testified an a training program expert before Congressman Augustus F. Hawkins' sub-committee on CETA legislation.

Served as Chairman of the Adult Committee of the Employment and Training Planning Council of New York City which is the policy-making body for the implementation of program funding under CETA for New York City.

Also served as a member of the Executive Committee, chaired by the Commissioner of New York City Department of Employment. Helped write the annual maste plan for New York City.

Currently serves as Secretary of Private Industry Council of New York City and has been member of the Executive Committee since JTPA legislation cam into being.

Responsible for the administration of one of the most successful employment and training programs with the highest placement rate in the City of New York. In addition, the Adolescent Vocational Exploration program has been made a model for the entire State of New York. Thus, has thorough knowledge of JTPA legislation and policy, and hands-on administration of actual programmatic operations.

Campaign Activities

Has been active as an advisor to various local and national Chinese Republican organizations, such as Chinese Republican Assembly, headed by Dr. John Tsu, and Chinatown Republican Club, headed by Peter Ng. Had helped with the Bush-Quayle National Campaign by encouraging citizens to vote, fundraising and assisting in many local races such as in the U.S. Congress and the State Legislature.

THE WHITE HOUSE
WASHINGTON

Arnason
Bobby Leg's all
Thursday
9:40

Rep Hamilton Fish
Bill Goodling

Bob Dole
Orrin Hatch
Jake Garn

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slogan -- and that this principle of striking down all barriers to advancement has real, living meaning, for all Americans. **We will leave nothing to chance, and no stone unturned, as we work to advance America's civil rights agenda.**

This nation's progress against prejudice -- from the 1964 Civil Rights Act, to the Voting Rights Act, to the Fair Housing and Age Discrimination in Employment Acts -- it has all hinged on the principle that no one in this country should be excluded from opportunity. So, we're committed to enacting new measures -- like the Hate Crimes Statistics Act, the HOPE initiative, and revitalized enforcement of restrictions against employment bias.

This Administration seeks equal opportunity and equal protection under the law for all Americans -- goals that I know are shared by Senator Kennedy and Representative Hawkins. So we've supported efforts to ensure an individual's ability to challenge discriminatory seniority systems. We've also moved to stiffen the penalties for racial discrimination in setting or applying the terms and conditions of employment.

Today, as we work to ensure that America represents democracy's highest expression, I want to begin by offering three principles that must guide any amendments to our civil rights laws.

These principles are firmly rooted in the spirit of our current laws -- and after the extensive discussions we've had this week, I think they're principles on which all of us -- including the leadership on the Hill -- can agree. So **I will**

enthusiastically support legislation that meets these principles.

First, civil rights legislation must operate to obliterate consideration of, factors such as race, color, religion, sex, or national origin, ~~age or disability~~ from employment decisions. **We seek civil rights legislation that is more effective, not less.** The focus of employers in this country must be on providing equal opportunity for all workers -- not on developing strategies to avoid litigation. No one here today would want me to sign a bill whose unintended consequences are quotas -- because quotas are wrong. They violate the most basic principles of our civil rights tradition, and the promise of democracy.

America's minority communities deserve more than symptomatic relief. **We want to eradicate the disease.** And that will require systematic solutions -- strategies that transcend statistics.

We should empower and ennoble our minority communities. We should seek systematic change that allows every American to excel. During my meetings this week, I invited the civil rights leadership to work with me to craft a bill that moves us toward this goal. I am confident that this can be done. **I want to sign a civil rights bill; but I cannot sign a quota bill.**

Second, civil rights legislation must reflect fundamental principles of fairness that apply throughout our legal system: individuals who believe their rights have been violated are entitled to ~~due process~~ their day in court, and an accused is innocent until proven

guilty. In every case involving a civil rights dispute, constitutional protections of due process must be preserved.

And third, Federal law should provide an adequate deterrent against harassment in the workplace based on race, sex, religion, or disability, as well as race -- and should ensure a speedy end to such discriminatory practices. Our civil rights laws, however, should not be turned into a bonanza for lawyers, encouraging litigation at the expense of conciliation, mediation, or settlement.

Let me add that Congress should live by the same requirements it prescribes for others. In 1972, the Civil Rights Act of 1964 was justly applied to executive agencies and state and local governments. Congress, however, is not yet covered. This inconsistency must be remedied, to give Congressional employees and applicants the full protection of the law. The Congress should join the Executive Branch in setting an example for private employers.

We seek strategies that work -- putting power where it belongs: in the hands of people. And that means new ideas, like giving poor parents the power of an alternative, and choice in where to send their kids to school -- so that all can have access to the best. It means more tenant control and ownership of public housing. Tax credits for child care, to give parents more flexibility and choice. And policies that underwrite prosperity, by encouraging capital flow to businesses in poor neighborhoods.

The door is open wider now than it has ever been -- and

Call Bert on Denny Smith
Sunday 5/20 — Rotaract w/ Denny

Is Civil Rights indoors?!

Document Originally Attached to Following Page

5.17.90
8:15 a.m.

(Lange/Cawley)
May 16, 1990
8:45 p.m.
[AFFIRM.DOC]

PRESIDENTIAL REMARKS: U.S. COMMISSION ON CIVIL RIGHTS
THE ROSE GARDEN
THURSDAY, MAY 17, 1990
10:00 A.M.

Thank you all. Attorney General Thornburgh, Secretaries Cavazos and Sullivan. Director Newman. Chairman Fletcher, Commissioners Buckley, Ramirez, and Redenbaugh [RED-in-bao]; Wilfredo Gonzalez, and State Advisory Committee Chairpersons:

It's an honor to have you here today. We meet at a very hopeful moment worldwide. A time when the thundering cry for freedom is being heard and answered from Panama to Johannesburg to Warsaw. Around the world, peoples warring against tyranny, citizens struggling against state control, economies weary of bureaucratic central planning, all are looking to America as reason for hope -- the bright star by which to chart their course to freedom.

So it's all the more crucial now that we look carefully to the kind of country we are -- to the state of democracy here in the land of liberty. **We are called upon to ensure that <u>this</u> democracy <u>means</u> opportunity, for all who call it home.** \\

Few have worked harder to deliver the promise of democracy, to make an enduring dream a living reality, than the men and women assembled here today -- and particularly, these men and women behind me.

From its earliest origins, the Commission on Civil Rights has been an independent, bipartisan voice for justice. The

Commissioners, the Directors, the Advisory Committees, all share a cultural diversity, and an intellectual and moral conviction, that are truly America's best. **These men and women have earned our admiration. Today, they deserve our thanks.**

Joining a new Chairman, and my friend of many years, Art Fletcher, are two outstanding additions: Carl Anderson and Russell Redenbaugh [RED-in-bao]. I know Bob Dole shares my admiration for Russell -- a man of impressive credentials -- who knows, as all Americans should know, that physical disability will not be a barrier to service in this Administration. That's why **I remain firmly committed to the landmark "Americans with Disabilities Act" to help ensure equal rights and opportunities for these Americans.** Today I'd like to announce a new member of the Civil Rights Commission: Mr. Charles Pei Wang [PAY WAING] -- President of the China Institute in America, and an outstanding new addition.

Over the last few days I've met to discuss pending civil rights legislation with leaders representing America's rich tapestry of cultural, religious, and ethnic diversity. I got, as I knew I would, a great deal of sound advice. These leaders, this Commission, the Congress, and this Administration, all share a common conviction for equal opportunity. It's a responsibility I have always taken very seriously -- especially now, when our most vital export to the world is democracy.

We must make sure that we as a nation lead by example. We must see that true affirmative action is not reduced to an empty

slogan -- and that this principle of striking down all barriers to advancement has real, living meaning, for all Americans. **We will leave nothing to chance, and no stone unturned, as we work to advance America's civil rights agenda.**

This nation's progress against prejudice -- from the 1964 Civil Rights Act, to the Voting Rights Act, to the Fair Housing and Age Discrimination in Employment Acts -- it has all hinged on the principle that no one in this country should be excluded from opportunity. So, we're committed to enacting new measures -- like the Hate Crimes Statistics Act, the HOPE initiative, and revitalized enforcement of restrictions against employment bias.

This Administration seeks equal opportunity and equal protection under the law for all Americans -- goals that I know are shared by Senator Kennedy and Representative Hawkins. So we've supported efforts to ensure an individual's ability to challenge discriminatory seniority systems. We've also moved to stiffen the penalties for racial discrimination in setting or applying the terms and conditions of employment.

Today, as we work to ensure that America represents democracy's highest expression, I want to begin by offering three principles that must guide any amendments to our civil rights laws.

These principles are firmly rooted in the spirit of our current laws -- and after the extensive discussions we've had this week, I think they're principles on which all of us -- including the leadership on the Hill -- can agree. **So I will**

enthusiastically support legislation that meets these principles.

First, civil rights legislation must operate to obliterate consideration of race, color, religion, sex, national origin, age or disability from employment decisions. **We seek civil rights legislation that is more effective, not less.** The focus of employers in this country must be on providing equal opportunity for all workers -- not on developing strategies to avoid litigation. No one here today would want me to sign a bill whose unintended consequences are quotas -- because quotas violate the most basic principles of our civil rights tradition, and the promise of democracy.

The surest, most insidious symptom of the perpetuation of injustice was well understood by Dr. Martin Luther King, Jr. Nearly 30 years ago he knew, as Americans of all walks of life know today, that quotas are wrong. He wrote, in fact, that "tokenism can now be seen not only as a useless goal, but as a genuine menace. It is a palliative which relieves emotional distress, but leaves the disease and its ravages unaffected."

We want to eradicate the disease. And America's minority communities deserve more than symptomatic relief. They deserve systematic solutions -- strategies that transcend statistics.

We should empower and ennoble our minority communities. We should seek systematic change that allows every American to excel. During my meetings this week, I invited the civil rights leadership to work with me to craft a bill, in the spirit of our record of civil rights legislation, that moves us toward this

goal. I am confident that this can be done. **I want to sign a civil rights bill; I cannot sign a quota bill.**

Second, civil rights legislation must reflect fundamental principles of fairness that apply throughout our legal system: individuals who believe their rights have been violated are entitled to their day in court, and an accused is innocent until proven guilty. In every case involving a civil rights dispute, constitutional protections of due process must be preserved.

And third, Federal law should provide an adequate deterrent against harassment in the workplace based on sex, religion, or disability, as well as race -- and should ensure a speedy end to such discriminatory practices. Our civil rights laws, however, should not be turned into a bonanza for lawyers, encouraging litigation at the expense of conciliation, mediation, or settlement.

Let me add that Congress should live by to the same requirements it prescribes for others. In 1972, the Civil Rights Act of 1964 was justly applied to executive agencies and state and local governments. Congress, however, is not yet covered. This inconsistency must be remedied, to give Congressional employees and applicants the full protection of the law. The Congress should join the Executive Branch in setting an example for private employers.

We seek strategies that work -- putting power where it belongs: in the hands of people. And that means new ideas, like giving poor parents the power of an alternative, and choice in

where to send their kids to school -- so that all can have access to the best. It means more tenant control and ownership of public housing. Tax credits for child care, to give parents more flexibility and choice. And policies that underwrite prosperity, by encouraging capital flow to businesses in poor neighborhoods.

The door is open wider now than it has ever been -- and together we can open it still wider. Today, an expanding economy is working in the service of civil rights. Let's not set back the clock. Let us look past the differences that divide us, to the shared principles and better natures we have within us.

To the Civil Rights leadership assembled here today: I have offered you my hand, and my word, that together we will make America "open and equal to all." This administration is committed to action that is truly affirmative -- positive action, in every sense -- to strike down all barriers to advancement, of every kind, for all people. We will tolerate no barriers, no bias, no inside tracks, no two-tiered systems, no glass ceilings, and no rungless ladders. \\

I'm willing to take the time to make sure that this is done right -- because it's worth doing right. Now is the time to extend a hand to all that are struggling -- and to devote our energies to a broader agenda of empowerment, that all might join in this new age of freedom.

Thank you, and God bless you all.

# # #

DRAFT CLOSE HOLD

Dear Senator Mitchell:

Over the past three decades, our country has made enormous strides in its fight against prejudice. That battle is not over, but it is well underway. Much of the progress has been inspired by civil rights legislation. From the 1964 Civil Rights Act, to the Voting Rights Act, to the Fair Housing Act, and to the Age Discrimination in Employment Act we have worked to make sure that no person in this country is excluded from opportunities on the basis of race, religion, color, national origin, sex, age, ethnicity. I remain firmly committed to the enactment this year of landmark legislation to extend these protections to those Americans with disabilities.

By and large, the current framework of civil rights laws has worked well. But problems beyond discrimination threaten the hopes of many. Crime, drugs, inadequate education, the disintegration of the family, and the collapse of various neighborhoods -- all stand as barriers in the way of opportunity.

To be reworked

We, and Members of Congress, have proposed legislation to continue tearing these barriers down. The Congress has acted on some of it [drug bill]. It has yet to act on other parts of it. [crime bill, education programs, housing programs, welfare reform programs jobs, enterprise zones]. The most urgent task, for those committed to making sure that this country is a land of opportunity for all, is to finish legislative action on these initiatives. The civil rights record of the 101st Congress cannot be considered complete until these measures are enacted.

Continued progress on civil rights also requires that our nation remain firm in its commitment to root out invidious discrimination. Measures such as our fair housing initiatives, the newly enacted Hate Crimes Statistics Act, as well as the vigorous enforcement of restrictions against employment bias, reflect this commitment. So too does the legislation that I believe will be the most important civil rights law in this decade: the Americans with Disabilities Act, which, for the first time, will bring persons with disabilities into the mainstream of American society.

Still other proposals that my Administration has made share some common ground with the legislation being offered by Senator Kennedy and Representative Hawkins. Believing that all Americans should be afforded their day in court, we have supported efforts to ensure an individual's ability to challenge discrimination by employing systems. We have also moved to enhance the penalties for racial discrimination in setting or applying the terms and conditions of employment. I will consider other amendments to our civil rights laws so long as any changes that we make are consistent with the fundamental principles upon which our current laws were built.

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DRAFT

CLOSE HOLD

Will embrace / 2 sophisticated

Accordingly, I will ~~only~~ support legislation that helps guarantee equal opportunity for all if it is consistent with the following principles:

1. Civil rights legislation must operate to obliterate consideration of race, color, religion, sex, national origin, age or disability from employment decisions.

Senator Hubert Humphrey, the great champion of the 1964 Civil Rights Act, was eloquent in denouncing the idea that our society should function on the basis of these irrelevant characteristics. Supporting Title VII, he noted that:

> "There is nothing in it that will give any power... to any court to require hiring, firing or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance .... In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion."

In contrast with Senator Humphrey's goals and with the 1964 Civil Rights Act, some provisions of the Kennedy-Hawkins bill would have the unintended consequence of encouraging employers to make decisions on the basis of these irrelevant characteristics. Recent amendments notwithstanding, the Kennedy-Hawkins bill continues to impose liability upon an employer whose workforce does not statistically reflect the race, color, religion, sex or national origin of the pool of available workers unless the employer can prove in court the legitimacy of each employment practice under onerous standards and evidentiary restrictions with which few small employers could contend.

Statistical "imbalance" is not itself an evil; even in a perfect world, where all employment criteria were truly neutral, it is statistically improbable that the workforce of every employer would mirror the pool of available workers. The focus of employers in this country must be on providing equal opportunity for all workers, not on developing strategies by which to avoid litigation. Such strategies are likely to result in quota schemes that violate the most basic principles and promise of our society.

I also believe that we must have a way to eliminate subtle or well concealed discrimination, as well as employment policies based on misconceived stereotypes. When a particular employment practice causes substantial disparities, the employer should offer a credible presentation of how the practice is legitimately related to the job or other business interest. This simple and direct standard could advance our common aims without engendering

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CLOSE HOLD

floods of litigation or unintentionally creating incentives for employers to base their decisions on the very considerations our civil rights laws direct them to ignore.

2. Civil rights legislation must reflect fundamental principles of fairness: individuals who believe their rights have been violated are entitled to their day in court, and an accused is innocent until proven guilty.

To be expanded

These principles speak for themselves. Constitutional protections must be observed. Moreover, a plaintiff must be required to show a causal connection between the alleged wrongful act and the harm claimed.

3. Congress must subject itself to the same requirements it prescribes for others.

In its original form, the Civil Rights Act of 1964 did not apply to any government agencies. In 1972, it was applied to executive agencies as well as state and local governments. Congress however, is not yet covered. This anomaly should be remedied for Congressional employees and applicants, giving them the full protection of this legislation and other relevant portions of the Civil Rights Act of 1964. These individuals, too, are entitled to their rights in court, and the Congress should be setting an example for employers in the private sector.

4. Federal law should provide an adequate deterrence to sexual or religious harassment or harassment on the basis of disability in the workplace and ensure a speedy end to such discriminatory practices.

In improving the remedies available, however, our civil rights laws should not be turned into a bonanza for lawyers, encouraging litigation at the expense of conciliation, mediation, or settlement. Accordingly, punitive damages should not be available. Instead, the government should be given the authority to seek fines in appropriate cases. Nor should excessive compensatory damages be obtainable. Moreover, providing adequate remedies need not, and should not, subject defendants to a multiplicity of lawsuits in multiple forums.

I look forward to enactment of legislation that is consistent with the principles outlined above. As you know, civil rights has been important to me throughout my life and my career in public office. I have always held the fundamental principle that government must advance equal opportunity, not further divide society along lines of race, color, religion, sex, national origin or disability. The dream of Martin Luther King of a country where <each is judged by the content of their character, not by the color of their skin."] is a goal we must strive to make a reality.

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CLOSE HOLD

Working together, we can produce a proud record of promoting civil rights and enhancing economic opportunity for all Americans. That record will include the Americans with Disabilities Act, the Hate Crimes Statistics Act, the Comprehensive Violent Crime Control Act, Project Hope, the Family Savings Plan, drug prevention and education, enhanced drug enforcement, the Education Excellence Act, and the reauthorization of the Civil Rights Commission, among others. Having made a good start, let us conclude the year as cooperatively and productively as we began it.

Sincerely,

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THE COMMISSIONERS

From the beginning, the Commission on Civil Rights has been considered an "independent" agency, although the word does not appear in the Civil Rights Act of 1957 which established the Commission, as an agency "in the executive branch of the government." The Act did endow the Commission with bipartisanship, one of the attributes of independence. This bipartisanship is reflected in the make-up of its seven Commissioners (one seat is vacant) who as Democrats, Republicans, and Independents, were chosen as Commissioners because of their moral stature and intellectual competence, as well as their cultural diversity. They all have private responsibilities -- educators, lawyers, and business executives -- into which their Commission duties must fit.

The Commission's impact on public opinion and on judicial and legislative action in the civil rights field depends in large measure on the policies set by these men and women who make up the U.S. Commission on Civil Rights. Their insight, courage and perseverance in effectively performing this vital role has contributed to greater public understanding of sensitive civil rights matters and has helped to move the nation toward equality under the law. As then Attorney General Herbert Brownell, Jr. said in 1956 on the eve of the creation of the U.S. Commission on Civil Rights, "through greater public understanding...the Commission may chart a course of progress to guide us in the years ahead."

The State Advisory Committees

The Commission's 51 Advisory Committees have a long and honorable history. From the earliest years, the Committees have brought to the Commission information and advice from all sections of this country. The volunteer citizens who serve on the Advisory Committees have spurred needed changes in their States and communities that ultimately benefit all Americans. Dealing with difficult and divisive issues, these men and women exemplify the best tradition of public service and deserve our thanks.

To those of you here today from the Advisory Committees, we are looking forward to a revitalized effort on your part, a reinvigoration that will be part of the overall renewal of the Commission on Civil Rights.

The Regional Directors

Yoeman service has also been contributed by the Commission's regional directors. The three who are here today have 66 combined years with the Commission. Their task has been immensely more difficult in recent years, with responsibility for some four times the numbers of States as previously. We owe them our sincere thanks for their efforts.

Black Leaders Press Bush to Support Rights Act

RIGHTS, From A1

ed for floor votes later this month or early next.

A Sununu aide denied the chief of staff had brought the conservatives into the discussion. Bobbi Kilberg, the White House official who said she, not Sununu, arranged the session, said conservative black Republicans were always on the guest list. "The president wants to hear all views," she said.

A string of interested groups will visit the White House this week. Black leaders and business groups will be there today. Labor groups, Hispanic and women's groups are scheduled on Wednesday. Administration officials have suggested Bush may make a statement on the legislation Thursday when he meets with Fletcher's Civil Rights Commission, but one official said that won't "necessarily" occur.

The legislation precipitating the battle seeks to modify or overturn five 1989 Supreme Court decisions that civil rights groups said significantly turned back the clocks on protections against job discrimination. After originally saying no remedy was necessary, the administration submitted its own legislation to modify two of the decisions.

Thornburgh in April condemned the pending legislation, arguing it would result in "surreptitious quotas" and would force businesses to pay not only back wages if they were found to have discriminated but monetary damages as well. Thornburgh said he would recommend a veto, but the president has not issued his own veto warning.

Ralph Neas, head of the Leadership Conference on Civil Rights, said the legislation has the support of "substantial majorities" in the Senate and the House.

Caught in the middle is Bush, who enjoys approval ratings among blacks that near 70 percent in some polls, a feat no GOP president since Dwight Eisenhower has approached. Bush and the national GOP have been laboring to reach out to blacks after eight years of the Reagan administration. Blacks were virtually unanimous in condemnation of the former president's policies.

This is the first substantive battle the president has faced that involves civil rights groups. Julius Chambers, an official with the NAACP Legal Defense Fund and one of the leaders scheduled for today's meeting, put the challenge to Bush directly yesterday in a commencement speech at the Unversity of North Carolina.

"In civil rights," he said, "actions speak louder than words. The course of action being urged by the Justice Department will drown out all the lofty rhetoric and fine-sounding speeches that we have heard from the Oval Office. The toxin of veto will poison all the wells of good feeling toward the president that have sprung up in the black community."

Fletcher said he fears "an element in the White House" will try to persuade Bush there is no black consensus behind the legislation, when virtually all civil rights and black groups endorse it.

Another black Republican, John Wilks, chairman of the executive committee of the National Black Republican Civil Rights Task Force, said, "We have been getting calls from members fearful of counter-efforts in the administration to get the president to veto this legislation. We don't want the president to veto a major civil rights bill." The task force, made up of black Republicans who have served in government, has endorsed the broad civil rights legislation.

Fletcher, like most who will attend the meeting, opposes the administration alternative. "I'm looking for a more comprehensive response," he said, "You can't go a quarter-mile in this time in our nation's history when the full mile is needed."

Bush Urged To Support Rights Act

Black Leaders Meet With President Today To Head Off Veto

By Ann Devroy
Washington Post Staff Writer

Civil rights leaders, including key black Republicans inside the Bush administration, will try to persuade President Bush today to ignore a veto recommendation from the attorney general and support the 1990 Civil Rights Act pending in Congress.

The leaders are bracing for what Arthur Fletcher, chairman of the U.S. Civil Rights Commission, yesterday called a "battle for the president's mind" over the fate of the legislation this week. Many civil rights groups have listed the bill as their top priority this year.

Fletcher, a Bush supporter for a decade who was named by the president to rejuvenate the moribund Civil Rights Commission, will join a group of black Republican and Democratic leaders meeting today with the president to try to persuade him not to veto the legislation.

Republican sources said White House Chief of Staff John H. Sununu has insisted the group briefing Bush include not only the mainstream Democratic and Republican black leaders, but more conservative blacks such as Robert Woodson, head of the National Center for Neighborhood Enterprise; Walter Williams, an economist at George Mason University and Glen Loury, a professor at Harvard University. Fletcher called them "superconservatives."

Advocates of the legislation say they suspect Sununu and Attorney General Dick Thornburgh hope a series of White House "outreach sessions" on the issue this week will demonstrate to the president that the black community is split over the legislation and that Bush should stick with the administration's far more modest civil rights proposal. They want him to veto the broader legislation that has cleared House and Senate committees and is head-

See RIGHTS, A12, Col. 1

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UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

New Commissioner

ARTHUR A. FLETCHER

Arthur A. Fletcher was appointed chairman of the U.S. Commission on Civil Rights in February 1990. A Republican, he was appointed by President Bush to serve a term expiring in November 1995.

Mr. Fletcher is president of Arthur A. Fletcher and Associates, a management consulting firm with offices in Maryland. He served at the White House as deputy assistant to the President for urban affairs from 1976-77; as president of Arthur A. Fletcher and Associates, Inc., 1973-76; and as executive director of the United Negro College Fund, 1972-73. He was an alternate delegate to the 26th session of the United Nations General Assembly in 1971; and was an assistant secretary of labor for employment standards at the U.S. Department of Labor from 1969-71.

Mr. Fletcher was a special assistant to the governor of the State of Washington in 1968-69; a member of the city council in Pasco, Washington; and an employee relations consultant at the Hanford Atomic Energy facility, 1967-68. He was a public school teacher in Berkeley, California, 1961-65; a reports control manager at Aerojet-General Corporation in Sacramento, California, 1957-61; and an assistant director for the public information office of the Kansas State Highway Department in Topeka, 1955-57.

In 1954 while teaching in a rural elementary school in Kansas, Mr. Fletcher helped raise money for the pending Brown vs. School Board of Topeka desegregation suit, which was successfully fought up to the United States Supreme Court. In the early 1950's, Mr. Fletcher played professional football with the Los Angeles Rams and the (then) Baltimore Colts until an injury cut his career short.

Mr. Fletcher was born in Phoenix, Arizona on December 22, 1924. He served in the United States Army from 1943-45, and received his B.A. degree from Washburn University in Topeka, Kansas in 1950. Mr. Fletcher and his wife Bernyce reside in Washington, D.C.

3/90

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

WILLIAM BARCLAY ALLEN

just cite (not Rev)

William Barclay Allen served as Chairman of the U.S. Commission on Civil Rights until October 23, 1989, at which time he received from President Bush effective notice that the resignation Commissioner Allen tendered September 8, 1989 had been accepted. Allen was appointed Chairman in August 1988 by President Reagan. A Republican, he continues and has been a member of the Commission since April 1987. His term expires in December 1992.

A professor of government at Harvey Mudd College in Claremont, California since 1972, Dr. Allen served as a member of the Commission's California Advisory Committee in 1985-87. He has also been a visiting tutor at St. John's College, Graduate Institute in Liberal Education since 1977. He was an assistant professor of government at American University in Washington, D.C. in 1971-72; and a lecturer and Fulbright Fellow, Universite de Rouen (France) in 1970-71.

Dr. Allen has been the program administrator of the Liberty Fund Bicentennial Project since 1982; a member of the National Council on the Humanities, 1984-87 and a Kellogg National Fellow in 1984-87.

Dr. Allen has lectured extensively and written numerous articles for major publications. He has served as president of the Board of Education for the Clarement Unified School District, and was a consultant to the Whittier Union High School District and the city of Pomona in California.

In 1986, Dr. Allen was a candidate for the Republican nomination to the U.S. Senate. In the 1984 presidential campaign, he served as one of the two California Chairmen of Scholars for Reagan. In the 1980 presidential campaign, Dr. Allen was town chairman and alternate to the 62nd Assembly District Republican Central Committee.

Dr. Allen was born in Fernandina Beach, Florida on March 18, 1944, where he graduated from Peck High School as valedictorian in 1962. He earned his undergraduate degree (B.A.) from Pepperdine College in 1967, a master's degree (M.A., 1968) and a doctorate degree (Ph.d, 1972) from Claremont Graduate School.

Dr. Allen resides in Claremont, California with his wife and two children.

11/89

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

New Commissioner

just ate

CARL A. ANDERSON

Carl A. Anderson became a commissioner of the U.S. Commission on Civil Rights in February 1990. A Republican, he was selected by the House Minority Leader to serve a six-year term.

Mr. Anderson is vice president for public policy for the Knights of Columbus, and dean, vice president, and professor of family law at the North American campus of the Pontifical John Paul II Institute for Studies on Marriage and Family in Washington, D.C.

Before joining the Knights of Columbus, Mr. Anderson was special assistant to the President for Public Liaison, 1985-87; and a staff member in the White House Office of Policy Development, 1983-85. Prior to that, Mr. Anderson was a counselor in the office of Secretary Richard Schweiker and Secretary Margaret Heckler at the Department of Health and Human Services (HHS), 1981-83; and legislative assistant to Senator Jesse Helms (N.C.), 1976-81. During 1989 he served in the office of the president-elect as an advisor to HHS Secretary-designate Louis Sullivan.

From 1981-82, Mr. Anderson was a commissioner of the Native Hawaiian Study Commission, a Congressionally-mandated commission to study the social, economic, and legal situation of Native Hawaiians.

A lawyer by profession, Mr. Anderson has authored several papers and manuscripts on the family and law. He earned an undergraduate degree (B.A.) in 1972 from Seattle University, and his juris doctor degree (J.D.) from the University of Denver in 1975.

Born in Torrington, Connecticut on February 27, 1951, Mr. Anderson resides in Arlington, Virginia with his wife Dorian and their four children, Carl, Matthew, Teresa, and Katherine.

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UNITED STATES
COMMISSION ON
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1121 Vermont Avenue, N.W.
Washington, D.C. 20425

MARY FRANCES BERRY

Mary Frances Berry was reappointed to the U.S. Commission on Civil Rights in December 1986. An Independent, she was appointed by the Speaker of the House.

Dr. Berry is the Geraldine R. Segal Professor of American Social Thought and Professor of History at the University of Pennsylvania, Philadelphia, Pennsylvania. She is also the 1990-91 president of the Organization of American Historians (OAH). The OAH was founded in 1907 to promote study and research in American history. With 12,000 members, it is the largest professional society in the field. Dr. Berry was a Vice Chair of the Civil Rights Commission in 1980-82, and has been a Commissioner since that time.

Dr. Berry served as the Assistant Secretary for Education in the U.S. Department of Health, Education, and Welfare (HEW) from April 1977 until January 1980. For a period she also served as Acting U.S. Commissioner on Education.

As Assistant Secretary for Education, Dr. Berry headed the Education Division of HEW and administered an annual budget of nearly $13 billion. In this role, she coordinated and gave general supervision to the National Institute of Education, the Office of Education, the Fund for the Improvement of Post-secondary Education, the Institute of Museum Services, and the National Center for Education Statistics.

Prior to her service at HEW, Dr. Berry was Chancellor of the University of Colorado at Boulder where she was also professor of History and Law. She was Provost of the Division of Behaviorial and Social Sciences at the University of Maryland, College Park, prior to her selection as Chancellor of the University of Colorado at Boulder.

Dr. Berry was born in Nashville, Tennessee on February 17, 1938. She earned bachelor's and master's degrees at Howard University, a doctorate in history from the University of Michigan, and the juris doctor degree from the University of Michigan Law School. She has held faculty appointments at Central Michigan University, Eastern Michigan University, the University of Maryland, College Park, the University of Michigan, and Howard University in Washington, D.C.

Dr. Berry is a member of the Bar of the District of Columbia.
She has received 18 honorary doctoral degrees and numerous awards for her public service and scholarly activities, including the NAACP's Roy Wilkins Award, the Rosa Parks Award of the Southern Christian Leadership Conference, and the Ebony Magazine Black Achievement Award. Ms. Magazine honored her as one of its 1986 Women of the Year.

Dr. Berry is the author of a number of articles and essays as well as five books including Long Memory: The Black Experience in America (with co-author John W. Blassingame) and Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution.

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ESTHER GONZALEZ-ARROYO BUCKLEY

Esther Gonzalez-Arroyo Buckley became a Commissioner of the U.S. Commission on Civil Rights in December 1983. A Republican, she was reappointed by the President in December 1986.

Mrs. Buckley has held a number of positions in the Republican Party. She has been the chairperson of the Webb County Republican Party; a charter member, secretary and vice president of the Webb County Republican Women's Club; precinct chairperson; alternate to the national Republican convention in 1984; delegate to the Webb County and State Republican conventions; and chairperson of the Senatorial District 21 Republican Caucus.

Mrs. Buckley is currently a biology and physics teacher at Cigarroa High School in Laredo. She is also chairperson of the school's science department; chairperson of the Accreditation Committee for the Southern Association of Schools and Colleges; and chairperson of the Superintendent's Advisory Committee for the Laredo Independent School District.

Mrs. Buckley serves on the Task Force on Career Ladder and Teacher Appraisal and the Governor's Commission on Women. She is a member of the Science Teachers Association of Texas, National Science Teachers Association, Association of Teachers and Professional Educators and Association for Supervision and Curriculum Development. She is a charter member of the local chapter of Kappa Delta Pi, an honors fraternity in education and Phi Delta Kappa, a professional fraternity in education. She previously served by appointment of the governor to the Teacher's Professional Practices and Ethics Commission. During 1974-77, she was a teacher with the Migrant Compensatory Education Project and the Migrant Youth Corps. She has also taught English as a second language for adults at Laredo Junior College during 1972-76.

Mrs. Buckley earned her undergraduate degree (B.A., magna cum laude) from the University of Texas in 1967, and a graduate degree in education and spanish (M.S., with honors) from Laredo State University in 1975.

Born in Laredo, Texas, March 29, 1948, Mrs. Buckley resides in Laredo with her husband Elmer and seven children.

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BLANDINA CARDENAS RAMIREZ

Blandina Cardenas Ramirez, Director of the Office of Minority Concerns, American Council on Education, was reappointed the U.S. Commission on Civil Rights in December 1986. A Democrat, she was appointed by the Senate Minority Leader.

Dr. Cardenas Ramirez was a Commissioner on the Civil Rights Commission in 1980-86. She was vice president for Institutional Advancement at Our Lady of the Lake University in San Antonio from 1988-89, and director of development at the Inter-Cultural Development Research Association (IDRA) in San Antonio from 1976-86. She has held successive post as a teacher with the San Felipe Independent School district in Del Rio, Texas; executive assistant for the Texas Migrant Educational Development Center in Austin; assistant to the superintendent of the Edgewood Independent School District in San Antonio; and directed various education programs for the school district.

During 1974-75, Dr. Cardenas Ramirez was a Rockefeller Fellow assigned to Senator Mondale's staff. She was also an assistant dean of the National Teacher Corps Institute at the University of Virginia in Richmond.

Dr. Cardenas Ramirez was the Commissioner of the Administration of Children, Youth and Families, and Chief of the Children's Bureau at the Department of Health, Education and Welfare during 1977-79. In this role, she administered a $900 million budget and six programs including Head Start, runaway Youth, Domestic Violence, the National Center for Child Abuse and Neglect, the Child Welfare Services and the Adoption Opportunities Program.

Dr. Cardenas Ramirez has been a consultant to numerous organizations and educational institutions. She was a member of the U.S. Commission on Civil Rights Texas Advisory Committee, 1974-77; Chairperson of the Federal Interagency Committee on the International Year of the Child, 1977-79; and a delegate to the Early Childhood Education committee of the Organization for Economic and Cultural Development, Paris, France, 1978-79. She has also been a member of the board of the Mexican American Legal Defense and Education Fund.

Born in Del Rio, Texas on October 25, 1944, Dr. Cardenas Ramirez received a bachelor of journalism degree in 1967 from the University of Texas, Austin, and a doctorate in education in 1974 from the University of Massachusetts, Amherst. She also attended Texas Women's University, Denton and St. Mary's University in San Antonio.

Dr. Cardenas Ramirez has authored several articles. She resides in Washington, D.C. with her son Alexandro Rodolfo.

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1121 Vermont Avenue, N.W.
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New Commissioner

RUSSELL G. REDENBAUGH

Russell G. Redenbaugh became a commissioner of the U.S. Commission on Civil Rights in February 1990. An Independent, he was appointed by the Senate Majority Leader to serve a six-year term.

Mr. Redenbaugh is the first disabled American to serve on the national Commission since its creation in 1957. He was blinded and lost most of his hands in an explosion at the age of 17.

Mr. Redenbaugh is a partner and director of Cooke & Bieler, Inc., an investment management firm based in Philadelphia; and chairman and chief executive officer of Action Technologies Inc., a California-based company that makes operating systems and application software for distributed computing systems. He is also a co-founder and head of Kairos, Inc., a Philadelphia educational services firm.

Mr. Redenbaugh is an accomplished author, executive, financial and economic strategist, and teacher. He has been a chartered financial analyst since 1972; a chartered investment counselor since 1969; a member of Financial Analyst of Philadelphia, and the Wharton Club of Philadelphia.

Mr. Redenbaugh earned his undergraduate degree (B.S., magna cum laude) from the University of Utah in 1967, and an MBA, with honors, from the Wharton School, University of Pennsylvania in 1969.

Born in Salt Lake City, Utah on July 14, 1945, Mr. Redenbaugh resides in Philadelphia with his wife, Patty, and their four children, Micah, David, Allie, and James.

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UNITED STATES
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WILFREDO J. GONZALEZ

Wilfredo J. Gonzalez was appointed Staff Director of the U.S. Commission on Civil Rights on March 30, 1990. A Republican, Gonzalez was appointed by President Bush.

Before being appointed to the post, Gonzalez was associate director of Equal Opportunity and Civil Rights, U.S. Department of State, 1988-90; and associate administrator for Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, 1985-88. As associate administrator, Gonzalez directed the agency's efforts to assist minority business development, including the 8(a) program and the 7(j) program.

From 1978 to 1984, Gonzalez served with the Peace Corps as Country Director in Ghana, West Africa, where he directed and supervised all Peace Corps operations; as Chief of Operations for the Latin American Region; and as Peace Corps Deputy Director in Colombia, South America.

Gonzalez began his Federal government career in 1976 as an HEW Fellow. He has held positions in the Department of Housing and Urban Development, at ACTION the volunteer agency, and at the Department of Labor. He has been an assistant director for the Community Service Society in New York, director of development for Aspira of America, and a manpower consultant for the New York Urban Coalition.

Gonzalez was born March 26, 1943 in San Juan, Puerto Rico and was raised in the South Bronx. He graduated from the University of Puerto Rico, magna cum laude, with a B.A. degree in sociology in 1969. He attended the Bronx Community College, 1964-66; the University of Puerto Rico Law School, 1971-72; and the Baruch Graduate School of Public Administration, 1975-76.

Gonzalez resides in Springfield, Virginia with his wife and three children.

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TO Mark Lange

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COMMENTS

FROM David Sloane

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Mark 6218
Lange

from DOJ
2/20/90

SUMMARY OF KENNEDY-HAWKINS BILL AND ADMINISTRATION POSITION

The Kennedy-Hawkins bill seeks to overturn the following Supreme Court decisions:

Wards Cove Packing Co. v. Atonio (Section 4 of bill);

Price Waterhouse v. Hopkins (Section 5 of bill);

Martin v. Wilks (Section 6 of bill);

Lorance v. AT&T Technologies, Inc. (Section 7 of bill);

Crawford Fitting Co. v. J.T. Gibbons, Inc. (Section 9 of bill); and

Patterson v. McLean Credit Union (Section 12 of bill).

As discussed in the attached talking points, the Administration agrees that legislation is appropriate to address Lorance and Patterson, and we will introduce such legislation. As this paper next discusses, however, we plan to oppose legislation aimed at Wards Cove, Price Waterhouse, and Wilks.

Section 8 of the Kennedy-Hawkins bill also proposes, though not in response to any adverse Supreme Court decision, to expand Title VII to make damages available in all disparate treatment cases. The Administration opposes this expansion.

The Administration's Proposals to Address *Patterson v. McLean Credit Union* and *Lorance v. AT&T Technologies*

These two decisions may have been correct as a matter of statutory construction, but they create anomalies or inconsistencies in the law which Congress should correct. The Administration has proposed legislation to address these problems in a fair and evenhanded way.

Patterson

- 42 U.S.C. 1981 ("Section 1981") is a post-Civil War statute generally prohibiting discrimination in the "making and enforcing" of contracts. In Patterson, the Supreme Court held that this language did not include discrimination after the contract had been made. Thus, racial harassment on the job, for instance, would not be covered by Section 1981, and plaintiffs are therefore now unable to collect the damages usually available under this statute for an employer's discrimination.

- This is especially troublesome because Title VII of the Civil Rights Act of 1964--the other, and principal, federal law prohibiting discrimination in employment--prohibits racial harassment but does not provide for damages claims.

- Accordingly, the Administration has proposed legislation amending Section 1981 so that it will cover discrimination not only when the contract is formed, but at all stages of the contract's performance.

Lorance

- In Lorance, the Court ruled that Title VII requires that an employee who wishes to challenge a seniority plan adopted with discriminatory intent must, unless the system is discriminatory in its explicit terms, challenge it at the time of its adoption.

- This is bad for several reasons. First, intentionally discriminatory seniority systems, whether or not that intent is apparent on the face of the agreement, should all be treated the same way under the law. Second, it makes no sense to require employees to challenge a provision in a seniority system before it applies to them. This will lead to needless and speculative litigation, and is an unfair burden to

put on employees -- who are understandably reluctant to sue their employers before it is truly necessary. Most fundamentally, it is not fair to deny someone his or her day in court, which is what this program would do in the case of an employee who was hired after the adoption of the plan. This is the same principle that the Administration is supporting, but which the Kennedy-Hawkins bill is attacking, in Martin v. Wilks.

Accordingly, the Administration has proposed legislation that would make clear that all intentionally discriminatory plans are to be treated alike, and that they need not be challenged by a particular employee until actually applied to that employee.

Conclusion

The Administration is opposed to all forms of intentional discrimination, and it favors strong laws prohibiting such discrimination and enabling plaintiffs to file lawsuits and receive full relief. The Administration's stand against intentional discrimination means we also oppose quotas, which is why we will not accept legislation aimed at overturning City of Richmond v. J.A. Croson Co., Martin v. Wilks, or Wards Cove Packing Co. v. Atonio. We also oppose legislation that would encourage specious claims, which is why we are against the proposed legislation aimed at Price Waterhouse v. Hopkins, as well as Wards Cove.

Wards Cove Was Correctly Decided and Was Consistent with Prior Precedent

The Supreme Court's decision last term in Wards Cove Packing Co. v. Atonio had three distinct holdings which opponents of the decision seek to overturn: (1) that a plaintiff in a Title VII disparate impact action must identify the particular employment practice that he or she believes is discriminatory; (2) that once the plaintiff has shown the disparate impact of such a practice, the employer must show that the practice significantly serves a legitimate employment purpose, rather than that the practice is a literal "necessity" for the business; and (3) that the burden on the employer is one of production of evidence, not proof -- that is, that the overall burden of proving discrimination remains on the plaintiff throughout the case. The Supreme Court was correct on all three points. Moreover, each of the three major holdings in Wards Cove is solidly based in the Supreme Court's own precedent and the decisions of various federal courts of appeals.

1. A plaintiff must identify the specific procedure(s) he is challenging.

- It should be the plaintiff's responsibility to identify the practices he or she thinks are discriminatory. It should not be up to the employer to prove a negative.

- Title VII is designed to root out racial discrimination against individuals, not to encourage proportional representation of racial groups. That means that the plaintiff in a disparate impact case must show disparate impact caused by a selection device (test, degree requirement, etc.), not just overall racial imbalance.

- As the Supreme Court pointed out, this is not an onerous burden for plaintiffs and will not discourage meritorious claims. Federal discovery rules, as well as recordkeeping practices and requirements, ensure that plaintiffs will have access to the information they need to identify discrimination.

- The Supreme Court has already held, in ruling against an employer in Connecticut v. Teal, 457 U.S. 440 (1982), that what matters is not the racial "bottom line," but rather the elimination of specific discriminatory practices. The holding in Wards Cove is simply the flip-side of the coin.

- Every Supreme Court disparate impact decision, from Griggs through Wards Cove, has involved an attack by a plaintiff on a specific procedure. The Court has never even hinted that

an attack on the employer's "bottom line" racial balance was permissible.

- Indeed, the Justices have said repeatedly, in a variety of contexts, that racial balance is not required by Title VII or the Constitution.

- Finally, every court of appeals has indicated explicitly or at least implicitly that a plaintiff must identify a specific employment practice which has caused a disparate impact on minorities.

2. A defendant's rebuttal burden is merely to show that his selection procedures are "job-related." Literal "necessity" need not be shown.

- Title VII prohibits discrimination; it does not and should not prevent employers from making decisions for legitimate business reasons.

- Thus, the Court made clear in Wards Cove that, where an employer can point to credible evidence of such legitimate motives, the plaintiff must show either that the employer's justification is pretextual, or that there exists an alternative way of achieving the same legitimate business end but with less disparate impact.

- While Supreme Court decisions have used the term "business necessity," the Court has never defined or used that term as the Kennedy-Hawkins bill does to mean literally "essential" to the business. Indeed, the Court has almost always used that term interchangeably with "job-related" or such other, more flexible formulations. Similarly, while the courts of appeals have adopted a variety of formulations, they have never required that a practice be literally "essential" to the operation of the business.

- Few business practices are literally "essential." An employer can usually change his practices if he is willing to operate less efficiently and make less money. To outlaw any nonessential business practice that produces a disparate statistical impact, as the Kennedy-Hawkins bill would, will inevitably do one of two things. It will force employers to eliminate the disparate impact either by adopting surreptitious quotas, or by switching to less efficient business practices. Neither result is good policy, and neither is consistent with Title VII.

3. The burden of proof remains on the plaintiff at all times. The employer's burden is one of production, not persuasion.

Rule 301 of the Federal Rules of Evidence states clearly that the burden of proof in a civil case always remains on plaintiff. A defendant should not have to prove that he is innocent. Thus, all the Court did in Wards Cove was reapply the general rule of civil litigation to Title VII cases.

Probably as early as 1973, and certainly by 1978 and 1981, the Supreme Court had held that in the disparate treatment context, the burden of proof always remains on the plaintiff even when the burden of production has shifted to defendant. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Board of Trustees v. Sweeney, 439 U.S. 24 (1978) (per curiam); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981). It would be paradoxical to place a heavier burden on the defendant in the disparate impact context, where the discrimination alleged is not even intentional.

Even in the disparate impact context, the Court had given earlier indications that the shifting evidentiary burdens are to be the same as in disparate treatment cases -- so that in the former cases as well as the latter the ultimate burden of proof always remains on plaintiff. New York City Transit Authority v. Beazer, 440 U.S. 568, 587 n.31 (1979); Albemarle Paper Co. v. Moody, 422 U.S. 405, 425-426 (1975).

While the Court had in earlier dicta used a variety of formulations ("articulate," "show," "demonstrate," and "prove") to describe defendant's rebuttal burden, the Court had also pointed out in a 1978 per curiam decision in the disparate treatment context (Sweeney, supra) that these terms are consistent with a burden of production as well as a burden of persuasion.

The Third Circuit expressly relied on the Supreme Court's decision in Beazer for its pre-Wards Cove en banc decisions that the burden of persuasion always remains with the plaintiff in disparate treatment and disparate impact cases. NAACP v. Medical Center, Inc., 657 F.2d 1322, 1334-1337 (3d Cir. 1981) (en banc); Croker v. Boeing Co., 662 F.2d 975, 991 (3d Cir. 1981) (en banc).

Indeed, to make the defendant's rebuttal burden one of proof is to make it an affirmative defense -- and that amounts to making racial imbalance a violation of Title VII per se, which the Court and Congress have repeatedly and correctly rejected.

Moreover, all three of these subholdings of Wards Cove were expressly endorsed by a 4-justice plurality in an opinion written by Justice O'Connor a year before Wards Cove was decided. Watson v. Fort Worth Bank & Trust Co., 108 S. Ct. 2777 (1988). Many of those challenging the Court's decision in Wards Cove try to paint it as "radical" or "unprecedented," but this simply is not the case. The decision not only was reasonable but was solidly based in the Court's own precedent and the decisions of lower courts. More importantly, and as the Court said over and over again, it reached the decision it did in large part because it did not want Title VII to become a powerful engine pushing employers to adopt surreptitious quotas or to abandon legitimate, efficient selection devices in order to minimize their exposure to suit. That is precisely what would happen under the Kennedy-Hawkins bill.

Martin v. Wilks Should Not Be Overturned

- The Supreme Court's holding in Martin v. Wilks was simply that, where the City of Birmingham, Alabama and a group of minority plaintiffs who had sued the city agreed to hiring and promotion quotas, nonminority plaintiffs who had not participated in the original suit had a right to challenge those quotas in a case of their own. Consent decrees entered into in the earlier cases could not have a binding effect against the plaintiffs in their subsequent litigation.

- This holding is nothing more or less than a reaffirmation of, as the Court put it, "the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party," and our "'deep-rooted historic tradition that everyone should have his own day in court.'"

- The Court's decision said nothing critical about civil rights suits in particular. It was written strictly in terms of proper civil procedure.

- Furthermore, the principle that a court cannot bind you to a judgment if you are not a party is so firmly rooted in fundamental notions of due process that any attempt, even by Congress, to circumvent it raises constitutional questions.

  -- The United States in its brief argued that due process concerns were at stake.

  -- The Supreme Court's opinion also alluded to due process concerns.

- It is inconsistent for those who object to the outcome of Lorance v. AT&T Technologies, Inc. to object to the Court's decision in Martin v. Wilks as well. The plaintiffs in Wilks, like those in Lorance, deserve to have their day in court. This was the Administration's position throughout the Lorance and Wilks litigation, and it is still our position today.

- Many times employers seek to avoid paying back-pay to actual victims by instead agreeing to quotas. In other words, the wrongdoer avoids punishment by trading away the rights of innocent bystanders.

- The argument that this decision will discourage legitimate settlements in discrimination cases is misguided for three reasons. First, we should not encourage litigants to settle cases at the expense of third-parties not in the room. Second, procedural mechanisms (such as joinder) are available

to bring in interested third-parties. Third, if the parties settle the case without hiring quotas or other discriminatory relief, it is unlikely that any third-party challenge would be mounted in the first place. Finally, if a settlement is lawful and does not impair the rights of those who are not before the court, it will withstand any subsequent third-party challenge anyway.

On the other hand, the decision will discourage settling parties from agreeing to "remedies" such as quotas which themselves violate Title VII by requiring the settling defendant to discriminate in favor of one class of individuals over another on the basis of race.

Price Waterhouse v. Hopkins Is Fair to Civil Rights Plaintiffs

- The general rule in employment discrimination cases, just as in any civil case, is that the plaintiff must show that the defendant's unlawful act caused the injury.

- In many cases, a plaintiff will be able to adduce some evidence of discrimination -- for instance, a stray remark by one supervisor, or the fact that someone of a different race was promoted--but it would be unprecedented for such minimal evidence to prove that discrimination caused the decision to fire or not to hire or promote.

- The Supreme Court's decision in Price Waterhouse v. Hopkins is more than fair to plaintiffs. So long as a plaintiff produces direct and substantial evidence of discriminatory animus, the burden of proof shifts to the employer to show that its decision would have been supported by legitimate reasons. Indeed, if anything the Court's decision in Price Waterhouse is unfair to defendants, for the Court does not identify any provision in Title VII which would alter Federal Rule of Evidence 301's assignment of the burden of proof in civil litigation to the plaintiff.

- It is hard to understand, judging from who wrote the Supreme Court's decision and how it came out, why plaintiffs should be unhappy. The plurality opinion, which was written by Justice Brennan and joined by Justices Marshall, Blackmun, and Stevens, ruled for the plaintiff on nearly every issue. Justices White and O'Connor concurred in the judgment for the plaintiff, although they thought the plurality went too far in certain respects. Three Justices -- Kennedy, joined by Rehnquist and Scalia -- dissented because they thought, under a proper standard, the defendant should have won.

- Finally, legislation is grossly premature. There was no majority opinion for the Court, so the ultimate legal standards are still to be determined. There is no need for Congressional intervention -- which will amount to no more than "fine-tuning"--before there is a definite legal standard and before there is any evidence that inequities are resulting.

Title VII Should Not Be Amended to Include Damage Claims

- Section 8 of the Kennedy-Hawkins bill will make damage awards available in all disparate treatment lawsuits brought under Title VII of the Civil Rights Act of 1964. This is a subterfuge, for it is not a response to any adverse Supreme Court decision. The Supreme Court's decisions last year are being used as a mere pretext for an unwise, across-the-board expansion of Title VII.

- The Civil Rights Act of 1964 was landmark legislation, and it has worked well. In particular, Title VII of that Act has enabled this country to eradicate systematic exclusion of minorities and women from the workplace. In each of its provisions it used injunctions and other equitable remedies. The Act carefully balanced employees' rights with the need to preserve legitimate management prerogatives. It has made meaningful, effective relief available, while discouraging frivolous claims. Moreover, it has focused the parties on eliminating discrimination rather than filing lawsuits.

- The Kennedy-Hawkins bill's proposal to make damages available in every Title VII disparate treatment case will upset the carefully balanced remedial scheme that has worked so well. Title VII "ain't broke"; it doesn't need to be fixed.

- Making damages available above and beyond back pay and reinstatement will encourage litigation rather than conciliation.

- Such a provision will turn Title VII into a tort claims act rather than an anti-discrimination statute. Damage claims for pain and suffering, emotional harm, and the like will become a staple of every Title VII claim.

- Title VII cases with damage claims -- and all will inevitably include them -- will no longer be tried to judges; they will be tried to juries. In our view, the emotional and complex issues presented in Title VII cases are better handled in bench trials, as they have been for the last 25 years. For instance, "jury nullification" for claims by unpopular plaintiffs have been avoided; so have unjust awards of punitive damages.

interplays w/
Amy with Disab Act
ADA Bill makes
such discrim. eligib.
under Civil Rights Act
- but w/o punitive damages
(Sec. 7)

Hate Crimes Bill
- More $ for Headstart program
- Enterprise zones to draw
businesses into low-income areas
- tax credits for children in
low-income families
- protection against crime
STPA

Document Originally
Attached to
Following Page

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release August 2, 1989

STATEMENT BY THE PRESS SECRETARY

The Administration has reached a consensus with key Senators from both parties on legislation that would expand the reach of this country's civil rights laws to include disabled Americans. This will be landmark legislation, not only for the 37 million Americans with some form of disability, but for all Americans, demonstrating, as the President said in his Inaugural Address, that "this is the age of the offered hand."

The President endorses this legislation as the vehicle to fulfill the challenge he offered in his February 9 address to the Nation: "Disabled Americans must become full partners in America's opportunity society."

The President has pursued a commonsense approach, seeking a practical bill that will help the disabled reach their full potential. He is committed to producing a bill that can be signed this year.

The discussions have resulted in an agreement we expect to be reflected in today's mark up in the Senate Labor and Human Resources Committee of the "Americans with Disabilities Act." The agreement provides for:

- Federal protection for the disabled against discrimination in the workplace, paralleling existing protections that apply to entities that receive federal funds. The requirement would initially apply to employers of 25 or more and phase down to employers of 15 or more. Covered employers would have to make reasonable accommodation to disabled persons.

- Prohibition of discrimination against the disabled in public accommodations. The agreement adopts a broad definition of public accommodations, including restaurants, stores, and health care providers. Public accommodations would be required to make readily achievable alterations to existing facilities to accommodate the disabled. This legislation is designed to achieve access for the disabled in the most efficient manner, with emphasis on making new buildings accessible.

- Enforcement of the new protections through the Equal Employment Opportunity Commission, and suits seeking injunctive relief.

The President is committed to bringing persons with disabilities into the mainstream, including full participation and access to all aspects of society. He wants to do this through a framework that allows for maximum flexibility to implement effective solutions, builds on existing law to avoid unnecessary confusion and litigation, and attains these goals without imposing undue burdens. The President believes this can be accomplished by using reasonable measures, phased over time, as this legislation does.

We are pleased that substantial progress has been made. We will continue to analyze the full ramifications of the legislation and look forward to working with the Senate and the House to complete the legislative process this year.

# # #

QUESTIONS AND ANSWERS

Concern for Civil Rights

Question: Is the Reagan Administration indifferent to the concept of equal opportunity, and to the forces of discrimination in our society?

Answer: President Reagan is opposed to all forms of discrimination against any American. He is firmly committed to achieving a society that is truly color-blind; a society in which each individual has equal standing before the law and equal opportunity to compete for life's rewards based solely on ability and effort, without regard to race or ethnicity.

Analysis:

- The President believes the proper role of the Federal government is to ensure that no person is unlawfully denied or afforded opportunities because of his or her race, sex, age, religion, national origin, or handicap.

- The Reagan Administration has consistently adhered to the view that government power must be used to combat all acts of such unlawful discrimination. However, that power should never be employed to favor some individuals on the basis of race or sex, while penalizing others.

  -- Certain "remedies" such as quotas based on race and forced school busing were not required by any of our civil rights laws, but were the result of attempts by well-meaning people to accelerate the elimination of discrimination.

  -- Some efforts to rectify past discrimination against some groups served merely to mandate new discrimination against others -- creating situations as morally objectionable as the original problem. Nor did these "remedies" achieve the intended results.

Veto of Civil Rights Restoration Act

Question: If President Reagan has been so concerned about civil rights, why did he veto the Civil Rights Restoration Act which offers minorities stronger protection against discrimination?

Answer: The President supported legislation designed to eliminate invidious discrimination and to ensure equality of opportunity for all Americans, while preserving their basic freedoms from governmental interference and control.

Congress, however, passed a bill that vastly and unjustifiably expands the power of the Federal government over the decisions and affairs of private organizations and places at risk such cherished values as religious liberty.

Minorities would have been fully protected against discrimination under the President's alternative legislative proposal. Moreover, numerous other Federal, state, and local civil rights laws provide a broad range of protections against discrimination.

Analysis:

- The Civil Rights Restoration Act was presented simply as an effort to "restore" the coverage under Title IX of the Education Amendments Act of 1972, which prohibits sex discrimination in any "education program or activity" receiving Federal funds, Title VI of the Civil Rights Act of 1964 (race), Section 504 of the Rehabilition Act of 1973 (handicap), and the Age Discrimination Act of 1975 -- which existed prior to the Supreme Court's ruling in the 1984 case of Grove City College v. Bell.

- In Grove City College v. Bell, the Supreme Court ruled that since the only Federal money benefiting Grove City College came in the form of financial aid to its students, only the college's financial aid office was covered by Title IX.

- Since 1984, President Reagan said he favored amending the four statutes in order to protect women, minorities, and others against discrimination throughout entire educational institutions. Although no case had been made for further amendment, the President's most recent alternative would have provided even further coverage.

- The Civil Rights Restoration Act, however, goes far beyond restoring the pre-Grove City coverage of the four civil rights statutes in question, despite virtually no evidence to justify amending these statutes outside the area of education. Federal agencies, aside from the Department of Education, indicated that their efforts to ensure that those receiving Federal funds do not discriminate had been virtually unimpeded by the Grove City decision.

- The Civil Rights Restoration Act, passed into law over the President's veto, will subject religious institutions, businesses, and individuals to greatly increased Federal paperwork requirements and oversight; leading to greater consumer costs, random on-site compliance reviews by Federal agencies (even in the absence of a specific allegation of discrimination), and increased exposure to lawsuits and action by the courts.

- The President's alternative would have ensured equal opportunity for the elderly, women, the handicapped, and minorities across the board in public school districts, public systems of higher education, systems of vocational education, and private educational systems which receive any Federal aid.

- It would also have extended the application of the civil rights statutes to entire businesses or private entities which receive Federal aid as a whole and to the entire plant or facility of a business or other private entity where that plant or facility alone receives Federal funds.

- The President's alternative would have ensured equal opportunity in all Federally funded programs of departments and agencies of state and local governments.

- Unlike the Civil Rights Restoration Act, the President's alternative would have protected religious liberty by limiting coverage of the statutes in question to that part of a church or synagogue which participates in a Federal program.

- The President's bill stated explicitly that farmers would not become subject to Federal regulation under these statutes by virtue of their acceptance of Federal agricultural assistance, and that grocers and supermarkets would not be subject to Federal regulation under these statutes if the only Federal funds they received were in the form of food stamps from customers.

Affirmative Action

Question: Why is the Reagan Administration opposed to affirmative action?

Answer: The Reagan Administration supports affirmative action -- but opposes mandatory quotas or similar forms of preferential treatment based on race. Contrary to perceptions promoted by the media, affirmative action and racial quotas are not one and the same.

Analysis:

- o True affirmative action does not require reverse discrimination. It means expanding opportunities by:
  - -- Vigorously recruiting qualified minority and female candidates;
  - -- Encouraging qualified minority and female candidates to apply for education, employment, and other opportunities from which they have been traditionally excluded;
  - -- Identifying and eliminating barriers to opportunities for minority group members and women;
  - -- Assisting community groups, educational institutions, employers, and unions in devising training programs to overcome such barriers; and
  - -- Marketing available housing in a manner that ensures that all persons have an equal opportunity to obtain housing.
- o Quotas, the requirement that selections for employment, promotion, housing, etc., be made so as to attain specified numerical proportions of various groups, result in negative consequences that reach beyond the effect of reverse discrimination.
  - -- Quotas institutionalize discrimination on the basis of race and gender.
  - -- By casting a shadow on the real achievements of minorities and women, quotas promote the very prejudices they were initiated to overcome. The attainments of minorities and women are made to appear as benefits conferred by the government or the courts -- not the rewards of ability and hard work.
  - -- Quotas have not helped those most in need. Beneficiaries often have been those who have already come furthest in freeing themselves from past burdens.
  - -- In housing complexes, allegedly "benign" quotas are specifically aimed at excluding or limiting minority tenancy in order to achieve the owners' vision of proper racial balance.

School Desegregation

Question: Has progress against segregation in public schools ground to a halt under the Reagan Administration?

Answer: The Reagan Administration is working to ensure not only equal access to education for minorities, but also equal access to quality education. The Administration has aggressively advanced education reform proposals that promise particular benefits to minority and disadvantaged students and has promoted equal educational opportunity for all.

Analysis:

- Investigations of alleged discrimination and plans for dealing with it, where found, are aimed not merely at "numbers," but also at ensuring that there is no discrimination in the quality of education afforded minorities.

- For example, an effective remedy for segregation has been the highly successful "magnet" schools, which attract integrated enrollments by virtue of their superior course offerings.

  -- In 1981, the Department of Education funded a study of magnet schools, including an inquiry into the effectiveness of magnet schools in desegregating school districts. The study found that magnet schools are powerful and versatile tools in the desegregation efforts of school districts.

  -- Since 1984, the Magnet Schools Assistance Program has provided funds to school districts across the country to assist them in establishing and operating desegregated schools by providing innovative educational opportunities and varied curricula. The Administration has proposed increased funding for this program.

- School busing has often resulted in significant enrollment losses in affected districts -- followed by greater racial isolation and poorer education quality than existed before. Frequently, minority students were merely being reassigned from one poor school to another.

- The Reagan Administration has been successful in negotiating five-year statewide desegregation plans for the public higher education systems in Kentucky, Texas, Maryland, and Pennsylvania. Presently, the latter three states are implementing their plans and the Department of Education is assessing Kentucky's implementation of its plan.

- The Department of Education recently examined the implementation of desegration plans by ten states to eliminate remaining vestiges of de jure, or statutory segregation in their higher education systems.

  -- The Department found that all ten states had made significant progress in desegregating their systems. Arkansas, South Carolina, West Virginia, and the community college system of North Carolina were found to have complied fully with their desegregation plans.

  -- While substantial progress has been made by Delaware, Florida, Georgia, Missouri, Oklahoma, and Virginia, the Department found that further actions are needed to implement fully their desegregation plans. The Department is requiring these six states to take other effective measures -- in most instances by the end of 1988 -- to eliminate the remaining vestiges of illegal segregation.

Black Poverty

Question: Blacks may have made "modest" gains in rising out of poverty in recent years, but hasn't progress slowed considerably from what it was in the years prior to the Reagan Administration?

Answer: From 1983 to 1986, almost 900,000 blacks escaped poverty, the largest three-year decline in black poverty in nearly two decades. In contrast, from 1978 to 1981, the number of blacks living below the poverty line rose by over a million and a half.

Analysis:

- In 1959, the first year for which modern poverty statistics were compiled, 55.1 percent of black Americans lived below the poverty line.

- The 1960s were a time of modest Federal social spending (the "Great Society" programs did not approach full gear until the 1970s) -- but of strong economic growth and low inflation. During this decade, the black poverty rate fell by nearly 23 percentage points, to 32.2 percent by 1969.

- In the 1970s, a time of massive Federal "anti-poverty" spending -- but of reduced economic growth and rising inflation -- progress in reducing black poverty stopped and the number of blacks living in poverty began rising rapidly at the end of the decade.

- The double-digit inflation of 1979 and 1980 was particularly devastating to low-income families. A family of four with a steady income of $8,000 in 1979 was over $500 above the poverty line. By the end of 1980, that same family with the same income was almost $500 below the poverty line, solely due to inflation.

- While much remains to be accomplished in the effort to achieve economic equality for blacks, the best course of action remains the Reagan policy of sustained economic growth and low inflation.

Note on Hispanic Poverty: The Hispanic poverty rate is declining (1.7 percentage points in 1986), but has remained relatively stagnant since the poverty rate for Hispanics was first calculated in 1972. Because Census Bureau calculations include aliens, both legal and illegal, the significant economic progress achieved by many Hispanics has been continuously offset in the annual poverty statistics by the influx of poor illegal aliens.

Infant Mortality

Question: Has infant mortality for non-white babies risen under the Reagan Administration?

Answer: This frequently-leveled charge simply is not true. The infant mortality rates for both whites and non-whites have declined since the 1960s and are now at record lows.

Analysis:

- It is true that the infant mortality rate among non-whites is higher than it is for whites, but this has been the case since statistics have been kept. The important fact is, however, that progress for both whites and non-whites is proceeding at a rapid pace.

- The overall infant mortality rate declined by 17 percent between 1980 and 1986. That represents significant progress.

- A major factor in the higher rate for non-whites is a higher proportion of low birth-weight infants.

5-8-90

TO: MARK LANGE

FAX # 456-6218

FROM: BOYD HOLLINGSWORTH

FAX # 224-0291

— MORE INFO ON CIVIL RIGHTS BILL -- FROM AN OUTSIDE SOURCE.

NUMBER OF ADDITIONAL PAGES 4

LABOR POLICY ASSOCIATION, INC.

SPECIAL MEMORANDUM

May 3, 1990
90-96

TO: Key Federal Policy Makers

RE: **Kennedy-Hawkins Is Still An Employment Quota Bill**

On Wednesday, May 2, the House Education and Labor Committee agreed to amendments offered by Rep. Hawkins to H.R. 4000 that purportedly address the concern that the legislation will force employers to quietly adopt quota hiring systems. While it is encouraging that the sponsors have publicly acknowledged that the quota concern is a legitimate issue, the language adopted does little to correct H.R. 4000's strong bias in favor of them.

At the outset it should be remembered that the principal purpose of Kennedy-Hawkins is to:

1. permit a plaintiff to establish a Title VII violation solely on the basis of statistical comparisons between groups of employees;

2. make it virtually impossible for an employer to defend itself against the finding of statistical disparity; and

3. permit juries and courts to levy huge damage awards, attorney fees and expert witness fees for that statistical disparity.

The amendments adopted by the Committee address neither the first nor the third point, and make only cosmetic changes in the second point. In fact, the initial reading of the amendments by several prominent industrial psychologists suggests that in certain respects they create even more barriers for employers trying to defend themselves than the original bill.

Because the modified version of Kennedy-Hawkins will make it so easy to "prove" Title VII violations and win huge damage awards, as with the original bill the only real defense employers will have is to hire, promote and lay off employees on the basis of quotas. The message to employers is clear--if your "numbers" are not just right, you are a sitting target. But if your numbers are okay, you can breathe easy.

Statistical Comparisons

The first step in proving a Title VII violation (the "prima facie" case) under the Civil Rights Act (CRA) of 1990 is by the plaintiff showing that "a group of employment practices results in a disparate impact" on the basis of race, sex, religion, national origin or color. In a disparate impact case, the plaintiff shows that within a company, there are less minorities or women in a particular group of employees than in the relevant labor market. Or the plaintiff may rely, as in *Wards Cove*, on the mere fact that there are proportionately less minorities in one job than another. There is no need to show a specific discriminatory practice. Statistical comparisons between groups of employees alone would be sufficient to establish a "prima facie" violation of Title VII.

Employer Defense

Once the prima facie case is established on the basis of mere statistical comparisons, a company can defend itself only if it can show by objective evidence:

> that the challenged group of employment practices (i.e., practices that produce one or more decisions with respect to employment) bear a substantial and demonstrable relationship to effective job performance.

Thus, under the latest version of H.R. 4000, the only way an employer can defend against punitive and compensatory damages is by proving that each and every one of its hiring and selection practices bears a "substantial" and "demonstrable" relationship to "effective" job performance. If any single practice cannot be shown to meet this test, the defense fails.

Many employment decisions, however, are predicated upon considerations other than job performance. H.R. 4000 would effectively eliminate any defense for those practices if they worked to the disadvantage of a protected group. Take, for example, an assembly plant in which a group of predominately male sheet metal workers were paid $20 per hour while a group of predominately female administrative employees were paid $15 per hour. Could the employer defend the wage difference on the basis that collective bargaining agreements and prevailing wage practices in the area (i.e., the job market) dictated those pay rates? No. They cannot be said to bear a substantial and demonstrable relationship to effective job performance because the compensation levels were based on market factors rather than performance.

In view of this new rebuttal burden, comparable worth is also alive and well and thriving inside H.R. 4000. Any practice or group of practices that has an impact on minorities or women still must be shown to be related to job performance, and only job performance. Payment of market wages (which is a nonperformance-related criteria) could no longer be used to justify pay practices presently protected from the "comparable worth" theory.

Also, there are many legitimate, non-performance factors that could no longer be considered, such as: economic layoffs, compensation decisions for job groups, grooming standards, training costs, and moving expenses. Safety concerns such as used in the *Dothard* case (selection of prison guards) and *Beazer* case (drug usage) also would not be a permitted defense.

Similarly, what about a hiring policy that only accepts applications for certain professional positions from those with advanced degrees? Or a promotion policy for skilled technicians that requires taking a certain number of night courses each year? These are all legitimate, but non-performance related, criteria.

In *Spurlock v. United Airlines*, the airline's policy was that applicants for pilot positions must have 500 flying hours and a college degree. The court held that no violation of Title VII occurred when the airline, which in 1971 had very few black officers, refused to hire a black applicant who had no college degree and only 204 hours. Under H.R. 4000, the applicant would be awarded punitive and compensatory damages, and the employer required to put the plaintiff in the cockpit.

Objective Evidence

Another new barrier added by the amendment was the introduction of the concept that objective evidence must be used to defend subjective hiring and promotion decisions. It was not until the Supreme Court's *Watson* decision in 1988 that disparate impact theory was extended to subjective practices, such as interviews and performance appraisal systems. The Court made clear in *Watson*, however, that even standardized or objective tests do not need to be justified by formal validation studies--the only truly "objective" method of defending selection practices.

But another Hawkins amendment adopted in markup requires employers to produce "objective evidence" to justify all practices--both objective and subjective. Such evidence must justify all practices by proving that they bear a "substantial and demonstrable relationship to effective job performance." Thus, content validity--a traditional method of validating objective selection measures accepted since 1966 under EEOC's Selection Guidelines--would be foreclosed under the "objective evidence" standard because subjective judgments are absolutely essential to content validation.

Thus, the bill creates an impossible evidentiary oxymoron:

objective evidence to justify subjective practices.

This new requirement is not found in prior Supreme Court decisions, even for objective practices. The fact that the Committee dropped the requirement that a practice be "essential" to job performance does not resolve the problem--the "objective evidence" requirement simply substitutes a new impossible rebuttal burden for an earlier one. How can a company provide objective evidence to prove that between two people, one is a

better writer than another, one is better at dealing with the public than another, one is a better manager of people than another, one troubleshoots complex software programs better than another?

Quotas

It is only logical to conclude that an employer would try to avoid such lawsuits by quietly telling the company's managers to hire and promote on a quota basis. Justice White acknowledged this logical result in the Supreme Court's *Ward's Cove* decision:

> any employer who had a segment of his workforce that was--for some reason--racially imbalanced, could be haled into court and forced to engage in the expensive and time-consuming task of defending the "business necessity" of the methods used to select the other members of his work force. The only practicable option for many employers will be to adopt racial quotas, insuring that no portion of his workforce deviates in racial composition from the other portions thereof; this is a result that Congress expressly rejected in drafting Title VII.

This is the result expressly approved by H.R. 4000.

5-8-90

TO: MARK LANGE

FAX # 456-6218

FROM: BOYD

HOLLINGSWORTH

FAX # 224-0291

Quotas

Talking Points on Civil Rights

The small amendment to the Kennedy-Hawkins bill that we understand Senator Danforth et al. to be considering would not cure the legislation's very significant problems. Moreover, Senate non-sponsors should not be cutting their own deals with Senator Kennedy but should be talking to the Administration about a desirable end result.

Quotas

Under Kennedy-Hawkins with the new amendment, liability would be imposed wherever some (undefined) statistical imbalance is shown between the workforce and the outside population, unless the employer could prove by "objective evidence" that its employment practices "bear a substantial and demonstrable relationship to effective job performance." This standard contrasts with present law requiring employees to produce evidence that the "challenged practice pursues, in a significant way, the legitimate employment goals of the employer" (i.e., is job related). The effect of the new standard will be to encourage litigation-shy employers to make sure their numbers "come out right" through the silent use of quotas.

- Employment criteria that are somewhat helpful to effective job performance but not sufficiently "substantial" would not meet the new standard. Why it should be illegal for employers to pursue legitimate employment goals has never been explained. This question is especially relevant in today's highly competitive world market.

- This new standard is meant, and will be viewed by courts as designed, to cut back on the Supreme Court's business justification standard. To the extent that employers must show more than business justification, the pressure for quota grows significantly.

- This new standard appears to allow no weight at all for subjective or intuitive evaluations of what is required for effective job performance. Nondiscriminatory employers may find it very difficult to show by "objective evidence" that all of their job practices meet the test.

- The new standard would eliminate the requirement that plaintiffs identify the particular employment practice complained of. That requirement has always obtained heretofore because the Supreme Court never has said that an attack simply on the employer's "bottom line" racial or sexual balance is appropriate, and the Civil Rights Act does not mandate such balance.

- Kennedy-Hawkins would also shift the ultimate burden of proof in disparate impact cases to defendants. Such a shift is counter to the general civil rules and specifically is contrary to the allocation in cases of intentional discrimination. It is not clear why a defendant accused of unintentional discrimination should have a higher burden than an intentional discrimination defendant. Moreover, shifting the burden of proof is inconsistent with Title VII's express statement that preferential treatment is not required "on account of a [statistical] imbalance which may exist."

Remedies

In cases where intentional discrimination is alleged, Kennedy-Hawkins would scrap Title VII's current remedial scheme (providing for injunctions and back-pay after trial to a Judge), replacing it with jury trials that could result in the award of compensatory and punitive damages.

- This major statutory change overthrows Title VII's longstanding approach geared to conciliation and settlement, and is not even arguably related to any set of Supreme Court rulings. No showing has been made that Title VII remedies are not working well.

- The heightened damage provisions would apply to the new Americans with Disabilities Act if the ADA were to become law. Society has no experience with the ADA provisions, which were designed with current Title VII remedies in mind.

- Moving to high risk jury trials will inevitably make Title VII litigation more time consuming, expensive, and unpredictable.

Due Process

Kennedy-Hawkins would deprive certain putative discrimination victims of their day in court, thereby infringing constitutional rights. The bill would preclude equal protection challenges to court-ordered consent decrees by individuals who had notice of and opportunity to object to the proposed judgement, or for whom reasonable efforts at notice were made or whose interests were represented adequately by another who did object prior to entry of the order.

- This provision of the bill is designed to prevent court challenges by workers who feel aggrieved by court imposed quota systems that turn out to affect them detrimentally.

- Everyone should have his or her day in court. Courts and litigants should not be encouraged to bargain away the rights of unrepresented third parties.

- Current federal rules are fair in requiring joinder of all interested parties to litigation. A person not joined whose rights then turn out to be infringed by an agreement between other entities should have the opportunity to vindicate his or her own interests at that point. By denying that right, this section of the legislation is inconsistent with another section allowing victims of discriminatory seniority systems to sue long after adoption of the system when the effects actually are felt by the employee. (The Administration supports legislation to bring about this latter change).

Judicial Law Making

Kennedy-Hawkins provides that "[a]ll federal laws protecting the civil rights of persons shall be broadly construed to effectuate the purpose of such laws to eliminate discrimination and provide effective remedies."

- This provision could be invoked by Judges as justification for stretching any number of laws beyond the bounds established through the legislative process. When laws are not read according to their terms, our representative system is circumvented.

- This is an amendment of all civil rights laws, but one of no defined content. Not only would it allow Judges to manufacture substantive standards for liability, it would also expand Judges' remedial authority--perhaps implicating bussing, taxation, etc.

Other Problems

- The bill would impose liability wherever race, religion, sex, etc. was a "motivating factor" in an employment decision, even when the employer could show that the same decision would have been made absent the discriminatory animus; the general rule that the plaintiff must show harm resulting from an improper act would be overridden.

- As detailed in the Attorney General's letter to Senator Kennedy of April 3, numerous other provisions in the bill are problematic. For example, general Title VII statutes of limitation would be quadrupled, making cases more stale; attorney fee provisions would be made more favorable to lawyers; and the government would be compelled to pay interest on Title VII awards against the U.S.

The Fortune 500's 'extremists'

Several months ago, William Bradford Reynolds turned a bilious verbal volley toward U.S. Supreme Court Justice William Brennan, who wrote the recent decisions upholding affirmative action. The U.S. Justice Department's top civil-rights officer claimed that the "radical egalitarianism" of people like Brennan was "perhaps the major threat to individual liberty."

Reynolds

Mostly, this bombast was a sign that Reynolds had exhausted his bag of legal tricks in the administration's campaign against affirmative action. (Sharp personal denunciations are no way to win the court's favor.) But beyond that, do his charges of "radical egalitarianism" have merit? And is "unlimited judicial power" the chief reason for affirmative action?

Those notions are nonsense. As it turns out, Brennan is a radical in the same way that many — if not most — of the nation's Fortune 500 companies are radical: They support affirmative action.

A survey just released by the Bureau of National Affairs (a private publishing house) shows that despite administration efforts to discredit such policies, seven of every eight Fortune 500 firms responding plan to keep affirmative-action programs for minorities and women. In fact, 12 percent of the 206 respondents said they intended to increase their affirmative-action efforts.

What's more, a majority of companies polled in the Northeast, Midwest and West said that the administration has not adequately addressed the employment of minorities and women. Only Southern firms, by a puzzling 80.6 majority, reckoned the administration has been responsive.

Really, affirmative action today is a mainstream idea whose ultimate benefits (sounder companies, sounder societies) are generally acknowledged. It has the support of the Business Roundtable and the National Association of Manufacturers (whose rosters include no known Bolsheviks and certainly no egalitarians).

At bottom, it takes quite an extremist to find something extreme here.

3-27-87

Employers Welcome Ruling Upholding Affirmative Action

By TAMAR LEWIN

Most large employers and business groups said yesterday that they welcomed the Supreme Court's decision upholding affirmative action programs.

Some said the decision, issued Wednesday, should finally lay to rest the longstanding concern that employers who used race- or sex-based preferences in hiring or promotion were unfairly discriminating against white male employees.

"This decision is very positive for businesses, since it gives them the freedom to do their own thing, to voluntarily implement their own affirmative action plans, without fear of a reverse discrimination suit," said Stephen Bokat, the vice president and general counsel of the Chamber of Commerce of the United States. "There had started to be a real rash of reverse discrimination suits, and I think a lot of employers were nervous about being caught between a rock and a hard place."

Most of the nation's largest employers adopted affirmative action programs in the 1970's, after the Government brought a spate of class-action enforcement actions.

Challenge From White House

But the Reagan Administration has repeatedly challenged the legality of broad-based affirmative action programs, so many employers have been confused about their potential liability under such programs.

"The Reagan Administration gave a lot of employers the impression that affirmative action had been repealed," said Paul Siegel, a New York lawyer who counsels corporations on employment law. "This decision should clarify the fact that affirmative action is a very active and alive [illegible]

case is important because it involved a voluntary affirmative action plan adopted without any finding that there had been discrimination by the employer."

In many of the earlier cases, he said, the plan had been designed as a judicial remedy for discriminatory practices. The Kaiser Aluminum and Chemical Corporation, whose program to train minority and female workers for skilled craft positions was upheld by the Supreme Court in 1979, said this week's decision should help encourage other companies to develop similar programs.

"Important as the decision is, equally important is what happens next — what employers do about it to provide more jobs and opportunities for minorities and women," Kaiser said in a prepared statement applauding the decision. "Business needs to recognize that affirmative action isn't just a numbers game concerned with goals and quotas. It's a program for professionally managing America's people resources to insure their fair and full utilization and bring qualified people, regardless of race or gender, into the nation's work force."

A.M. ROSENTHAL
Sundays and Thursdays on the Op-Ed page

Editorials

IT'S TIME TO RESTRAIN ESOPs

The goal of turning workers into capitalists by helping them buy shares in the companies they work for has reached its fullest flower to date through a device known as the employee stock ownership plan (ESOP) (page 94). Developed by Louis O. Kelso and endowed by Congress with a rich panoply of tax benefits, the ESOP today is an idea running amok. ESOPs cost U. S. taxpayers heavily in lost taxes, $2.5 billion for fiscal 1986. That could rise to $4.4 billion by 1990. But the real danger is that the justification for all this tax largesse—and the idea's original purpose—are being supplanted. ESOPs were conceived as a credit mechanism for financing worker stock ownership. But the outbreak of takeover wars is subordinating this objective to the ESOP's new role as a defensive financing weapon, especially in facilitating leveraged buyouts. Whatever social value the ESOP might embody, it has become a tax abuse whose main beneficiaries increasingly are not workers but corporate managers, investment bankers, and outside investors. The Reagan Administration's proposal for overall tax reform would strip the ESOP of most of the preferences that make it appealing as a source of corporate financing. That is exactly what should be done.

Even in pristine form, ESOPs raise problems. Federal law says they are a type of pension fund. The overriding goal of a pension fund should be to make sure it has the resources needed to pay benefits. How many people really want their pensions tied solely to the stock of one company? Workers who own stock may be motivated to work harder, but similar incentives could be provided, with far less risk, through profit-sharing plans and other bonuses.

As ESOPs multiply, so do abuses. Workers often support them as a way to save jobs, but in many cases jobs are lost anyway. ESOPs can be set up in ways that shut workers out of decision-making and expose the ESOP to risks, while reserving potential gains for other investors.

The courts and Congress alike are beginning to wrestle with problems inherent in ESOPs. The goal should be to allow management and labor to make use of ESOPs to save companies and jobs while curbing egregious abuse. The best reform would eliminate most of the costly tax preferences altogether.

DON'T SCUTTLE AFFIRMATIVE ACTION

Reagan Administration officials can often be heard saying, "If it ain't broke, don't fix it." The Justice Dept., starting with Attorney General Edwin Meese III, should take that advice to heart in its approach to affirmative action plans that try to increase job opportunities for blacks, women, and other minorities in the work force. Meese and members of his staff attack hiring practices based on race and reject hiring "quotas." They are proselytizing other federal agencies to the point that Andrew F. Brimmer, an economic consultant and a former governor of the Federal Reserve Board, can say flatly that affirmative action "is no longer a basic policy of the federal government." Yet few business voices are calling for watering down affirmative action. For most companies it has become a routine part of personnel management. Justice has mounted a crusade that nobody else seems ready to join.

Critics of affirmative action have always insisted that it discriminates against majority job seekers, especially white men. To some extent, they are right. But some tilt in favor of blacks and women is justified to rectify the consequences of past discrimination. Federal regulators and the courts are available to see that the tilt does not lean too far. Only this week a federal court in Washington threw out the city's fire department promotion program as discriminatory against whites but upheld its hiring goals that favor blacks.

Affirmative action dates back to March, 1961, and, in practical terms, it is late in the day to start tearing it down. Harold C. Fleming, president of Washington's Potomac Institute, points to a new study by his organization concluding that the significant progress toward equal opportunity by minorities is due "in large part to the federal government's affirmative action program and private industry's adoption of it." Over the years business and regulators have worked out rules and procedures for affirmative action, including numerical yardsticks for sizing up progress, that both sides understand. It has worked and should be left alone.

JAPAN: NOW HEAR THIS

For weeks the Reagan Administration pointed to Apr. 1 as the date when the Japanese would reveal how much they would respond to U. S. pressure to open their big telecommunications market to American producers (page 43). That day has come and gone, and, as far as anyone can tell, the answer remains what it was: "Wait and see." Washington officials and telecommunications industry executives are coming to realize that Japan's timetable stretches far beyond that of the U. S., which calls for action right away. Because the Administration and free-trade senators and congressmen had staked so much on Apr. 1, the country now finds itself moving almost willy-nilly toward the economic retaliation that President Reagan and many members of Congress say they want to avoid. The U. S. should bend every effort to avert a mutually damaging trade conflict with Japan. But if it comes, the Japanese will have mostly themselves to blame.

The Senate Finance Committee approved a bill that requires the President to strike back within 90 days. A House bill telling the President to ban imports of Japanese telecommunications equipment failed just short of passage. Such actions are evidence more of frustration and anger than of careful thought. But they send a signal to the Japanese that the U. S. is fed up with throwing open its markets to them while being denied access to Japan's. For the good of the world trading system, the Japanese had better start moving.

BUSINESS WEEK/APRIL 15, 1985

Business Week 4-15-85

BUSINESSMEN LIKE TO HIRE BY THE NUMBERS

The Reagan Administration is pushing to get rid of affirmative action goals and timetables, or at least make them voluntary. Corporate managers prefer to leave well enough alone. ■ *by Anne B. Fisher*

IF THE REAGAN Administration warriors taking shots at affirmative action think business is on their side, they are in for unpleasant surprises. Some corporate managements, no doubt, push affirmative action only because government pushes them. But persuasive evidence indicates that most large American corporations want to retain their affirmative action programs, numerical goals and all.

The Administration's position is that employers can achieve true fairness in hiring standards only by ignoring race and sex altogether—not by favoring women, blacks, and Hispanics over white male applicants. Clarence Thomas, chairman of the Equal Employment Opportunity Commission in the Reagan Administration, has been outspoken in his belief that companies should not be held to statistical standards to prove that they are hiring enough minorities and women. Taking account of race and sex in hiring, he says, violates Title VII of the 1964 Civil Rights Act—the section that prohibits discrimination in employment. "Title VII says you can't consider race or sex in hiring decisions, period," notes Thomas. "It doesn't say which race or sex it's okay to favor."

So far, in spite of the Administration's musings, nothing much has happened that affects the way companies run their affirmative action programs. The Labor Department's Office of Federal Contract Compliance Programs, which enforces equal opportunity in companies that do business with the federal government, has gone right on enforcing the rules. But in mid-August the Administration sent a strong signal—a proposed presidential executive order that would put an end to mandatory goals and timetables in affirmative action programs. Whether it was a rocket or a trial balloon remains to be seen.

Training minority college students is part of Hewlett-Packard's affirmative action program.

PHOTOGRAPH BY JOHN HARDING

Engineer Eric McHenry (left) used to be a trainee. Here he is training student employee Eduardo Plantilla.

The requirement that government contractors adopt goals and timetables was a legacy of the Nixon Administration. It was issued by the Labor Department in the early 1970s. The authority for the Labor Department's action derived from Executive Order 11246, signed in 1965 by President Lyndon Johnson. Among other things, that order created the Office of Federal Contract Compliance Programs to see that government contractors (which include most large American corporations) obeyed government rules against discrimination.

As drafted, the Reagan order would give mandatory goals and timetables both barrels. "The Secretary of Labor," it runs, "shall immediately revoke all regulations and guidelines promulgated pursuant to Executive Order No. 11246" if they require companies doing business with the government "to use numerical quotas, goals, ratios, or objectives." In effect, that would make numerical goals and timetables voluntary.

But the draft went a great deal further, with this incendiary language: "Nothing in this executive order shall be interpreted to require or provide a legal basis for a government contractor or subcontractor to utilize any numerical quota, goal, or ratio, or otherwise to discriminate against, or grant any preference to, any individual or group on the basis of race, color, religion, sex, or national origin with respect to any aspect of employment . . ." These words would not make company goals and timetables illegal—that would take an act of Congress or a ruling by a court. But they would weaken the legal basis for such programs, possibly exposing employers to a blizzard of suits by white male employees or job applicants claiming that affirmative action had discriminated against them.

UNTIL THE PRESIDENT signs it, the draft is paper without legal force. And maybe he won't sign it. This Administration has a history of barking loudly and then failing to bite. But some officials in the Justice and Labor departments think he will sign—not necessarily the floated draft, but something like it. "It would be political suicide for a first-term President," says a Justice Department official. "But now—why not?"

The floating of the draft order stirred pre-

Fortune 9-16-85

The Washington Post

OUTLOOK

SUNDAY, NOVEMBER 10, 1985

Why Bosses Like to Be Told To Hire Minorities

By Peter C. Robertson

PRESIDENT REAGAN is being urged to weaken enforcement of affirmative action programs for federal contractors. The proposition has divided the Cabinet, stalling action. But if Reagan still is trying to make up his mind, here's a message from the business community: Go slow.

Although business has major problems with the program, it now supports the basic principles of affirmative action as implemented under Presidents Kennedy, Johnson, Nixon, Ford and Carter.

The reasons corporations are not interested in seeing those principles weakened have more to do with business than with civil rights. Business — led by the National Association of Manufacturers — sees that its own self-interest requires affirmative action. And if the Reagan administration thinks American business will thank it for weakening affirmative action enforcement, then the administration isn't listening to what businessmen outside the Beltway are saying.

The government's present affirmative action program requires companies doing business with the federal government to have written affirmative action plans including goals and timetables to increase the employment of qualified minorities and women where they are "under-utilized." Press reports indicate the administration may no longer require goals and timetables and might even prohibit their voluntary use as a management tool.

There are at least 10 good reasons that business, while seeking administrative reforms, might take a position that voluntary goals and timetables should continue to be allowed and government should have some kind of mandatory program:

1 *Changing Labor Market:* Women and minorities will be 75 percent of labor force growth between 1990 and 2000. Employers without plans to eliminate barriers to hiring or promoting those groups will be cut off from a major part of America's labor force.

C.W. Parry, chief executive officer at Alcoa, recently sent a memo to all employes noting that Alcoa's "best prospects for survival and growth lie in our skillful selection of the best individuals" from a "broad-based talent pool that includes women and minorities."

2 *Minimizing Risk of Reverse Discrimination Suits:* In a recent survey of chief executive officers by the management consulting firm for which I work, 95 percent indicated that they will use numbers as a management tool to measure corporate progress whether the government requires them or not. However, once the government requirements are gone, there would be a risk of so-called "reverse discrimination" suits alleging that employers have gone too far with affirmative action.

The continuation of a responsible and balanced government program that sanctions goals and timetables will make it less likely that such suits will be successful, according to National Association of Manufacturers President Alexander Trowbridge.

3 *Compatibility with Management:* The use of goals and timetables and other numerical measures to track the employment of minorities and women is consistent with how corporations deal with all important areas.

In recent meetings with more than 150 companies, the consistent question we were asked was "If we can't count, how can we measure? If we can't measure, how can we manage?"

William McEwen, director of equal-opportunity affairs at Monsanto Co. in St. Louis and chairman of the human resources steering group of the NAM, told a House of Representatives subcommittee in July that "business . . . sets goals and timetables for every aspect of its operations — profits, capital investment, productivity increases and promotional potential for individuals. Setting goals and timetables for minority and female participation is a way of measuring progress and focusing on potential discrimination."

Senior corporate officials clearly recognize that managers must be measured on all of the things they are expected to do.

A survey of more than 200 major companies found 76 percent saying they used "voluntary internal numerical objectives to assess [equal employment opportunity] performance." One-fourth of the companies said that incentive compensation plans for managers include equal employment objectives and that performance against those objectives can affect incentive payments positively or negatively. By 1988 more than half the companies predict they will be basing incentive pay in part on EEO performance.

4 *Use of Numbers as a Defense:* One proposal might eliminate the possibility that businesses could use goals and timetables even voluntarily or point to progress in minority and female employment as part of the evidence in defending against discrimination charges, although the Supreme Court has emphasized the appropriateness of such a defense. Employers clearly want to use their progress as a defense and to be able to

LIFE IN THE U.S.

SOCIAL POLICY

New report kills myths of affirmative action

By Pat Aufderheide

Affirmative action—good advertising for business? That's what a recent report shows: 78 percent of some 200 corporation heads found that their affirmative employment programs had enhanced the company's image and goodwill.

But for the last four years the Reagan administration has acted as if affirmative action was not only bad for business but positively un-American.

You can tick it off—cutbacks in budget at the Equal Opportunity Employment Commission, appointments that have turned the Civil Rights Commission hostile to affirmative action, a Justice Department whose civil rights head, William Bradford Reynolds, defiantly refuses even to file EEOC forms for his own agency. And more—but you get the drift.

Certain people in Washington, D.C., took this all personally. They are ex-officials and lawyers who have dedicated hefty chunks of their lives, as good Republicans and good Democrats, to creating and executing affirmative action programs and legislation.

People like Arthur Flemming, former chair of the Civil Rights Commission; William Taylor, former staff director of the Commission; Eleanor Holmes Norton, former EEOC chair; William Brown III, also a former EEOC chair; Elliott Richardson, former attorney general; and a dozen others who belong to the Citizens' Commission on Civil Rights. They are concerned these days about bad government—particularly about the erosion or destruction of independent agencies and established law. They are also concerned about bad ideas. They think Reagan is wrong to oppose affirmative action, but they're afraid he's persuasive.

Like David before Goliath, they're willing to go up against the Big Lie with plain facts: 217 pages of them, in fact, in a report called *Affirmative Action to Open the Doors of Job Opportunity: a Policy of Fairness and Compassion that Has Worked.* (Well, no one said they were snappy writers.) It summarizes the history of affirmative action, the Reagan administration's response and the record of affirmative action for private corporations over the last 20 years.

Like its title, the report is a touch earnest in presentation. But that's more than compensated for by the massive factory in its information. The thing is an understated little mythslayer. When you see the slingshot, duck.

Myth: *Affirmative action means quotas.* Affirmative action does not mean quotas. It never meant quotas. There is no legislation that says anyone must meet quotas. At all. Numerical goals are regularly used, especially in post-1978 legislation that applies to government contractors and to government employers. That's because no other rule of thumb worked.

Not even the most diehard affirmative action supporters will tell you that numerical goals (based, for instance, on the percentage of the social group in the civil labor force) are a great idea, or deny that they can lead to underrepresentation of some, less-well-counted minorities. They only say that they're better than other, more vague rules of thumb. And they're a heck of a lot better than trusting to luck.

Myth: *Affirmative action was a good idea, but is never really worked.* Consider the most limited objective of the panel of legislation going under the rubric "affirmative action"—to increase the proportion of minorities and women hired. In 1978, five years after AT&T signed a consent agreement with the EEOC, women in craft jobs increased from 2.4 to more than 10 percent; males in clerical jobs increased from 4.6 to 10 percent.

Between 1974 and 1980, among some 77,000 companies with 20 million employees, those with government contracts (and therefore affirmative action plans) increased minority employment 27 percent and female employment 15 percent, while non-contractors only increased those categories 12 and 2 percent respectively. Among contractors, black and female officials and managers rose 96 and 73 percent respectively, while among non-contractors it was only 50 and 36 percent.

Myth: *Affirmative action keeps employers from hiring the best person for the job, and it is unfair to white males.* Affirmative action, especially as a general policy applied nation-wide, means that merit can surface instead of being smothered by discriminatory practices. And the law has consistently supported the rights of whites already hired in a situation of declining workforce. In crisis, some workplaces have worked out job-sharing programs that avoid job loss for whites even under dire financial circumstances.

Myth: *Affirmative action is a New Society idea, brought to us by Kennedy liberals.* Actually, the concept behind affirmative action—that government must take positive steps to ensure equality of opportunity—goes back to the Reconstruction era with the Freedmen's Bureau. After a dismal history of retrenchment, it arose again under the New Deal, when equal opportunity clauses were made part of the National Industrial Recovery Act of 1933.

When postwar employment statistics revealed minorities being shut out after getting a break during wartime, Eisenhower brought back affirmative action clauses for defense contractors. It did take Kennedy and finally the Civil Rights Act, however, to put this era of affirmative action into effect.

Myth: *Affirmative Action was imposed by big government.* Yes and no: it's true that the record of voluntary participation stinks. Neither big defense contractors nor big government-backed projects like the San Francisco subway system BART showed much influence of broad legislative hints that hiring should use affirmative action guidelines. It took a grassroots protest and boycott of a major construction project in 1966 in St. Louis to put some backbone in the government's demands.

Myth: *If government would just get out of the way, employers would hire people on their merits.* Forget it. Even after public protest, a Lockheed "Plan for Progress" in the late '50s stayed a good idea on paper. In fact, it was only after near-universal failure that numerical goals became part of government policy.

Even now, with heads of such major corporations as Hewlett-Packard, IBM and Control Data self-styled enthusiasts for affirmative action, the middle managers in those companies are chafing under regulation and carry newspaper clips of the administration's views into their bosses' offices.

Myth: *Employers hate affirmative action and support the administration.* So wrong. In fact, some members of the contractor community actually protested when the administration tried to lift requirements to file written affirmative action plans; among other things, they thought the plans protected them from lawsuits.

Some 200 corporations surveyed recently by the Citizens' Commission found that affirmative action had resulted in improved management. Most liked the way their procedures for hiring, promotion and performance had been standardized and made more effective.

Overwhelmingly the managers said they now identified qualified people more efficiently, that their employees were happier, making for lower job turnover, less absenteeism and a smoother work environment. And it turns out to be good for business.

The Kaiser Foundation Health Plan, for instance, discovered a new market among blacks for its health plans once black doctors were included. Equitable Life Assurance Society now has the largest number of black sales staff among major insurers and —guess what—has a large number of black policy holders.

Myth: *The Supreme Court has challenged affirmative action.* I'll let you read the fine print on some of the more recent cases, but the upshot is this: No. The Supreme Court has consistently endorsed the principle behind affirmative action—yes, the Burger Court—although in some cases it has ruled that affirmative action may not apply to the case in question.

In the *Bakke* case, a fave of affirmative action foes, Justice Harry Blackmun, who concurred in part, wrote, "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently."

Myth: *The Reagan administration is opposed to affirmative action.* Not even this is quite true. Yes, the Reagan administration over the last few years was critical of much in affirmative action law. But even the Justice Department endorses the concept by recognizing minority recruitment as a solid government objective. ■

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