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Maria Echaveste

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Name	Date
Leslie Bernstein	9/9/98

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Labor

International Labor Rights Fund
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FAX COVER SHEET

Date: 12/2/97

To: Maria Echaveste Fax No: 456-2983

Organization: White House Public Liaison

From: Terry Collingsworth

Pages (including this page): 4

See attached correspondence.

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December 2, 1997

Robert E. Rubin
Secretary of Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Rubin:

Attached please find a copy of our October 27, 1997 letter to you raising serious concerns that you have not met your obligation under the Sanders-Frank provision. The law states that you shall direct your representatives to the IMF and World Bank to raise worker rights issues as a condition to U.S. approval of assistance. We were particularly concerned about the IMF bailout of Indonesia, despite that fact that Indonesia has one of the worst worker rights records in the world. It should be a relatively straight forward matter to inform us whether the U.S. raised formally concerns about worker rights in Indonesia prior to approval of the IMF package and whether the U.S. voted for the bailout despite the omission of worker rights reforms in the IMF package.

We have yet to receive any reply to our October 27 letter. Please provide us with a response at your earliest convenience.

We also note that any IMF bailout for South Korea would be subject to the the Sanders-Frank worker rights provision. We would appreciate receiving any information demonstrating that you complied with the law before supporting any the IMF package for Korea, which continues to suppress rights for independent trade unions.

Sincerely,

Pharis Harvey
Executive Director

Terry Collingsworth
General Counsel

cc: Representative Bernie Sanders
Representative Barney Frank
Maria Echaveste, Assistant to the President &
Director of Office of White House Public Liaison

INTERNATIONAL LABOR RIGHTS FUND

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October 27, 1997

Robert E. Rubin
Secretary of Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Rubin:

The much-heralded economic miracles in Thailand, Indonesia and Malaysia have suffered a firm reality check. As labor and human rights groups have been warning for years, and a growing number of distinguished economists, such as Ethan Kapstein and Dani Rodrik, are now recognizing, economic growth cannot be sustained when countries fail to invest in their workers. Export-led growth based on cheap labor might be a way to attract foreign investment, but, as Southeast Asia has recently demonstrated, it is a recipe for disaster if mistaken for a long-term economic strategy.

Regardless of any definitive agreement on the cause of the present economic instability in Southeast Asia, it is now a fact that Thailand, Indonesia and probably Malaysia are seeking financial assistance from the World Bank and the International Monetary Fund (see October 27 *New York Times* reporting your plan to use these institutions, rather than direct U.S. funds, for the bailout). **We urge you to comply with the Frank-Sanders provision and direct the U.S. Executive Directors to the World Bank and IMF to vote against any economic bailout for these countries unless clear and verifiable progress is made in improving respect for internationally-recognized worker rights.**

As you know, the 1994 Frank-Sanders provision requires that the "**Secretary of Treasury shall direct the United States Executive Directors of the [World Bank and IMF] . . . to use the voice and vote of the United States to urge the respective institution -**

1) **to adopt policies to encourage borrowing countries to guarantee internationally recognized workers rights** . . . .

2) in developing the policies referred to in paragraph (1), to use the relevant conventions of the International Labor Organization, which have set forth, among other things, the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, and certain minimum labor standards that take into account differences in development levels among nations including a minimum age for the employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health . . ."

In passing this law, Congress made clear that U.S. support for World Bank and IMF programs should be withheld when a country denies its people fundamental worker rights. Thailand, Indonesia and Malaysia all have well-documented histories of failing to meet minimum international standards of worker rights. In Thailand, the government has denied large portions of the workforce the rights to associate, organize unions and bargain collectively. The tragic fire at the Kader factory which incinerated young women and children who were locked inside illustrates what can happen when workers are routinely denied the protection of health and safety laws. In Indonesia, Nike is only the most famous of the many foreign companies taking advantage of the atmosphere created by the brutal Suharto regime that ensures that workers will not complain if they are denied their basic rights. These companies are confident that workers can continue to be paid a mere pittance as long as Mucktar Pakpahan, virtually the only strong voice for workers, languishes in a prison hospital for speaking out against the systematic repression of workers. Likewise, Malaysia's electronics industry, dominated by the chip manufacturing operations of America's computer giants, allow the companies to make modern, high-tech profits, while the workers are by government policy denied the right to form unions. The government argues that these companies need to "develop" without the potential costs associated with strong unions. In other words, Texas Instruments and Harris Corporation are having their profits subsidized by workers who are not being paid a livable wage.

Unless the governments concerned are prepared to change the way they do business, allowing workers to share in the profits of economic growth, any bailout of Thailand, Indonesia or Malaysia would be a scandalous welfare payment to prop up some of the most un-democratic regimes in the world, and their largely U.S.-based investors. Further, no matter how the issue is finessed, this bailout will be subsidized partly by U.S. taxpayers through U.S. contributions to the World Bank and the IMF, and the U.S. has a significant voice and vote in those institutions. It would also violate the clear requirements of the Frank-Sanders provision.

We have been critical in the past of the Clinton Administration's failure to implement the Frank-Sanders provision. The past issues have been abstract and difficult to communicate. **We are confident that the American public and the Congress will be outraged if the U.S. again ignores the Frank-Sanders law and supports the bailout of the economic elites in Thailand, Indonesia or Malaysia without also requiring that significant progress be made on worker rights.** We will be monitoring the situation closely and hope that you can use the tool provided by the law to give some of the most exploited workers in the global economy some hope for the future.

Sincerely,

Pharis Harvey
Executive Director

Terry Collingsworth
General Counsel

cc: Representative Bernie Sanders
Representative Barney Frank

UNITED STATES DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

April 1, 1998/6:33pm

TO: CECE ROUSE

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 456 2223

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:

CONGRESSIONAL AFFAIRS	202/219-5120
INTERGOVERNMENTAL AFFAIRS	202/219-5736
IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE: *New Abraham-Hatch language*

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide substitute language.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1723

To amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ABRAHAM (for himself and Mr. HATCH)

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "American Competitiveness Act".

(b) REFERENCES IN ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or a repeal of a provision, the reference shall be deemed

to be made to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) American companies today are engaged in fierce competition in global markets.

(2) Companies across America are faced with severe high skill labor shortages that threaten their competitiveness.

(3) The National Software Alliance, a consortium of concerned government, industry, and academic leaders that includes the United States Army, Navy, and Air Force, has concluded that "The supply of computer science graduates is far short of the number needed by industry.". The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.

(4) The Department of Labor projects that the United States economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1,300,000.

(5) Between 1986 and 1995, the number of bachelor's degrees awarded in computer science declined by 42 percent. Therefore, any short-term increases in enrollment may only return the United

States to the 1986 level of graduates and take several years to produce these additional graduates.

(6) A study conducted by Virginia Tech for the Information Technology Association of America estimates that there are more than 340,000 unfilled positions for highly skilled information technology workers in American companies.

(7) The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the United States economy will result in a 5-percent drop in the growth rate of GDP. That translates into approximately $200,000,000,000 in lost output, nearly $1,000 for every American.

(8) It is necessary to deal with the current situation with both short-term and long-term measures.

(9) In fiscal year 1997, United States companies and universities reached the cap of 65,000 on H–1B temporary visas a month before the end of the fiscal year. In fiscal year 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent United States companies and researchers from having any timely access to skilled foreign-born professionals.

(10) It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.

(11) If American companies cannot find homegrown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.

(12) Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs in the United States.

SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR UNITED STATES COMPANIES AND UNIVERSITIES.

(a) ESTABLISHMENT OF H1–C NONIMMIGRANT CATEGORY.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i) (8 U.S.C. 1101(a)(15)(H)(i)) is amended—

(A) by inserting "and other than services described in clause (c)" after "subparagraph (O) or (P)"; and

(B) by inserting after "section 212(n)(1)" the following: ", or (c) who is coming temporarily to the United States to perform labor as a health care worker, other than a physician, in a specialty occupation described in section 214(i)(1), who meets the requirements of the occupation specified in section 214(i)(2), who qualifies for the exemption from the grounds of inadmissibility described in section 212(a)(5)(C), and with respect to whom the Attorney General certifies that the intending employer has filed with the Attorney General an application under section 212(n)(1).".

(2) CONFORMING AMENDMENTS.—

(A) Section 212(n)(1) is amended by inserting "or (c)" after "section 101(a)(15)(H)(i)(b)" each place it appears.

(B) Section 214(i) is amended by inserting "or (c)" after "section 101(a)(15)(H)(i)(b)" each place it appears.

(3) TRANSITION RULE.—Any petition filed prior to the date of enactment of this Act, for issuance of a visa under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act on behalf of an alien described in the amendment made by para-

graph (1)(B) shall, on and after that date, be treated as a petition filed under section 101(a)(15)(H)(i)(c) of that Act, as added by paragraph (1).

(b) ANNUAL CEILINGS FOR H1–B AND H1–C WORKERS.—

(1) AMENDMENT OF THE INA.—Section 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read as follows:

"(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year—

"(A) under section 101(a)(15)(H)(i)(b)—

"(i) for each of fiscal years 1992 through 1997, may not exceed 65,000,

"(ii) for fiscal year 1998, may not exceed 95,000,

"(iii) for fiscal year 1999, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, and

"(iv) for fiscal year 2000, and each applicable fiscal year thereafter through fiscal year

2002, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, plus the number of unused visas under subparagraph (C) for the fiscal year preceding the applicable fiscal year;

"(B) under section 101(a)(15)(H)(ii)(b), beginning with fiscal year 1992, may not exceed 66,000; or

"(C) under section 101(a)(15)(H)(i)(c), beginning with fiscal year 1999, may not exceed 10,000.

For purposes of determining the ceiling under subparagraph (A) (iii) and (iv), not more than 20,000 of the unused visas under subparagraph (B) may be taken into account for any fiscal year.".

(2) TRANSITION PROCEDURES.—Any visa issued or nonimmigrant status otherwise accorded to any alien under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act pursuant to a petition filed during fiscal year 1998 but approved on or after October 1, 1998, shall be counted against the applicable ceiling in section 214(g)(1) of that Act for fiscal year 1998 (as amended by paragraph (1) of this subsection), ex-

cept that, in the case where counting the visa or the other granting of status would cause the applicable ceiling for fiscal year 1998 to be exceeded, the visa or grant of status shall be counted against the applicable ceiling for fiscal year 1999.

SEC. 4. EDUCATION AND TRAINING IN SCIENCE AND TECHNOLOGY.

(a) DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.—Subpart 4 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070c et seq.) is amended—

(1) in section 415A(b)(1) (20 U.S.C. 1070c(b)(1))—

(A) by striking "$105,000,000 for fiscal year 1998" and inserting "$155,000,000 for fiscal year 1999"; and

(B) by inserting ", of which the amount in excess of $25,000,000 for each fiscal year that does not exceed $50,000,000 shall be available to carry out section 415F for the fiscal year" before the period; and

(2) by adding at the end the following:

"SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.

"(a) ALLOTMENTS AND GRANTS.—From amounts made available to carry out this section under section 415A(b)(1) for a fiscal year, the Secretary shall make allotments to States to enable the States to pay not more than 50 percent of the amount of grants awarded to low-income students in the States.

"(b) USE OF GRANTS.—Grants awarded under this section shall be used by the students for attendance on a full-time basis at an institution of higher education in a program of study leading to an associate, baccalaureate or graduate degree in mathematics, computer science, or engineering.

"(c) COMPARABILITY.—The Secretary shall make allotments and grants shall be awarded under this section in the same manner, and under the same terms and conditions, as—

"(1) the Secretary makes allotments and grants are awarded under this subpart (other than this section); and

"(2) are not inconsistent with this section.".

(b) DATA BANK; TRAINING.—

(1) IN GENERAL.—The Secretary of Labor shall—

(A) establish or improve a data bank on the Internet that facilitates—

(i) job searches by individuals seeking employment in the field of technology; and

(ii) the matching of individuals possessing technology credentials with employment in the field of technology; and

(B) provide training in information technology to unemployed individuals who are seeking employment.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1999 and each of the 4 succeeding fiscal years—

(A) $8,000,000 to carry out paragraph (1)(A); and

(B) $10,000,000 to carry out paragraph (1)(B).

SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IMPROVED OPERATIONS.

(a) INCREASED PENALTIES FOR VIOLATIONS OF H1–B OR H1–C PROGRAM.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended—

(1) by striking "a failure to meet" and all that follows through "an application—" and inserting "a

willful failure to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application—"; and

(2) in clause (i), by striking "$1,000" and inserting "$5,000".

(b) SPOT INSPECTIONS DURING PROBATIONARY PERIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (E); and

(2) by inserting after subparagraph (C) the following:

"(D) The Secretary of Labor may, on a case-by-case basis, subject an employer to random inspections for a period of up to five years beginning on the date that such employer is found by the Secretary of Labor to have engaged in a willful failure to meet a condition of subparagraph (A), or a misrepresentation of material fact in an application.".

(c) LAYOFF PROTECTION FOR UNITED STATES WORKERS.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended by subsection (b), is further amended by adding at the end the following:

"(F)(i) If the Secretary finds, after notice and opportunity for a hearing, a willful failure

to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application, in the course of which the employer has replaced a United States worker with a nonimmigrant described in section 101(a)(15)(H)(i) (b) or (c) within the 6-month period prior to, or within 90 days following, the filing of the application—

"(I) the Secretary shall notify the Attorney General of such finding, and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $25,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Attorney General shall not approve petitions filed with respect to the employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

"(ii) For purposes of this subparagraph:

"(I) The term 'replace' means the employment of the nonimmigrant at the specific place of employment and in the specific employment opportunity from which a

United States worker with substantially equivalent qualifications and experience in the specific employment opportunity has been laid off.

"(II) The term 'laid off', with respect to an individual, means the individual's loss of employment other than a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant, contract, or other agreement. The term 'laid off' does not include any situation in which the individual involved is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at the equivalent or higher compensation and benefits as the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(III) The term 'United States worker' means—

"(aa) a citizen or national of the United States;

"(bb) an alien who is lawfully admitted for permanent residence; or

"(cc) an alien authorized to be employed by this Act or by the Attorney General.".

(d) EXPEDITED REVIEWS AND DECISIONS.—Section 214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by inserting "or section 101(a)(15)(H)(i)(b)" after "section 101(a)(15)(L)".

(e) DETERMINATIONS ON LABOR CONDITION APPLICATIONS TO BE MADE BY ATTORNEY GENERAL.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking "with respect to whom" and all that follows through "with the Secretary" and inserting "with respect to whom the Attorney General determines that the intending employer has filed with the Attorney General".

(2) CONFORMING AMENDMENTS.—Section 212(n) (8 U.S.C. 1182(n)(1)) is amended—

(A) in paragraph (1)—

(i) in the first sentence, by striking "Secretary of Labor" and inserting "Attorney General";

(ii) in the sixth and eighth sentences, by inserting "of Labor" after "Secretary" each place it appears;

(iii) in the ninth sentence, by striking "Secretary of Labor" and inserting "Attorney General";

(iv) by amending the tenth sentence to read as follows: "Unless the Attorney General finds that the application is incomplete or obviously inaccurate, the Attorney General shall provide the certification described in section 101(a)(15)(H)(i)(b) and adjudicate the nonimmigrant visa petition."; and

(v) by inserting in full measure margin after subparagraph (D) the following new sentence: "Such application shall be filed with the employer's petition for a nonimmigrant visa for the alien, and the Attorney General shall transmit a copy of such application to the Secretary of Labor."; and

(B) in the first sentence of paragraph (2)(A), by striking "Secretary" and inserting "Secretary of Labor".

(f) PREVAILING WAGE CONSIDERATIONS.—Section 101 (8 U.S.C. 1101) is amended by adding at the end the following new subsection:

"(i)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of section 212(n)(1)(A)(i)(II) and section 212(a)(5)(A) in the case of an employee of—

"(A) an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity, or

"(B) a nonprofit or Federal research institute or agency,

the prevailing wage level shall only take into account employees at such institutions, entities, and agencies in the area of employment.

"(2) With respect to a professional athlete (as defined in section 212(a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

"(3) To determine the prevailing wage, employers may use either government or nongovernment published

surveys, including industry, region, or statewide wage surveys, to determine the prevailing wage, which shall be considered correct and valid if the survey was conducted in accordance with generally accepted industry standards and the employer has maintained a copy of the survey information.".

(g) POSTING REQUIREMENT.—Section 212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii)) is amended to read as follows:

"(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in a conspicuous location, or electronic posting through an internal job bank, or electronic notification available to employees in the occupational classification.".

SEC. 6. ANNUAL REPORTS ON H1-B VISAS.

Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end the following:

"(3) Using data from petitions for visas issued under section 101(a)(15)(H)(i)(b), the Attorney General shall annually submit the following reports to Congress:

"(A) Quarterly reports on the numbers of aliens who were provided nonimmigrant status

under section 101(a)(15)(H)(i)(b) during the previous quarter and who were subject to the numerical ceiling for the fiscal year established under section 214(g)(1).

"(B) Annual reports on the occupations and compensation of aliens provided non-immigrant status under such section during the previous fiscal year.".

SEC. 7. STUDY AND REPORT ON HIGH-TECHNOLOGY LABOR MARKET NEEDS.

(a) STUDY.—The National Science Foundation shall oversee the National Academy of Sciences in establishing a government-industry panel, including representatives from academia, government, and business, to conduct a study, using sound analytical methods, to assess the labor market needs for workers with high technology skills during the 10-year period beginning on the date of enactment of this Act. The study shall focus on the following issues:

(1) The future training and education needs of the high-technology sector over that 10-year period, including projected job growth for high-technology issues.

(2) Future training and education needs of United States students to ensure that their skills, at various levels, are matched to the needs of the high

technology and information technology sector over that 10-year period.

(3) An analysis of progress made by educators, employers, and government entities to improve the teaching and educational level of American students in the fields of math, science, computer, and engineering since 1998.

(4) An analysis of the number of United States workers currently or projected to work overseas in professional, technical, and managerial capacities.

(5) The following additional issues:

(A) The need by the high-technology sector for foreign workers with specific skills.

(B) The potential benefits gained by the universities, employers, and economy of the United States from the entry of skilled professionals in the fields of science and engineering.

(C) The extent to which globalization has increased since 1998.

(D) The needs of the high-technology sector to localize United States products and services for export purposes in light of the increasing globalization of the United States and world economy.

(E) An examination of the amount and trend of high technology work that is outsourced from the United States to foreign countries.

(b) REPORT.—Not later than October 1, 2000, the National Science Foundation shall submit a report containing the results of the study described in subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate.

(c) AVAILABILITY OF FUNDS.—Funds available to the National Science Foundation shall be made available to carry out this section.

SEC. 8. LIMITATION ON PER COUNTRY CEILING WITH RESPECT TO EMPLOYMENT-BASED IMMIGRANTS.

(a) SPECIAL RULES.—Section 202(a) (8 U.S.C. 1152(a)) is amended by adding at the end the following new paragraph:

"(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.—If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a cal-

endar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

"(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).".

(b) CONFORMING AMENDMENTS.—

(1) Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking "paragraphs (3) and (4)" and inserting "paragraphs (3), (4), and (5)".

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking "the proportion of the visa

numbers" and inserting "except as provided in subsection (a)(5), the proportion of the visa numbers".

(c) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING.—Notwithstanding section 214(g)(4) of the Immigration and Nationality Act, any alien who—

(1) as of the date of enactment of this Act is a nonimmigrant described in section 101(a)(15)(H)(i) of that Act;

(2) is the beneficiary of a petition filed under section 204(a) for a preference status under paragraph (1), (2), or (3) of section 203(b); and

(3) would be subject to the per country limitations applicable to immigrants under those paragraphs but for this subsection,

may apply for and the Attorney General may grant an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

SEC. 9. ACADEMIC HONORARIA.

Section 212 (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(p) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities, as defined by the Attorney General in consultation with

the Secretary of Education, if such payment is offered by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965) or other nonprofit entity and is made for services conducted for the benefit of that institution or entity.".

Labor

C

Section by Section

The Abraham-Hatch Substitute Amendment for the American Competitiveness Act S. 1723

Section 1
The Act may be cited as the "American Competitiveness Act."

Section 2. Findings:

The Act makes the following findings:

- The National Software Alliance a consortium of concerned government, industry, and academic leaders that includes the U.S. Army, Navy, and Air force has concluded that
- "The supply of computer science graduates is far short of the number needed by industry." The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.
- The U.S. Department of Labor projects that our economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1.3 million.
- The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the U.S. economy will result in a 5 percent drop in the growth rate of GDP. That translates into approximately $200 billion in lost output, nearly $1,000 for every American.
- In FY 1997, U.S. companies and universities reached the cap of 65,000 on H-1B temporary visas a month before the end of the fiscal year. In FY 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent U.S. companies and researchers from having any timely access to skilled foreign-born professionals.
- It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.
- If American companies cannot find home-grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.
- Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs here in the United States.

Section 3. Increased Access to Skilled Personnel for United States Companies and Universities. Additional Numbers Sunset After 5 Years.

The numbers in the Abraham-Hatch Substitute are the same as in the original bill, with three exceptions:

Under the Substitute, rather than being available on a permanent basis, the additional numbers in the bill for H-1B visas would sunset after five years.

The amendment substitutes a hard number (95,000) for the formula requiring a doubling of usage as of March 31 for FY 1998. We now have a pretty clear idea what that formula would produce, and it would be somewhere between 90,000 and 95,000. The 95,000 also includes between 3,000 and 5,000 visas that would have been granted last fiscal year but for the cap.

The reserve in the substitute drawn from unused H-2B visas is capped at 20,000 rather than 25,000.

Like the original bill, the Substitute creates a new H-1C category that will include physical/occupational therapists and other health care professions, which are removed and subtracted from the H-1B category.

	H-1B Visas	**H-1C Visas (New Category for Physical Therapists and Other Health Care Workers)**
FY 1998	95,000 (current projected usage for FY 1998)	
FY 1999	85,000 (plus a maximum of 20,000 H-2B visas if unused in previous fiscal year)	10,000
FY 2000	Same as above	10,000*
FY 2001	Same as above	10,000*
FY 2002	Same as above	10,000*
FY 2003	65,000	(would revert to H-1B category)

Note: *If H-1C visas are unused in a fiscal year, they will be made available to the H-1B category in the next year.

Section 4. Education and Training in Science and Technology

The bill authorizes $50 million for the State Student Incentive Grant (SSIG) program to create approximately 20,000 scholarships a year for low-income students pursuing an associate, undergraduate, or graduate level degree in mathematics, engineering or computer science. The program provides dollar-for-dollar federal matching funds that will grow to $100 million with state matching. The scholarships will be for up to $5,000 each. The bill also authorizes $10 million a year to train unemployed American workers in new skills for the information technology industry.

Section 5. Increased Enforcement Penalties and Improved Operations

1. Layoff Protection for U.S. Workers. The Substitute adds a new provision to protect against layoffs of U.S. workers. Any employer who commits a willful violation that includes a layoff of a U.S. worker is subject to a fine of $25,000 per violation and a 2-year debarment from the H-1B program and the permanent employment visa program.

2. Fines. The bill increases fines by five-fold for willful violators of the H-1B program, from the current $1,000 to $5,000.

3. Additional Enforcement Powers. The bill allows the Secretary of Labor to conduct spot inspections and exercise other enforcement powers for in the absence of complaint for employers previously found to have committed a willful violation whom the Secretary determines should be placed on probation for the duration of the probationary period.

3. Certification Application Responsibility Transfer. This section transfers filing of the Labor Condition Application to the INS, which will free up resources for enforcement at the Department of Labor on H-1Bs.

4. Prevailing Wage. Under current law an employer must attest on a Labor Condition Application that an individual on an H-1B will be paid the greater of the prevailing or actual wage paid to similarly employed U.S. workers. The bill seeks to correct for the inaccuracies in the current Department of Labor use and calculation of prevailing wage data.

The substitute amendment changes the prevailing wage provisions that were in the bill to focus on just two areas – helping universities deal with the Hathaway decision, which has artificially inflated their wages by lumping them in with for-profit entities, and allowing universities and businesses to use private, generally accepted, academic and industry surveys to determine prevailing wage. The Department of Labor would still have the ability to challenge a survey if it was considered a "sham" survey or not a commonly used survey. The amendment also contains a provision dealing with special issues regarding prevailing wages confronting professional sports teams.

5. Posting. The bill provides for posting by electronic means (e.g. e-mail) rather than exclusively by physical means (e.g. bulletin boards at lunch rooms). The substitute clarifies that this language is not intended to change the scope of the posting obligation.

Section 6. Annual and Quarterly Reports on H-1B Visas
Requires quarterly reports on H-1B numbers. Mandates annual reports on the occupations and compensation of aliens provided nonimmigrant status under such section during the previous fiscal year.

Section 7. Study. The Substitute adds a new section requiring a study and report on high tech labor market needs for the next ten years overseen by the National Science Foundation and done by a panel established by the National Academy of Sciences to be transmitted to the Judiciary Committees of both Houses by October 1, 2000.

Section 8. Limitation on Per Country Ceiling with Respect to Employment-based Immigrants

The bill modifies per country limits on employment-based visas to eliminate the discriminatory effects of those per country limits on nationals from certain Asian Pacific nations. Currently, in a given year there are employment-based immigrant visas available within the annual limit of 140,000, yet U.S. law prevents individuals born in particular countries from being able to join employers who want to sponsor them as permanent employees because those countries have reached their per country limit. This amounts to preventing an employer from hiring or sponsoring permanently in that year someone because he or she is Chinese or Indian, even though the individuals meets all the proper legal criteria set forth by the U.S. government. The bill would end this prohibition itself leaving intact the annual level of 140,000.

Section 9. Academic Honoria

Permits universities to pay honoraria and incidental expenses for speeches by visiting scholars.

Busted Unions

FLUSH WITH HIGH-PROFILE ACCOMPLISHMENTS, ORGANIZED LABOR HOPED TO BECOME THE VOICE OF ORDINARY AMERICANS. BUT THE TEAMSTER SCANDAL AND ATTACKS BY CONSERVATIVES HAVE PUT UNIONS ON THE DEFENSIVE.

BY JULIE KOSTERLITZ ■

They don't believe in Santa Claus at the AFL-CIO, and in any event, there are no chimneys at its massive, granite and marble headquarters just across Lafayette Square from the White House. Still, the federation of labor unions has been busy drawing up its holiday wish list for the year to come.

It's called the annual budget, and the federation's executive council will take it up sometime next month. The AFL-CIO already got a promise of an extra $12 million from affiliated unions to spend on politics in the next two years, besides the millions the federation and its 72 affiliated unions routinely spend on overt electioneering through their political action committees.

Near the top of its list is the first installment of a two-year, $40 million "repositioning" campaign. The money would enable the federation to run its stylish new television ads—replete with rock 'n' roll soundtracks and '90s production values—in 15 cities around the country, in hopes of boosting the public's goodwill toward unions.

This public relations campaign is an integral part of labor's mighty struggle to reinvigorate and reinvent itself. The effort was begun two years ago, when insurgent candidate John J. Sweeney was elected president in the first contested election in the federation's 116-year history.

Desperate to stop the plunge in membership that halved its share of the workforce since the 1950s, to just 15 per cent today, "New Labor" has poured money into campaigns to organize workers, to oust the Republican majority in Congress and to stave off hostile legislation.

Flush with various high-profile accomplishments—the collapse of President Clinton's bid to speed the growth of global trade, a hike in the minimum wage, a smaller and more domesticated Republican majority and the Teamsters Union's victory in its showdown last summer with the United Parcel Service—the labor movement has been hoping to take the next step: to modernize its image and to portray itself as a voice for ordinary Americans. Internal polls suggest the ads could help do that.

RICHARD A. BLOOM

VICTOR KAMBER: "What this has done is put a blanket on an exuberant, vibrant force."

The AFL-CIO is likely to go ahead with its expensive charm offensive. But it's unlikely to get the desired results any time soon. Instead of consolidating its political gains and capturing the hearts and minds of ordinary Americans, the labor federation may spend much of 1998 holed up in its 16th Street bunker, playing serious defense.

In a case of extraordinarily bad timing, the upbeat PR campaign would be getting under way in the midst of perhaps the worst labor scandal of the decade. The election-fraud scandal

at the federation's largest affiliate, the 1.4-million-member Teamsters, has done more than leave that union in chaos. It has also implicated several pivotal labor leaders, including the AFL-CIO's second-ranking official—the charismatic Richard L. Trumka—and the presidents of its powerful public-sector and service-employee unions. "What this has done is put a blanket on an exuberant, vibrant force," said Victor S. Kamber, a PR consultant to many labor unions.

AP/MATT YORK

SWEENEY AND CAREY: "We wouldn't be under this kind of attack if we were not doing something right," Sweeney said.

The worst, though, is yet to come. On the legal front, the U.S. Attorney for the Southern District of New York, Mary Jo White, hasn't finished her investigation into illegal campaign financing in last year's Teamsters election. More indictments seem inevitable.

On the political front, the outlook is just as bleak. A House subcommittee is gearing up for a wide-ranging, six-month investigation into the sordid details of the Teamsters' election debacle. It plans to pursue leads that suggest involvement by other union leaders and by the Democratic National Committee and also to scrutinize the performance of federal overseers who received $22 million in taxpayers' money to make sure that such scandals couldn't happen. A source close to the House investigation hinted at blockbuster revelations, and another intimated that the Clinton Administration may have been involved.

And just in case all this doesn't leave labor punch-drunk, national conservative groups and local activists are ready to land another roundhouse blow: They're teaming up to pass state laws around the country that would make it much harder for unions to raise money for electioneering, lobbying or other political purposes.

This month, the AFL-CIO brought 120 union officials from all over the country to Chicago to swap information and plot a defense. But even fending off this threat could strain unions' resources in a year when money would be better spent trying to elect sympathetic candidates.

Sweeney tries to put the best spin on labor's predicament. "We wouldn't be under this kind of attack if we were not doing something right," he said in an interview.

All the body blows to organized labor, however, could cause real damage. Ever since the divisive election battle in 1995, labor has largely closed ranks behind Sweeney and a reformist agenda that moved organized labor away from its stodgy past, toward political and social activism. With so many outside threats looming, after all, open dissent would be self-destructive. Still, the Teamsters scandal has occasioned some muttering, and the events of 1998 could shift power within the AFL-CIO away from its most activist members and prod Sweeney to rely more on the traditional forces that once opposed his revolt against the old guard. The AFL-CIO won't return to the ways of Old Labor, but it may see the rise of a New New Labor.

SCANDAL, SCANDAL

Ron Carey's against-the-odds ascension to the presidency of the troubled union in 1991—in its first-ever direct election by members—was supposed to end autocracy, self-dealing and Mob-nobbing. The convoluted tale of a scheme to funnel workers' dues and other forbidden contributions into Carey's flagging reelection bid has been unfolding in ever-more-squalid detail since June, when federal prosecutors had Washington political consultant Martin Davis arrested.

Things haven't let up. The results of last year's tainted Teamsters vote have been thrown out, Davis and two other campaign consultants have pleaded guilty to criminal fraud charges, Carey went on unpaid leave after a federal overseer barred him from running when the election is conducted all over again next year. Another overseer has charged Carey with financial improprieties that could lead to his expulsion from office. He could also face serious legal troubles.

That isn't all. The Justice Department, which has wielded indirect control over the Teamsters as a condition for settling racketeering charges in 1989, recently handed authority over the union's depleted treasury to an independent auditor. The new election has been postponed to allow the federally appointed election monitor to investigate charges that James P. Hoffa, Carey's opponent last year who's currently favored to win next year's race, also ran a campaign financed with illegal contributions.

That isn't the only scandal bedeviling organized labor. Arthur A. Coia, president of Laborers' International Union of North America that represents construction workers, was accused in late November of consorting with mobsters. The charges, brought by a former federal prosecutor hired as a

watchdog by the union's agreement with Justice, could result in Coia's expulsion. Like the Teamsters, Coia's 750,000-member union proved critical in electing Sweeney, who made him chairman of the AFL-CIO's organizing committee.

In the Teamsters scandal, one of the darkest clouds seems to hang over Trumka, the AFL-CIO's secretary-treasurer. In a November report by Kenneth Conboy, the federally appointed Teamsters election appeals officer, two former Carey campaign aides alleged that Trumka had raised $50,000 for Carey's campaign. Federal law prohibits campaign contributions from any employer, including high-ranking labor officials. The two also alleged that Trumka promised to have the AFL-CIO to give $150,000—reimbursed by the Teamsters—to now-defunct Citizen Action, a self-styled consumer group, to benefit the Carey campaign. The AFL-CIO disbursed the money, the bulk of which then went to underwrite a mass mailing for Carey.

RICHARD A. BLOOM

TOENSING AND DIGENOVA: They'll command a half-dozen new House gumshoes looking into the Teamsters.

If there's an innocent explanation for Trumka's actions, the public hasn't heard it yet. Trumka invoked the 5th Amendment rather than answer Conboy's questions.

Trumka's alleged actions have also raised questions about what Sweeney and top AFL-CIO aides knew or authorized. Trumka may have had the authority—but some labor officials doubt he had the autonomy—to make such a large payment on his own. Sweeney, in the interview, said he had "not been involved in any activity related to the Teamsters union election." He added, when pressed, that "to the best of my knowledge, [that is true] for Rich Trumka as well." Trumka has denied wrongdoing. But federal agents recently asked the AFL-CIO to turn over some of Trumka's records and computer files, according to *Newsweek*.

Conboy's report also cast a shadow over the presidents of two other large, influential unions—Gerald W. McEntee of the American Federation of State, County and Municipal Employees (AFSCME) and Andrew L. Stern of the Service Employees International Union (SEIU). McEntee acknowledged to the federally appointed Teamsters election monitor that he solicited funds for the Carey campaign from an employer. The report also cited an allegation that Stern promised to raise funds for Carey, but the SEIU president has denied it. McEntee, an architect of Sweeney's successful campaign, masterminded much of the AFL-CIO's unsuccessful effort last year to help the Democrats regain control of Congress. Stern and Trumka had been mentioned as possible successors to Sweeney.

Unlike federal prosecutors, Congress has no need to prove a crime when it puts labor leaders on the witness stand. Peter Hoekstra, R-Mich., chairman of the House Education and the Workforce Oversight and Investigations Subcommittee, said that he plans to "follow the money" that flowed to Carey.

A source close to the investigation predicted that Congress will wind up enacting "new requirements for audits of labor unions" to make sure that "members dues are not wasted." The source also suggested the possibility of untoward links between the Teamsters and the Administration. "There were White House advance people at [last year's] Teamsters convention," he said. "What were [they] doing there?"

The House subcommittee has already hired a half-dozen new staff members, to be led by Joseph E. diGenova, a former high-profile U.S. Attorney for the District of Columbia, and his wife, Victoria Toensing, a former prosecutor in Justice's Criminal Division. Several more investigators are expected to be hired soon, including at least one former FBI agent with experience tracking organized crime.

UNION DUES AND DON'TS

As if organized labor weren't facing enough trouble in Washington and New York City, a political brushfire touched off in California threatens to spread nationwide. Conservative activists in that trend-setting state appear to have collected enough signatures from voters to put a measure on the ballot next June that would require unions to get permission every year to spend each union member's money for any political purpose.

That's a far cry from the current practice in California—and most states—of letting unions automatically deduct money from workers' payrolls for political use. Federal law (and the law in some states) require that unions' political action committees solicit voluntary contributions for explicit electioneering but allow unions to collect these using payroll deductions without securing annual permission.

The "back-to-basics" education activists who launched the drive, out of pique at the powerful teachers' unions for continually outspending them, have cast the initiative as a matter of good government and individual choice. Their proposal includes other, mainly symbolic campaign finance reforms. "Organized labor represents organized labor, not employees," said Frank Ury, a co-author of the initiative. "This will make them represent [workers] honestly and fairly."

Labor officials counter that such a step would impose cumbersome, costly strictures that no other interest group faces. "The impact would be to take away our members' right to express themselves and have a political voice," Sweeney said.

No one disputes that the effect on union finances could

be dramatic. After a 1992 ballot measure prohibiting paycheck deductions from public employees for political purposes passed in Washington state, the number of teachers contributing to the Washington Education Association's political fund sank from 40,000 to 10,000.

The prospect of a widespread decline in union political funds, which is expected to affect mainly state races, has Republicans salivating. "The one thing standing in the way of a 40-year reign [of Republicans in Congress] is unregulated union activity," a House GOP leadership aide said.

Similar legislation has gone nowhere on Capitol Hill. Senate Majority Leader Trent Lott, R-Miss., tacked a version onto a campaign finance reform bill earlier this year, attracting Democratic opposition and halting the entire reform drive. Though the idea is sure to resurface when campaign finance reform comes up in the Senate next spring, it's hard to envision getting a bill as far as Clinton's veto pen.

LIZ LYNCH

GROVER NORQUIST: "It allows [Republicans] to talk to unionized workers and say, 'You and I are friends.'"

But the California initiative has galvanized what had been diffuse and struggling efforts by conservatives. Money and support have been flowing into California from conservative groups and wealthy donors across the country. California Gov. Pete Wilson, House Speaker Newt Gingrich, R-Ga., Americans for Tax Reform president Grover G. Norquist and other supporters of restrictions on union fund raising are trying to touch off similar efforts nationwide. At the Republican Governors Association last month, Wilson persuaded them to pass a resolution endorsing the initiatives in California and elsewhere.

GOPAC, the conservative political fund Gingrich once led, plans to send videotapes to all 3,600 Republican state elected officials. Norquist said it's a good issue for Republicans: "It allows [them] to talk to unionized workers and say, 'I think you should keep [your money]. You and I are friends.'"

Activists are already working in Arizona, Nevada and Oregon to put California-like measures on ballots next November. Similar campaigns are expected in Colorado, Florida, Michigan, Missouri, Montana and Ohio. The Illinois legislature may take up such a measure.

The issue could have broad public appeal. Opinion polls conducted in October for ABC News/*The Washington Post* and CNN/*USA Today* showed hefty majorities in favor of requiring unions to obtain permission from individual members to spend dues on political work.

The same month, though, a *Los Angeles Times* poll showed Californians opposing the initiative 2-1. Labor strategists say that the public's view on ballot initiatives is changeable until an actual vote is imminent. Focus groups, they say, suggest that voters' enthusiasm tends to flag when they're told that corporations wouldn't suffer curbs on their political expenditures.

Still, it won't be cheap for organized labor to get that message across. Rumors have been circulating in the California press that labor will pour $20 million into the California campaign. That figure sounds high, an AFL-CIO official said. But no one disputes that the effort will put an additional burden on labor's resources.

RUMBLINGS FROM WITHIN

Top labor leaders—in what could pass for a show of unity—have remained tight-lipped about the AFL-CIO's problems. For the moment, the federation has circled the wagons to defend Trumka. Sweeney has publicly brushed off the notion that Trumka should resign to comply with a 40-year-old executive resolution requiring officers to step down if they invoke the 5th Amendment to conceal wrongdoing. An internal AFL-CIO investigation had found that Trumka was doing no such thing, Sweeney wrote in a letter to the presidents of affiliated unions.

Still, some union advisers say that Sweeney will be pressed to get Trumka to resign rather than hold the AFL-CIO hostage to more investigations and revelations in the Teamsters scandal. Yet, finding a successor to Trumka wouldn't be easy. Because Sweeney hails from the SEIU, federation politics would make it unseemly for the No. 2 official to come from a white-collar service or public-sector union; that would preclude the AFL-CIO's third-ranking official, executive vice president Linda Chavez-Thompson, a former AFCSME leader, from moving up. To the extent that youth, smarts, charisma and a broad reputation count, few candidates exist. None elicits much enthusiasm so far.

There's talk among conservative outsiders that the old guard that opposed Sweeney's candidacy in 1995 might rally behind Sandra Feldman, the president of the American Federation of Teachers. But many labor insiders consider the notion of her candidacy—which she has pooh-poohed—little more than nostalgia for the socially conservative labor leadership of George Meany and Lane Kirkland.

Still, circumstances might force the federation to veer more toward starboard. The Teamsters and Laborers' Union scandals seem likely to weaken or remove several of the key leaders who backed Sweeney's election in 1995. Should Hoffa become the next Teamsters president, he is likely to be a more diffident and conservative force than Carey has been. He could also yank the Teamsters out of the AFL-CIO altogether.

Amid the almost-universal praise of Sweeney since his tenure started, some still-faint murmurs of criticism have been heard: That for all the talk of New Labor, the AFL-CIO still operates in a top-down manner and hasn't engaged local union leaders, who are crucial to organized labor's revival; that Sweeney has tied labor's fate too closely to the Democratic Party; and that he has shown partiality to the public-sector and service unions that is reflected in the makeup of the federation's top staff.

There's also been griping about the power and the politics of Sweeney's top aides. "The 'new labor movement' is a small group of self-righteous, arrogant people, isolated from the movement and the membership," an aide at an affiliated union said. "They adopt the rhetoric of militancy, but it's a substitute for real contact with the rank and file."

Personal pique or political insight? Hard to be sure, but 1998 will tell just how gracefully New Labor is aging. ■

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
LEGISLATIVE AFFAIRS

PHONE: 395-4790 / FAX: 395-3729

and email Sylvia

TO: Maria Echaveste

DATE: 5-19

URGENT

to say thanks for getting it done

FROM:

___ CHUCK KIEFFER ___ CHUCK KONIGSBERG

___ LISA KOUNTOUPES ✓ KATE DONOVAN

___ NANCY BRANDEL

To

Comments: Sylvia Matthews asked that you review the attached Labor letter on HR 3736. Karen Tramontano has approved.

*Mark-up is tomorrow - please call me at 5-9136 as soon as possible w/ comments/clearance.

Thanks

FAX #: 6-6218 PAGES: 6

PHONE NUMBER: _____ (includes cover page)

letter is fine w/me

STATEMENT OF ADMINISTRATION POLICY

Must Echeveste needs to sign off!

Julie Fernandez

TO:
RAHM EMANUEL
LARRY STEIN
JOHN PODESTA
SYLVIA MATHEWS – ok
GENE SPERLING
SALLY KATZEN
BRUCE REED
ELENA KAGAN
KAREN TRAMONTANO – ok
JANET MURGUIA
CHUCK BRAIN – ok
TRACY THORNTON
PETER JACOBY
BRODERICK JOHNSON
BILL MARSHALL
RON KLAIN
CECILIA ROUSE
PAUL WEINSTEIN
JASON GOLDBERG – Kevin Moran 5/18

CC:
DIRECTOR RAINES
DEPUTY DIRECTOR LEW
CHARLES KIEFFER
BARBARA CHOW
LISA KOUNTOUPES

DATE: 5/18/98
FROM: Kate Donovan, OMB Legislative Affairs
RE: FOR YOUR CLEARANCE – Draft Labor Letter on H.R. 3736 - Workforce Improvement and Protection Act of 1998

Attached is a draft Labor letter on HR 3736 - Workforce Improvement and Protection Act of 1998. Please note that Justice is undecided whether or not they want to sign onto the veto recommendation.

Position: Secretary of Labor veto recommendation.

Background: A SAP was issued on 5/11/98 regarding a similar bill in the Senate – S. 1723, American Competitiveness Act, with a Sect. of Labor veto recommendation (copy attached). The concerns are similar in the draft letter.

Timing: Markup is scheduled for Wednesday, May 20. Please call Kate Donovan at 5-4790 as soon as possible with your comments or clearance. Thanks.

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

Today, your Committee will mark-up H.R. 3736, the "Workforce Improvement and Protection Act of 1998" which is intended to address the growing demand for skilled workers in the information technology (IT) industry. H.R. 3736 enacts a temporary increase in the annual cap on the number of visas for temporary foreign "specialty" workers under the H-1B program, while also effecting reforms to the H-1B program that would help target usage of H-1B visas to industries and employers that are actually experiencing skill shortages.

The Administration believes that the first response for increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, additional efforts to increase the skill level of U.S. workers and needed improvements to the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. Modifications to the H-1B program that appropriately protect U.S. workers are fully consistent with the Administration's longstanding support for legal immigration.

We are pleased that H.R. 3736 as reported from the Immigration and Claims Subcommittee is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, H.R. 3736 expands enforcement authority to help prevent employer abuses of the H-1B program. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, H.R. 3736 does not contain any provision to encourage additional training of U.S. workers. Training is a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy would also work to reduce the demand for H-1B visas. The Administration strongly supports amending H.R. 3736 to provide for additional training opportunities for U.S. workers and believes that this training should be funded through a modest H-1B application fee paid by employers.

The Administration is also concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although we agree that the increase should last for only

three years. In addition, the Administration is concerned that provisions in the bill that would impose occupation-based restrictions on the first 65,000 H-1B visas may be viewed by our trading partners as inconsistent with our international trade obligations.

The Administration believes that the reforms included in H.R. 3736 would substantially improve the current H-1B program. With the addition of a meaningful training provision, a modest reduction in the level of increase in the annual H-1B visa cap, and provided that the bill is consistent with U.S. international trade obligations, H.R. 3736 would garner the Administration's strong support. However, if amendments are adopted that substantially ~~weaken the reform or enforcement provisions of H.R. 3736 or if meaningful provisions for increasing the skill levels of U.S. workers are not adopted,~~ the Secretary of Labor would recommend that the President veto this legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALEXIS HERMAN
Secretary of Labor

- Commerce 4/21 - trying to get their signatures as well.
- P.G

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 11, 1998
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1723 - American Competitiveness Act
(Abraham (R) Michigan and 15 cosponsors)

S.1723, "The American Competitiveness Act," is intended to respond to a reported skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. For the reasons outlined below, the Administration strongly opposes Senate passage of S. 1723. If S. 1723 were presented to the President, the Secretary of Labor would recommend that the bill be vetoed.

Regrettably, S.1723 emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers. The bill's temporary increase in the annual number of H-1B visas is too large (up to 115,000) and lasts too long (5 years). In addition, the bill does not help ensure that U.S. workers do not lose their jobs to temporary foreign workers. Nor does the bill ensure that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, rather than strengthening program requirements and enforcement to prevent employer abuses of the H-1B program, S.1723 undermines some of the program's important enforcement provisions.

Since 1995 the Administration has sought reforms of the H-1B program, including: (1) requiring employers to make bona fide efforts to recruit and retain U.S. workers before hiring temporary foreign workers; and (2) prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers. These reforms, if enacted, would help target H-1B usage to industries and employers that are experiencing skill shortages.

Also, the Administration believes that the first response for increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. S.1723 includes an authorization for a scholarship fund and a small fund to train dislocated workers, but it provides no funding for these programs. The Administration believes that increased training opportunities for U.S. workers should be funded, in part, through a modest H-1B application fee paid by employers. In addition, the Administration has called upon the private sector to establish training programs and partnerships with educational institutions to give U.S. workers the skills needed for these jobs. It also has urged industry to reach out to dislocated workers as well as segments of the labor force underrepresented in high skilled jobs. The Administration is eager to work with industry to help create these programs and partnerships.

Additional efforts to increase the skill level of U.S. workers and needed improvements in the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

Pay-As-You-Go Scoring

S. 1723 would increase direct spending and receipts; therefore it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. The bill does not contain provisions to fully offset the increased direct spending. OMB's preliminary scoring estimates that this bill would increase direct spending by $1 million annually during FY's 1999-2003.

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Betty H. Bowers
Vice President, Government Relations

February 26, 1998

Ms. Maria Echaveste
Assistant to the President
and Director for Public Liason
The White House
Washington, D.C. 20500

Dear Maria,

Thank you so much for attending the Carlton Club lunch yesterday. It's a real tribute to you that you'll take time from your busy schedule to meet with us in this open discussion format.

I mentioned the issue of an initiative by the Administration to more closely scrutinize it's government contractors and some concerns that the business community has with regard to this initiative. I also mentioned that in the past when this first surfaced, a list of companies as potential violators circulated. Attached is the 1995 GAO report which prompted this list.

In reviewing this document, you will note that our company is listed as the sixth largest federal contractor with labor law violations. Indeed, it characterized the company as a serious labor law violator because of one NLRB case arising in Kentucky. You should know that after the GAO report was issued, the NLRB decision was reversed by the Court of Appeals. NLRB v. Fluor Daniel, Inc., 102 F.3d818 (6th Cir. 1996).

As I mentioned at our luncheon yesterday, this case demonstrates why we are very concerned about the regulations. If a contracting decision had been based upon the NLRB decision, our employees and the company would have been excluded from bidding on federal contracts only to be exonerated at a later date. We sincerely hope the Administration will proceed on this matter with great caution.

Again, thank you for listening to our concerns. We appreciate your dedication and know you have many issues on your plate. I hope this information will be helpful in your deliberations on this very important subject.

Sincerely,

Betty H. Bowers

Betty H. Bowers

Attachment

cc: Ms. Cheri Carter, Special Assistant to the President
Office of Public Liason

GAO

United States
General Accounting Office
Washington, D.C. 20548

Health, Education, and
Human Services Division

B-257208

October 24, 1995

The Honorable Paul Simon
United States Senate

Dear Senator Simon:

Private sector firms receive billions of dollars annually in federal government contracts for goods and services. While these firms generally profit from their business with the federal government, some also violate federal laws that protect the rights of employees to bargain collectively. You have proposed legislation that would debar firms exhibiting a "clear pattern and practice" of violating the National Labor Relations Act (NLRA) from receiving federal contracts.[1]

Given your interest in this issue, you requested that we identify the extent to which violators of NLRA include employers who have contracts with the government (referred to as federal contractors). More specifically, you asked us to identify characteristics associated with these federal contractors and their NLRA violations. You also asked us to identify ways to improve compliance of federal contractors with NLRA.

To address your request, we matched fiscal years 1993 and 1994 case data from the National Labor Relations Board (NLRB) with a database of federal contractors maintained by the General Services Administration (GSA). We verified by telephone that the matched firms had federal contracts. We then reviewed Board decisions to identify characteristics of the violations. Finally, we analyzed the GSA database for characteristics of contracts held by these violators in fiscal year 1993. We did our work from August 1994 to September 1995 in accordance with generally accepted government auditing standards. (See app. I for a detailed discussion of our scope and methodology.)

Results in Brief

Federal contracts have been awarded to employers who have violated NLRA. We found that 80 firms had violated the act and received over $23 billion, about 13 percent of the $182 billion in federal contracts

[1]The proposed Federal Contractor Labor Relations Enforcement Act of 1995 (S. 780) was introduced on May 9, 1995.

[2]In this report, the NLRB refers to the entire agency implementing NLRA. The Board refers to a five-member Board which, serving in a judicial capacity, hears unfair labor practice (ULP) cases.

awarded in fiscal year 1993.[3] However, these contracts were concentrated among only a few violators; six violators received almost 90 percent of the more than $23 billion in contracts.

The Board cases that we examined indicate a range of violations. The cases also show that the Board had ordered various remedies relating to the unlawful activities by firms that discouraged workers from exercising their right to bargain collectively. For example, as a remedy, the Board ordered firms to reinstate or restore workers in 35 of 88 cases (some of the 80 firms were involved in more than one case) in which workers were unlawfully fired, transferred, or not hired in the first place because of activities for or association with a union. Other remedies, such as restoring lost wages and benefits or demanding that the firm stop threatening workers with job loss, were also ordered by the Board in many of these 88 cases. Altogether, these remedies affected nearly 1,000 individual workers as well as thousands of additional workers represented in 12 bargaining units.

Fifteen of the violators (almost 20 percent of the 80 firms) might be considered more serious violators. These firms, for example, had been ordered to reinstate or restore more than 20 individual workers each or had been issued a broad cease and desist order by the Board.[4] Of these 15 violators, we also found some that have a history of violating the act.

NLRB's enforcement of the act could be enhanced by collecting judgments against violators from federal contract awards. Coordination with GSA to identify violators with federal contracts, however, would be necessary to collect judgments in this fashion.

Background

Federal contracts involve considerable dollars, resulting in employment for many workers. GSA's data show that federal contracts in fiscal year 1993 totaled about $182 billion. Approximately 22 percent of the labor force, 26 million workers, is employed by federal contractors and

[3]These totals are likely an underestimate of the number of violators and contracts they received because of the difficulties involved in a manual matching procedure. The $23 billion in federal contracts were awarded to the parent firms of the 80 violators.

[4]The Board issues a broad cease and desist order when a firm has demonstrated a proclivity to violate NLRA or when there has been widespread or egregious misconduct. Unlike narrow cease and desist orders, a broad order prohibits a range of unlawful conduct and serves as the basis for initiating contempt proceedings if the firm commits additional violations.

subcontractors, according to fiscal year 1993 estimates of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).[5]

Federal law and an executive order place greater responsibilities on federal contractors compared with other employers in some areas of workplace activity. For example, federal contractors must comply with Executive Order 11246, which requires a contractor to develop an affirmative action program detailing the steps that the contractor will take and has already taken to ensure equal employment opportunity for all workers, regardless of race, color, religion, sex, or national origin. In addition, the Service Contract Act and the Davis-Bacon Act require the payment of area-prevailing wages and benefits on federal contracts in the service and construction industries, respectively. NLRA, as amended, provides the basic framework governing private sector labor-management relations. The act, passed in 1935, created an independent agency, NLRB, to administer and enforce the act.[6] Among other duties, NLRB is responsible for preventing and remedying violations of the act—unfair labor practices (ULPs) committed by employers or unions.[7] NLRB's functions are divided between its Office of the General Counsel and a five-member board. The Office of the General Counsel, organized into 52 field offices in 33 regions, investigates and prosecutes ULP charges. The Board, appointed by the President with Senate approval, reviews all cases decided by administrative law judges (ALJ) in the regions.[8]

[5]OFCCP is responsible for ensuring compliance of federal contractors and subcontractors with their affirmative action and equal opportunity responsibilities. For more information on OFCCP, see Equal Employment Opportunity: DOL Contract Compliance Reviews Could Better Target Federal Contractors (GAO/HEHS-95-177, Sept. 28, 1995).

[6]The Board's jurisdiction extends to all firms—profit and nonprofit—engaged in interstate or foreign commerce. Major exemptions include agricultural laborers, domestics, workers covered by the Railway Labor Act, management employees, confidential employees, and supervisors.

[7]NLRB is also responsible for conducting elections to determine whether employees wish to be represented by a union. In this report, however, we focus on NLRB's duty to prevent and remedy ULPs.

[8]If a decision by an ALJ is not contested by either party, the Board simply affirms the ALJ decision so that it can be enforced. In some instances, the Board might issue a decision without an ALJ hearing, referred to as a summary judgment. While all five Board members may participate in the review of an ALJ's decision, and frequently do in cases which establish or change policy, decision-making authority in most cases is delegated to three-member panels.

Under Section 8 of the act,[9] it is illegal for employers to interfere with workers' right to organize or bargain collectively or for employers to discriminate in hiring, tenure, or condition of employment in order to discourage membership in any labor organization; and such behavior is defined as a ULP.[10] After concluding that a violation has been committed, the Board typically requires firms to cease and desist the specific conduct for which a ULP is found. The Board may order a variety of remedies, including requiring the firm to reinstate unlawfully fired workers or restore wages and benefits to the bargaining unit. In some cases, the Board will also issue a broad cease and desist order prohibiting the firm from engaging in a range of unlawful conduct.

If an employer to whom the federal government owes money (such as a federal contractor) has failed to comply with an order by the Board to restore wages or benefits, the government has the option of withholding from any amount owed to that employer (including payments under a federal contract) any equal or lesser amount that the contractor owes under the Board order. A withholding in this manner is referred to as a collection by administrative offset.[11]

In addition to the remedies mentioned above, the Congress has considered debarring from federal contracts firms that have violated NLRA in the past. In 1977, legislation that would have debarred firms from federal contracts for a 3-year period for willfully violating NLRA was introduced but was never enacted.[12]

NLRB has several databases that track cases at different stages of processing. One of NLRB's databases, the Executive Secretary's database, tracks all cases that go before the Board. Many of these cases were first heard by an ALJ after an investigation by the Office of the General Counsel's regional staff determined the case had merit. Cases that go before the Board represent only a small percentage of all ULP cases because most cases are withdrawn, dismissed, or informally settled

[9]Section 8(a) provides that it is a violation or a ULP for an employer to (1) interfere with, restrain, or coerce employees in the exercise of their rights to self-organize; (2) dominate or interfere with the formation or administration of any labor organization; (3) discriminate in hiring, or any term or condition of employment, to encourage or discourage membership in any labor organization; (4) discharge or otherwise discriminate against an employee for filing charges or giving testimony under this act; and (5) refuse to bargain collectively with the majority representative of employees.

[10]Section 8(b) violations refer to ULPs committed by unions. Because unions are typically not federal contractors, we did not include 8(b) violations in this report.

[11]Collections by administrative offset are required to follow procedures set forth in 4 C.F.R. 102.3.

[12]The proposed Labor Reform Act of 1977 (H.R. 8410) was introduced on July 19, 1977.

without being reviewed by the Board.[13] None of NLRB's databases, including the Executive Secretary's database, contains information as to whether or not violators have federal contracts.

GSA maintains the Federal Procurement Data System (FPDS) that tracks firms receiving over $25,000 in federal funding in exchange for goods and services provided. For fiscal year 1993, FPDS tracked information on almost 200,000 contracts totaling about $182 billion, which were awarded to over 57,000 parent firms. FPDS contains a variety of information, including the contractor's name and location, agency the contract is with, type of industry the contractor is engaged in, and contract dollar amounts awarded. However, FPDS does not contain information on contractors' labor relations records.

A Few Labor Law Violators Received Billions in Federal Contracts

Federal contracts are awarded to employers who violate NLRA. A total of 80 firms, receiving over $23 billion from over 4,400 contracts, had both labor violations and contracts.[14] Altogether, about 13 percent of total fiscal year 1993 contracts of $182 billion went to these 80 violators (see fig. 1). However, these contracts were concentrated among only a few violators; six violators received about $21 billion of the more than $23 billion in contracts.[15]

These totals are likely an underestimate of the number of violators and contracts they received because of the difficulties involved in the manual matching procedure we used in this analysis. This manual procedure was necessitated by the lack of a corporate identification number for firms in the NLRB case data. Because firms may split up, merge, subcontract, operate subsidiaries, or change names, the same firm might have appeared under different names in NLRB case data and the FPDS and thereby escaped

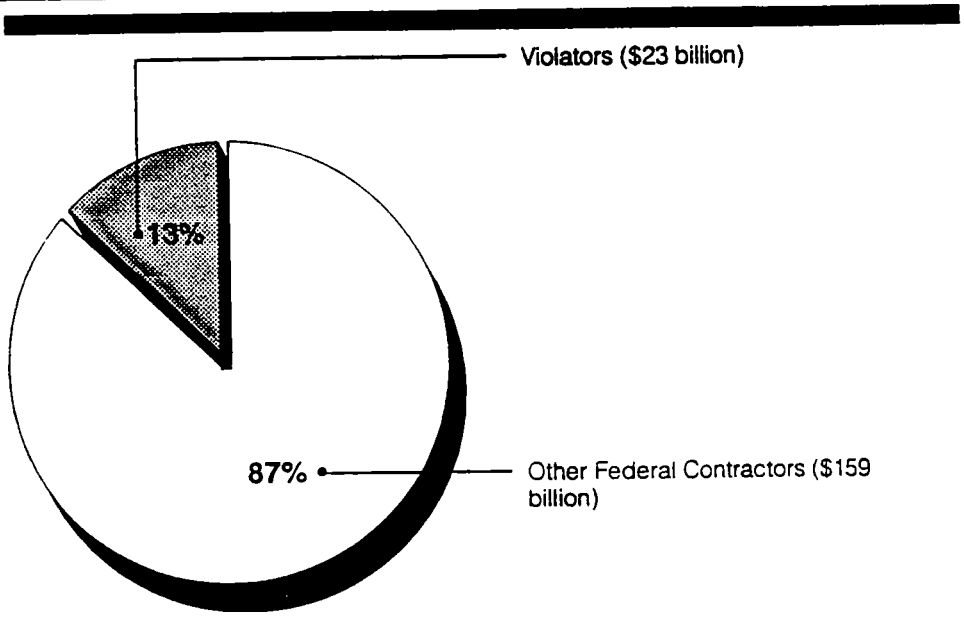
[13]We examined the timeliness of Board case processing in National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters (GAO/HRD-91-29, Jan. 7, 1991). We reported that more than a year may elapse before a case that goes before the Board is decided. (See app. I for more details on case processing.)

[14]In reporting on characteristics of federal contractors, including contract dollars received, we are referring here to parent firms. In some cases, the violator might be a division, subsidiary, or have some other legal relationship with the parent firm. We did not determine the extent to which violators of NLRA were federal subcontractors (firms who receive a portion of the contract award through a primary federal contractor) because we could not identify these subcontractors. Because any violation may have been committed more than a year before the Board's decision, firms we identified as violators per Board decisions issued in fiscal years 1993 and 1994 may not have been receiving federal contracts at the same time that they committed violations.

[15]Of about 1,600 NLRB cases decided by the Board during fiscal years 1993 and 1994, 6 percent of the cases (88) involved 80 firms (some with more than one case) with both violations and federal contracts.

our detection. Also, we were unable to verify those firms that went out of business or relocated or for which location data in NLRB case data or FPDS were incomplete or inaccurate.

Figure 1: Percent of Contract Dollars That Went to Firms Violating NLRA (Fiscal Year 1993)



Note: Violators refer to the parent firm. In some cases, the violations may have occurred within a subsidiary or division of the parent firm.

Source: FPDS, fiscal year 1993.

Each of these six violators, listed below, who together received almost 90 percent of the more than $23 billion in contracts awarded to all violators, received more than $500 million in fiscal year 1993 contracts. (See app. II, fig. II.4.) They are also among the largest federal contractors, ranking in the top 20 firms receiving federal contract dollars.[16]

[16]All but the Fluor Corporation were among the top 20 federal contractors by contract dollar in fiscal year 1994 as reported in Government Executive's most recent annual report on federal purchasing. This annual report is also based on FPDS.

- McDonnell Douglas ($7.7 billion),[17]
- Westinghouse Electric ($4.9 billion),
- Raytheon ($3.5 billion),
- United Technologies ($3 billion),
- American Telephone and Telegraph Company (AT&T) ($1.4 billion),
- Fluor Corporation ($508 million).[18]

In contrast, contract dollars were not as concentrated among all federal contractors. Firms receiving more than $500 million in contracts got about one-half (47 percent) of all federal contract dollars.

Firms Interfered With Workers' Right to Bargain Collectively in About One-Half of the Cases

Of the 88 cases decided by the Board during fiscal years 1993 and 1994 involving federal contractors, the Board found that the firm had interfered with workers' right to organize, a Section 8(a)(1) violation, in 44 cases. In 45 of the 88 cases, the Board found that a firm had refused to bargain collectively with employee representatives, a Section 8(a)(5) violation. Thirty-three of the 88 cases involved discrimination by a firm in hiring or condition of employment, which is a violation of Section 8(a)(3). Far fewer cases involved other types of violations.[19] (See app. II, fig. II.1.)

Firms Ordered to Reinstate or Restore Workers in About 40 Percent of Cases

In 35 of the 88 cases, the Board required firms to reinstate or restore workers as the remedy for violations.[20] In 32 of these 35 cases, firms were ordered to reinstate unlawfully fired workers. In 6 of them, firms were ordered to restore workers who had been subjected to another kind of

[17]Very recently, the U.S. Court of Appeals (D.C. Circuit, September 13, 1995) remanded the NLRB cases against McDonnell Douglas Corporation to the Board. The U.S. Court of Appeals asked the Board to reconsider its decision. The Board's additional review could affect McDonnell Douglas Corporation's classification as a labor law violator.

[18]Raytheon committed labor law violations at a Pensacola, Florida, facility of its subsidiary, Beech Aerospace Services, Inc. Similarly, United Technologies Corporation had violations at a Middletown, Connecticut, facility of its division, Pratt & Whitney Aircraft. The Fluor Corporation had violations at several facilities in Kentucky of its subsidiary, Fluor Daniel, Inc.

[19]A case may involve more than one type of violation. Only 4 cases involved a firm dominating or interfering with the formation or administration of a labor organization, a Section 8(a)(2) violation. In only 3 cases was the firm found to have discharged or discriminated against an employee because he or she had filed charges or given testimony under NLRA, a Section 8(a)(4) violation.

[20]More cases involved an order to reinstate or restore workers than contained a Section 8(a)(3) violation, which refers to discrimination in hiring or condition of employment. This is because the Board might order that a firm reinstate a worker when another type of violation was committed. For example, in the case involving Shell Company (Puerto Rico) Limited, the Board found that the firm committed a Section 8(a)(5) violation by refusing to bargain with the union when it "unilaterally" changed the collective bargaining agreement, laying off or terminating seven employees in the unit. The Board ordered the firm to reinstate these employees.

unfavorable change in job status. An unfavorable change in job status could mean the worker, for example, was suspended, demoted, transferred, or not hired in the first place because of activities for or association with a union. Some cases involved both an order to reinstate fired workers and an order to restore workers who were subjected to another kind of unfavorable change in job status. (See app. II, fig. II.2.)

In 44 of the 88 cases, the Board ordered the firm to pay back wages to affected workers. The Board ordered the firm to restore benefits in 28 cases. In most cases, back wages or benefits were owed to individual workers who had been illegally fired or subjected to another kind of unfavorable change in job status. However, in 12 cases, wages or benefits were ordered restored to all workers in the bargaining unit because the firm illegally failed to pay wages or benefits as required under its contract with the union. Some cases involved both a remedy for individual workers owed back wages or benefits as well as the same type of remedy for the entire bargaining unit. (See app. II, fig. II.2.)

The Board also ordered other types of remedies in many of these 88 cases. For example, in 33 cases, the Board ordered the firm to bargain with the union.[21] In 24 cases, firms were ordered to stop threatening employees with the loss of the job or the shutdown of the firm. Firms were ordered in 33 cases to stop other kinds of threats, such as interrogating employees and circulating lists of employees associated with the union. To facilitate the bargaining of a contract, the Board ordered firms to provide information to the union in 16 cases. (See app. II, fig. II.3.)

Nearly 1,000 Individual Workers Directly Affected by Violations and Remedies

Nearly 1,000 individual workers and thousands of additional workers represented in 12 bargaining units were directly affected by violations of the act in these 88 cases. During fiscal years 1993 and 1994, the Board ordered firms to reinstate or restore 761 individual workers to their appropriate job position. These workers had either been fired or experienced another kind of unfavorable change in job status; for example, they were transferred or not hired. These workers are included among those who were paid back wages or had benefits restored. Altogether, 801 individual workers were paid back wages and 462 workers had benefits restored because of Board-ordered remedies. In addition, the

[21]The Board's decision might also declare that the firm must recognize the union or honor the bargaining agreement.

Board ordered firms to restore wages and benefits to contract levels for thousands of workers represented in 12 bargaining units.[22]

Characteristics of Federal Contractors That Violated NLRA

Most of the contracts awarded to violators in fiscal year 1993 came from the Department of Defense and went to firms primarily engaged in manufacturing. The violations occurred in facilities owned or associated with parent firms that typically had more than 10,000 employees or over $1 billion in annual sales.

About $17 billion in contracts that went to violators came from the Department of Defense, accounting for 73 percent of such contracts. In addition to Defense, significant contract dollars were awarded to violators by the Department of Energy ($3.7 billion), National Aeronautics and Space Administration ($1.2 billion), and GSA ($702 million). Similarly, these four agencies were the source of most contract dollars (88 percent) to all federal contractors. However, a higher percentage of contract dollars awarded to violators came from the Departments of Defense and Energy as compared with that awarded to all federal contractors from these two agencies. (See app. II, fig. II.5.)

Most contract dollars—$15.6 billion or 67 percent—went to violators who were primarily engaged in manufacturing.[23] An examination of more detailed violators' industry codes shows that the highest percentage of contract dollars in manufacturing went toward the production of aircraft parts, guided missiles, and space vehicles. Although manufacturing is the industry in which most violators are engaged, a significant percentage of contract dollars—25 percent, about $6 billion—went to companies primarily engaged in providing services.[24] As is the case for violators, most contract dollars to all federal contractors went to firms in the

[22]For many of the cases, we were unable to determine the total number of workers affected by Board-ordered remedies involving an entire bargaining unit. This is because NLRB officials told us that they did not have reliable data on the number of employees in bargaining units for which remedies were ordered. However, some of these bargaining units affected by Board-ordered remedies are quite large. For example, the Board ordered Pratt & Whitney Aircraft, a division of United Technologies Corporation, to pay raises owed as a result of revised job evaluations to all workers in the bargaining unit of the firm's Middletown, Connecticut, plant. The bargaining unit included about 2,000 workers at that time.

[23]FPDS uses the Standard Industrial Classification (SIC) codes—a federal classification system—in order to describe the type of industry in which the firms receiving federal contracts are engaged. Firms can be classified by 11 major groups—including mining, construction, manufacturing, and services.

[24]We followed the SIC classification system in defining services. Services include hotel and motels, personal services such as drycleaning, business services such as advertising agencies, auto and other repair services, motion pictures, amusement and recreation services, health services, legal services, educational services, and social services.

manufacturing and services industries. However, a lower percentage of contract dollars to all federal contractors went to manufacturing (47 percent) as compared with violators (67 percent). (See app. II, fig. II.6.)

Many violations occurred in facilities owned by firms that had over 10,000 employees or $1 billion in annual sales as of fiscal year 1994.[25] Of the 77 violators for which data on workforce size were available, 35 had more than 10,000 employees. By contrast, only 22 violators had 500 or fewer employees and still fewer (5) were so small as to have 25 or fewer employees. For those 64 violators for which annual sales information was available, 32 had more than $1 billion in sales annually. Ten firms had annual sales greater than $10 billion. (See app. II, figs. II.7 and II.8.)

Fifteen Firms Classified as More Serious Labor Law Violators

Violations of NLRA vary in their severity. Given this variation, we identified 15 firms that might be considered more serious violators using criteria we developed based on our review of Board decisions. These firms meet one or more of the criteria listed below:

- Received a comprehensive Board-ordered remedy. We considered a remedy to be comprehensive if the firm received a broad cease and desist order or a Gissel bargaining order,[26] or was ordered to cease and desist 10 or more types of unlawful actions against workers.[27]
- Took actions affecting the job status of more than 20 workers.
- Had a history of labor law violations.

We identified a total of 12 of the 15 firms as serious violators because the Board-ordered remedy was comprehensive relative to remedies in other cases. This included four firms that received a broad cease and desist order. Cease and desist orders are typically narrow in that they prohibit continuation of the specific conduct found to be unlawful. However, in some cases, the Board issues a broad cease and desist order prohibiting the firm from engaging in a range of unlawful conduct. This may occur when a firm has demonstrated a proclivity to violate the act or when there has been widespread or egregious misconduct. The Board may also issue a

[25]Unlike other data on federal contractors reported here, which are fiscal year 1993 data, data on workforce size and annual sales are either fiscal year 1994 or 1995 data.

[26]A bargaining order is referred to as a Gissel bargaining order because it is based on principles established by the Supreme Court in its 1969 Gissel decision. NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). Although the Board may order a firm to bargain, as we found in 33 of the 88 cases we reviewed, a Gissel bargaining order is a more serious remedy.

[27]We identified some firms as having received a comprehensive Board-ordered remedy for more than one of these reasons.

broad cease and desist order to cover all of an employer's facilities or those facilities where a union has jurisdiction if there has been a pattern or practice of unlawful conduct.[28]

Also among the 12 firms whose Board-ordered remedy was more comprehensive are two firms that received a Gissel bargaining order. The Board imposes a Gissel bargaining order as an extraordinary remedy when the firm has committed ULPs that have made the holding of a fair election unlikely or that have undermined the union's majority and caused an election to be set aside. Also among the firms whose Board-ordered remedy was more comprehensive, we included 10 firms ordered to cease and desist 10 or more types of unlawful actions against workers. Although these cease and desist orders were narrow, the relatively high number of unlawful actions listed in the Board decision suggest that the firm may be a more serious violator.[29]

Examples of violators whose Board-ordered remedies were comprehensive relative to remedies in other cases include Monfort of Colorado, Inc., a meat processing firm, which received a broad cease and desist order because of ULPs committed at its facility in Greeley, Colorado. Monfort of Colorado, Inc., was found by the Board to have discriminated against 258 former union employees by applying more rigorous hiring criteria and taking numerous actions against employees to discourage union activity. Waste Management, Inc. (Salt Lake Division), a firm engaged in waste pickup and disposal, received a bargaining order in addition to a broad cease and desist order. The firm had taken numerous actions against employees in a West Jordan, Utah, facility to discourage union activity and created employer-dominated committees during a union organizing drive that it then dissolved after the union lost the election. The Board ordered a Tyson Foods, Inc., facility in Dardanelle, Arkansas, that engaged in poultry processing, to cease and desist 10 or more types of unlawful actions against workers, including "directing, controlling, circulating, and assisting in the circulation of a petition" to decertify a union.

Firms were also considered to be serious violators if their violations affected the job status of more than 20 individual workers, which was true

[28]A broad cease and desist order also serves as the basis for initiating contempt proceedings if the firm commits additional violations. By contrast, if a narrow order has been issued and the challenged conduct is not covered, an entirely new ULP proceeding may be necessary.

[29]While an order to cease and desist 10 or more types of unlawful actions appeared to us to indicate a more serious violator, this does not trigger any special Board remedy.

for four firms.[30] These workers had either been unlawfully fired or subjected to some other unfavorable change in their job status; for example, not hired in the first place because of activities for or association with a union.

For example, Caterair International, a firm that caters food for commercial airlines, was ordered to reinstate 289 workers who were permanently replaced when they lawfully went on strike at three facilities in Los Angeles to protest ULPs committed by the firm. Fluor Daniel, Inc., a general contractor in the construction business, was ordered to hire 53 applicants who the firm discriminatorily refused to hire at several facilities in Kentucky because of their union affiliation. In addition, the Board ordered Fluor Daniel, Inc., to reinstate another employee who was fired because he refused to cross a picket line.

Another criterion that could identify a serious violator is whether or not the firm has a history of labor law violations. Although we were unable to systematically determine the labor relations record for each of the 80 violators, we were able to determine which of the 15 firms that we had already identified as serious violators also had a history of violations.[31]

Five of the 15 serious violators had a history of labor law violations, and 3 firms (Beverly Enterprises; Monfort of Colorado, Inc.; and Overnite Transportation Co.) had several prior Board decisions against them.[32] Monfort of Colorado, Inc., for example, received another broad cease and desist order in 1987 for firing two workers because of their union activities at a facility in Grand Island, Nebraska. At this facility, Monfort of Colorado, Inc., was also found to have refused to grant contract-specified wage increases to the bargaining unit, assisted an employer-dominated committee, and promised a bonus to discourage workers' support for a union.

Beverly Enterprises, which operates nursing homes, violated the NLRA in additional facilities before its fiscal year 1993 and 1994 violations. For example, in 1986, the Board ordered Beverly Enterprises to bargain with the union and restore wages and benefits that had been unilaterally

[30]We did not include all cases in which the entire bargaining unit was affected, in which there are often more than 20 workers. This is because NLRB officials told us that they did not have reliable data on the number of employees in bargaining units for which remedies were ordered.

[31]Limitations in the NLRB's databases made a comprehensive search and analysis for recidivist violators too time-consuming to complete during this assignment.

[32]History of violations here refers to a firm found to have violated the NLRA in at least one other case since 1980.

changed at a nursing home in Waterloo, Iowa. In 1990, the Board found Overnite Transportation Co., a firm engaged in the interstate transportation of freight, to have unlawfully fired one employee at a facility in Lexington, Kentucky, because he gave testimony at a hearing before an ALJ. In 1982, the Board ordered Overnite Transportation Co. to reinstate a worker who was not recalled because of his union activities at a St. Louis facility. (See app. IV.)

Table 1: Firms Indicated by Criteria as More Serious NLRA Violators (Fiscal Years 1993 and 1994)

Firm	Received a comprehensive remedy[a]	Affected job status of more than 20 workers[b]	Had a history of violations[c]
Bartlett Nuclear, Inc.		X	
Beaird Industries, Inc.	X		
Beverly Enterprises	X		X
Caterair International		X	
Durbin Poultry Company (Marshall)	X		
Flexsteel Industries, Inc.	X		
Fluor Daniel, Inc.		X	X
Lane Construction Company (The)	X		
Monfort of Colorado, Inc.	X	X	X
Overnite Transportation Co.	X		X
Tyson Foods, Inc.	X		
Ursery Companies, Inc.	X		
Victorian Heights Health Care Center	X		
Waste Management, Inc. (Salt Lake Division)	X		
Windsor Castle Health Care Facilities, Inc.	X		

[a]Received a broad cease and desist order, a Gissel bargaining order, or was ordered to cease and desist 10 or more types of unlawful actions against workers.

[b]Ordered to reinstate or restore more than 20 workers who had been unlawfully fired or not hired.

[c]Violated NLRA in at least one other case since 1980.

Information on Federal Contractors Could Enhance NLRB Enforcement

Contract payments may be withheld from federal contractors who have failed to comply with a Board order to restore wages or benefits. This means of collection is referred to as an administrative offset.[33] NLRB officials told us that using administrative offset could help NLRB settle with violators more quickly and avoid a lengthy contempt proceeding. Administrative offset could also result in cost savings to NLRB and the government through reduced litigation as well as more timely restitution to workers. However, NLRB has not been able to use administrative offset as widely as it would like because the agency lacks information to identify which violators receive federal contracts.

Coordination between NLRB and GSA would be necessary if NLRB is to use administrative offset to enhance NLRB enforcement. Through administrative offset, NLRB could notify a contracting agency to withhold contract dollars to a violator of NLRA if the violator refuses to comply with NLRB's order in paying back wages or restoring benefits. NLRB officials told us that administrative offset could be particularly helpful to NLRB in its efforts to recover funds owed by smaller companies and companies that are being liquidated or shutting down their operations.

NLRB has not been able to use administrative offset as widely as it would like because the agency lacks the information to identify which violators had federal contracts. Currently, NLRB does not use a corporate identification number in any of its databases that could be recognized by GSA to identify violators with federal contracts. NLRB officials, however, told us that they see the importance of some form of identification number and are exploring this matter in their current efforts to develop a new database. The new database is intended to combine data across several databases that NLRB now maintains. It will track a case from the filing of a charge to the issuance of a decision or, when relevant, an appeal.

Conclusions and Recommendations

Federal contracts have been awarded to employers who have violated NLRA. We found that 80 firms violated the act and received over $23 billion, about 13 percent of the $182 billion in federal contracts awarded in fiscal

[33]Administrative offset was successfully used recently in an NLRB case, although the offset did not involve a government contractor. The Treasury Department withheld from the payment of an award that Alaska Pulp Corporation had won against the U.S. Forest Service the same amount that NLRB determined the firm owed its employees as a result of various ULPs. The government may use administrative offset to withhold money it owes when the party to whom the money is owed has a debt to the government. It was reasoned that money owed to employees as a result of a ULP could be treated as the equivalent of a debt owed to the United States because NLRB was the only party that could legally pursue collection and NLRB was acting not as a collection agent but as the enforcer of federal labor laws.

year 1993. The Board cases that we examined indicate a range of violations committed and remedies ordered that affect nearly 1,000 individual workers and thousands of additional workers represented in 12 bargaining units. The cases involved 15 firms that might be considered more serious violators based on several criteria, including that the firm received what we considered to be a comprehensive Board-ordered remedy.

NLRB's enforcement of the act could be enhanced by collecting judgments against violators from federal contract awards. Coordination with GSA to identify violators with federal contracts, however, would be necessary if such actions are to be taken. While NLRB officials recognize the importance of being able to identify labor violators who receive federal contracts, they have yet to approach GSA because they did not know the extent to which federal contracts dollars went to violators.

We recommend that the NLRB Chairman and General Counsel and the Administrator of GSA develop an information arrangement approach to facilitate the identification of violators who receive federal contracts.

NLRB Comments

We discussed the results of our work with key officials from NLRB and have incorporated their comments where appropriate. These officials generally agreed with our methodology for identifying NLRA violators with federal contracts. They also agreed with our approach to characterizing Board cases, although they did not comment on our criteria to identify serious violators because we developed these criteria from our case review. NLRB officials also agreed with our recommendation for improving compliance of federal contractors with NLRA and told us that they have already begun to act on it. NLRB officials told us they will soon issue written guidance concerning the expanded use of administrative offset, providing NLRB regional offices specific directions for obtaining assistance from GSA in identifying federal contractors.

GSA Comments

We also discussed the results of our work with GSA officials and have incorporated their comments where appropriate. GSA officials said that they see no major difficulty in coordinating with NLRB to identify which violators receive federal contracts so that contract payments may be withheld through administrative offset. These officials, however, raised concerns that the discussion of debarment as a remedy was inadequate, failing to consider its appropriateness or implementation. We told GSA

officials that this report does not explore issues related to how debarment of federal contractors might be implemented. If the Congress determines debarment to be an appropriate response, implementation concerns such as those raised by GSA could be addressed at that time. Additionally, GSA officials suggested that the feasibility of checking firms' compliance with labor laws as part of the pre-award contract clearance process be explored.

We are sending copies of this report to the NLRB Chairman and General Counsel, the Administrator of GSA, the Secretary of Labor, the Director of the Office of Management and Budget, relevant congressional committees, and interested parties. We also will make copies available to others on request.

If you or your staff have any questions concerning this report, please call Charlie Jeszeck, Assistant Director, at (202) 512-7036 or Jackie Baker Werth, Project Manager, at (202) 512-7070. Other major contributors include Cheryl Gordon, Wayne Turowski, Ronni Schwartz, and Danah Kozma.

Sincerely yours,

Linda G. Morra
Director, Education and
Employment Issues

AMERICAN UNIVERSITY
WASHINGTON, DC

PROFESSOR EDWARD C. SMITH
DIRECTOR OF
AMERICAN STUDIES & SPECIAL ASSISTANT TO THE DEAN
COLLEGE OF ARTS AND SCIENCES

October 24, 1997

Ms. Maria Echaveste
Assistant to the President for Public Liaison
THE WHITE HOUSE

Dear Ms. Echaveste,

It was very nice to meet you and talk for a little while at Wednesday^s UC BERKELEY gathering at The Smithsonian Castle. I am enclosing an article of mine that I wrote for the Close Up Foundation a few months after I left the White House Staff to return to teaching. You may find it interesting.

The only day that I cannot meet you for lunch is Wednesday.....I have a class that meets from 11:20 until 2pm. Take care and I am looking forward to us continuing our conversation.

Sincerely,

Do you want To meet

Prof. Edward C. Smith

(202) 885-1192

Public Expectations of the President

Edward C. Smith

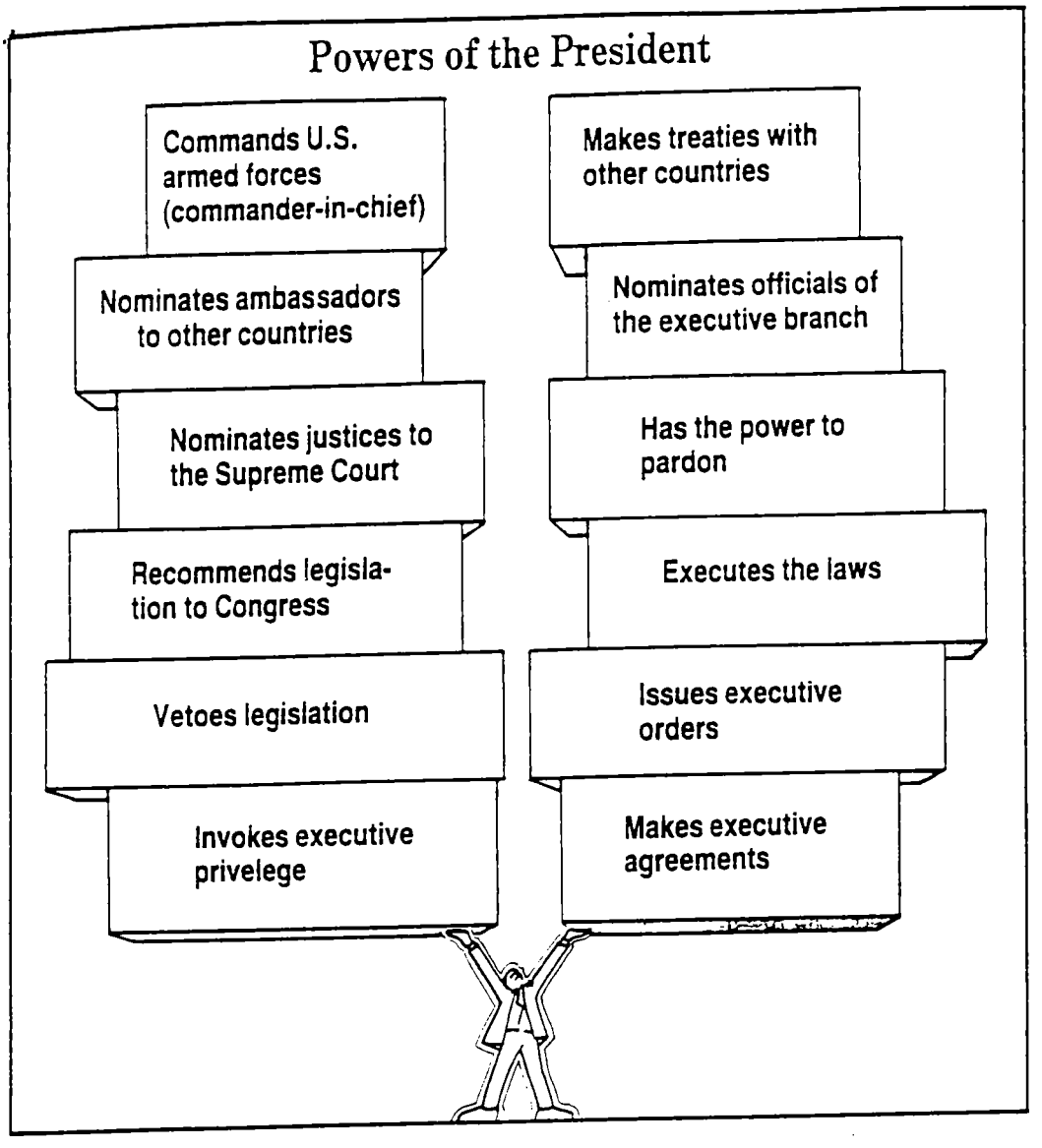
Edward C. Smith is currently a professor at the American University in Washington, D.C. From 1977 to 1978, he served in the Carter administration as the associate director to the assistant to the president for public liaison. In this article, Mr. Smith describes the challenge that faces every president—to be both president and presidential.

Every four years, the American people elect a president to preside over the nation. During the campaign, the candidates' media advisors try to market to the masses the image of a deliberate, decisive, compassionate, and controlled man. They promise that—once in office—their candidate will personally run the government, through the force of his character and charisma, and that he will indeed be both *president* and *presidential*. Yet, after only a few months in office, the nation quickly witnesses the limitations of presidential power. The president's "honeymoon" with the American electorate is invariably short-lived. For most of his administration, a president will be challenged by nearly every sector of public opinion, either for retreating from earlier campaign promises or for not advancing others. The persistence of such criticism can steadily chisel away at the president's stature among foreign and domestic leaders. Such criticism can also seriously limit his ability to govern by reducing the influence of his endorsement of any given set of issues.

America gained its independence through a revolutionary war against royalty. Indeed, the formation of our new nation was made possible by a rare combination of leaders with uncommon skill and tenacity. Our nation's founders were able to arouse a spirit of admiration and allegiance, sacrifice, and service from the citizens who followed them. However, although we honor the common man, we also covet "royalty" (as evidenced by the homage we pay to celebrities in every walk of life from athletes to academics and most especially in our deferential treatment toward foreign royalty). This acceptance and promotion of the celebrity influences our attitude toward the president; we want him to be one of us and above us at the same time.

A key factor contributing to a president's popularity is his ability to inspire the nation. This is particularly important since, for the past twenty years, the political process in America has become a form of "theater": Washington, D.C., serves as center stage, and the rest of the nation, even the rest of the world, serves as the audience. Thus, the president is elected not only to lead the nation, but he is also expected to play the role of the nation's "leading man."

In addition to being the nation's capital, where all of the major departments and agencies of the federal government are housed, Washington, D.C., is also the host city for foreign embassies



Article II of the Constitution details the powers of the president. Throughout our country's history, changing social, political, economic, and international conditions have led different presidents to interpret these powers in different ways.

and legations and for the international press corps. In addition, within the past few decades, Washington has become an oasis for public interest, corporate, and diplomatic lobbyists, as well as attorneys, management consultants, and brokers for narrower interests. Most, if not all, of these individuals at one time or another deal directly or indirectly with the federal government. The success of these ambassadors, who represent a wide array of domestic and global concerns, is measured largely by how effectively they serve as the link between the federal bureaucracy and the people they represent.

In this setting, the president must assert himself as the stellar star among a constellation of stars. He must establish himself as a leader, not a manager. He is expected to be on a "hill" examining the vast panorama of national and global problems, not in the trenches exhausting himself by going one-on-one with individual issues. Furthermore, a president strives to be identified with certain national themes, which, if not unique, are at least unifying. Above all else, it is the president who—through his manner, conduct, vision, and selection of principal staff—establishes the tone of the nation.

A president's success is largely determined by how well he deals with Congress, the press, foreign leaders, career civil servants, and public interest and corporate lobbying groups. Consequently, to cope with the ever-increasing and diverse demands of each group, the president must employ all of the resources and perquisites of his office (e.g., invitations to the White House, Camp David, Air Force One, etc.) in order to inform, educate, and influence the nation. If he shuns using presidential perquisites, as Jimmy Carter did, or overindulges in them, as Richard

Nixon did, a president's course of action is likely to end in failure. For the most part, Ronald Reagan has balanced his use of the privileges of his office to the pursuit of his political agenda.

In his dealings with Congress, the president is at a decided disadvantage unless he has massive popular support. First, he is vastly outnumbered (Senate and House of Representatives combined) by over 500 to 1. Second, senators in particular are members of an elite club of 100 and are elected to terms of office that exceed the president's by two years. Furthermore, during the past twenty years it has been the Senate—not the universities, corporations, or any other institution—that has served as the most important nursery for presidential aspirants. In addition, a chairman of an influential Senate committee (such as appropriations or foreign affairs) can wield enormous political power by preventing the president's proposals from ever getting to the Senate floor for a final vote. Finally, although the president works and resides in the splendor of the White House, the architectural grandeur of the Capitol is equally imposing. It instills a sense of power in the people who work there and helps to bring the prestige of Congress up to that of the president.

In closing, we extend to the president the authority to execute a limited amount of power. However, let it be understood that through this authority we entrust to him the responsibility for galvanizing the necessary resources and talent to advance the political agenda that he was elected to achieve. Our president is not and never will be a prince; rather, he is the first among all other elected and appointed officials who share the distinguished honor of being public servants to the American people.

Questions to Consider

1. What do you think is the difference between "being president" and "being presidential?"

2. Why must presidents establish themselves as the "stellar star among a constellation of stars?"

3. Do voters expect too much of presidents? Why or why not?

EDWARD C. SMITH

Clinton should look to JFK for lessons

The Eagle
MONDAY, APRIL 14, 1997

Washington, D.C. has never recovered from the assassination of John F. Kennedy. His death devastated the city, leaving it in a state of extended mourning that continues through today. And although he is buried nearby at Arlington Cemetery and the Kennedy Center for Performing Arts is an elegant living memorial to his legacy, the pain of the loss still lingers.

The Kennedy family, with John being its most celebrated and glamorous member, is, in the minds of many Americans, our nation's closest facsimile to European royalty. Although our founding fathers revolted against monarchy, and of course we subject our presidents to checks and balances and numerous other constraints designed to limit their authority, nonetheless, there are those who believe that every four years "We The People" elect a "king" for whom we provide a "palace" (the White House), a "praetorian guard" (the Secret Service), a "manorial retreat" (Camp David) and many other regal-like perquisites, all of which are provided at the taxpayers expense.

President Kennedy was born into considerable wealth, attended the finest schools, became a decorated World War II hero, married an extraordinarily beautiful and sophisticated wife, and fathered two handsome and successful children. Suffice it to say, Washington and Kennedy were destined to become one. This community was the perfect setting for his political rise and the subsequent reign of "Camelot."

During his administration, partly due to the pervasive influence of his well-connected father, Kennedy made certain to never sever ties with his elders, particularly those within the Democratic Party who had achieved elder-statesman status. Thus the likes of Dean Acheson, Averell Harriman, Clark Clifford and so many others were readily available to him as advisors and as "ambassadors" to a wide array of contentious constituencies who could prove troublesome if not properly courted and controlled. As a well-bred "patrician," Kennedy knew how to bond with the masses while maintaining at the same time a respectable distance from them. Kennedy, with all of his inherited wealth, was still considered the poor man's president. Indeed, it was quite common to find in the most impoverished black homes the prominent display of three photographs: those of Jesus Christ, Martin Luther King and John F. Kennedy.

Bill Clinton was born of humble origins. His family's support system was minimal. And although he attended Georgetown, Oxford, and Yale Law School, he also chose to assiduously avoid military service during the divisive Vietnam War era. Like Kennedy, who was a boyhood idol, Clinton is a natural-born politician. He has the cosmetic attractiveness and gregarious persona that ingratiates him—at least superficially—to nearly any audience. Thus during his campaign for the presidency, many party leaders forgave Clinton for his alleged sexual indiscretions, and a flood of other improprieties, and championed his cause, dismissing most rumors as mean-spirited and "not important." Consequently, when he was first elected president, with his only previous exposure to the peculiar world of Washington being that of a young college student from the American outback, the city's liberal Democratic establishment embraced him with unbridled enthusiasm. His first inauguration was more like a coronation. It was as if Kennedy and Camelot were alive again, and after a long absence, the king had returned to claim his rightful throne.

However, not long into his administration Washington discovered that Clinton was not the latter day heir apparent to the Kennedy legacy that it had so much wanted him to be. The most noxious of political sins is ingratitude. And although Clinton had

acquired a feint patina of urbaneness, it, however, was unanchored to the ancestral rituals and routines of the ruling elite, the principal component of which was paying respectful deference to the party in power's "wiseman," its sanhedrin.

I recall an incident that occurred a few weeks after the election when I was having lunch with former Maine Senator and Governor Edmund Muskie (now deceased and whose youngest son had been a student of mine) at the Madison Hotel. Across the dining room from us was a table that included many of the leading luminaries of the Clinton transition team. One of the people was Dr. Juanetta Cole, President of Spelman College in Atlanta, who it was rumored was about to be rewarded with the appointment of Secretary of Education, which would have made her the first black American to hold that particular cabinet post. I had met her before and asked the Senator if he wished to be introduced. He quietly said, without any trace of anger, "No, Ed, that won't be necessary. They know who I am, and they see where I am." In the hour or so that followed, no one came to greet Muskie, who was himself a vice presidential contender in 1968, or to acknowledge his presence in any way. I thought if this kind of disrespect is happening here and elsewhere in Washington, then this administration is destined for many difficult days ahead.

Early on, the Clinton White House became populated with young, mostly inexperienced, true-believing sycophants who made themselves into submissive "courtiers." As always before, such character and conduct by a leader's immediate intimates would prove damaging. In "Mein Kamph" Hitler said "Youth is the building material and plans for the future. Maturity takes and constructs the stones, provided the so-called wisdom of old age does not suffocate the genius of youth."

Albert Speer, Hitler' s architect and chief munitions production minister knew from firsthand experience that the fusion of youthful fire and the hunger for fame is inevitably a self-destructive blend. He wisely observed in his award winning 1970 book, "Inside the Third Reich, "There is a special trap for every holder of power, whether the director of a company, the head of a state, or the ruler of a dictatorship. His favor is so desirable to his subordinates that they will sue for it by every means possible."

He continues "Servility becomes endemic among his entourage, who compete among themselves in their show of devotion. This in turn exercises a sway upon the ruler, who becomes corrupted in his turn. The key to the quality of the man in power is how he reacts to this situation."

Today, the Clinton White House is embroiled in constant crisis management and damage control. So much of this could have been easily avoided, I believe, had the president practiced the time-honored tradition of soliciting the support and counsel of the large number of his party's elders, such as Walter Mondale, George McGovern, Robert Strauss, Sargent Shriver, Joseph Califano, to name only a few of those whose insights and experiences far exceed that of any member of his current staff and each one of whom would have been greatly honored to be called to come to his aid. Now I believe it may be much too late for the President to make such calls because he has evolved into something that precious few politicians recover from, meaning that he has, through his own hubris, become an embarrassment among his own advocates.

The ancient Romans knew well that all fame is fleeting, and perhaps Shakespeare was prophetically correct when he said, "Uneasy lies the head that wears the crown."

Edward C. Smith is Director of American Studies at American University.

BOOK REVIEW / Edward C. Smith

Guiding hand in the civil rights arena

Frederick Douglass commented that "There is no such thing as luck. Instead, what we call 'luck' is that moment in life where preparation and opportunity converge," Louis Martin was a disciple of Douglass' line of thinking. A little-known black advocate for social change, Mr. Martin's behind-the-scenes influence helped chart the courses of the Kennedy, Johnson and Carter administrations.

In his book "Walking with Presidents," Alex Poinsett, an award-winning journalist for Ebony magazine, chronicles Mr. Martin's life from his days as a young Midwestern journalist to his attainment of the coveted title, "consummate Washington insider."

WALKING WITH PRESIDENTS: LOUIS MARTIN AND THE RISE OF BLACK POLITICAL POWER
By Alex Poinsett
Introduction by David Garrow
Madison Books, $24.95, 251 pages
REVIEWED BY EDWARD C. SMITH

The author introduces us to Mr. Martin as a young boy growing up in post-World War I Savannah, Ga., where he first ran up against overt racism. Both of his parents were well-educated and instilled in him a lifelong love of learning, as is evidenced by the fact that Mr. Martin had read the entire set of Harvard Classics by the time he graduated from high school. He went on to Fisk University before transferring to the University of Michigan from which he graduated in 1934.

Mr. Martin's first professional work was as a journalist, of which he said, "It wasn't just a job with me. I looked upon it as a lever to move this mountain of racism." During this period, Mr. Martin became very involved in the labor movement and was a staunch supporter of President Franklin Roosevelt's economic recovery initiatives. Impressed by Roosevelt's progressivism, he used his columns to encourage blacks to leave the Republican Party — the Civil War party of black liberation — and join the Democratic Party.

Later, with his work toward achieving racial equality still incomplete, Mr. Martin found himself drawn to presidential candidate John F. Kennedy. He employed his vast network of friends in the national black press to ensure that Kennedy received maximum exposure in black communities across the country.

But, as Mr. Poinsett writes, "for all their idealism and campaign promises, the civil rights arena was for [the Kennedy Administration] foreign ground." Therefore, Mr. Martin saw it as his mission to make the president understand that racial discrimination was an evil that had to be expunged from society. To this end, he worked intimately with President Kennedy, Attorney General Robert Kennedy and the president's brother-in-law, Sargent Shriver, who headed the Peace Corps and later the War on Poverty.

Mr. Martin understood how important it would be to have blacks appointed to the higher and middle echelons of the federal establishment. He compiled extensive lists of prominent blacks in every imaginable field of endeavor and labored long and hard to secure their appointments. And although he urged the president to make bold gestures in the area of civil rights, Mr. Martin was, above all else, a politcal pragmatist who counseled caution in the face of a Congress that, largely because of the seniority system, remained a Southern province ruled by segregationists.

In the wake of the Kennedy assassination, President Lyndon Johnson promised to continue the Kennedy legacy. At Mr. Martin's urging, Johnson appointed Andrew Brimmer, the first black economist to serve on the Federal Reserve Board, nominated Thurgood Marshall to the Supreme Court, signed into law the Voting Rights Act and expanded the scope of the War on Poverty.

Martin Luther King, Jr., whom Mr. Martin greatly admired, was undoubtedly the civil rights movement's foremost "field commander." But without Mr. Martin playing his role in the corridors of Congress, the White House and the corporate world, the movement would have accomplished far less than it ultimately did.

The rise of black militancy muted the voices of moderation, relegating men like Mr. Martin to the sidelines. President Johnson felt betrayed by the riots of the late-1960s, carried out mostly by the disenfranchised blacks whose cause he had courageously championed against strident Southern opposition. Crushed by failures on the homefront and in Vietnam, the president decided not to run for reelection.

The advent of the Nixon administration removed Mr. Martin from public life, but he returned to Washington in 1978 as a member of the Carter White House staff. Although he admired Mr. Carter and his social agenda, Mr. Martin was ultimately unable to impart to the Georgians the lesson he had learned so well, namely that politics (especially at the federal level) is most effectively implemented not by the power of command, but through the art of courtship and compromise.

Readers will enjoy the opportunity to meet, in the pages of this fine book, an immensely modest man who sought not celebrity but only the opportunity to serve, and who didn't mind if others were lauded for his labor. Such a person is truly a rarity in American politics.

Edward C. Smith teaches at American University and served on the White House staff during the Carter Administration.

~~CONFIDENTIAL~~

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MEMO

TO: Maria Echaveste
FR: **Jack Bendheim**
DATE: **October 31, 1997**

Thought you would like to see the attached. Mel is really doing great work.

MELVYN I. WEISS SPEECH
B'NAI B'RITH ARGENTINA
DIGNITY AND JUSTICE AWARD
OCTOBER 15, 1997

GOOD AFTERNOON. IT IS A SPECIAL PLEASURE FOR ME TO BE HERE, AT THE B A STOCK EXCHANGE, WHERE I HAVE SO MANY CLOSE AND WONDERFUL FRIENDS. MY GRATITUDE TO THE STOCK EXCHANGE FOR PERMITTING THE AWARD TO BE GIVEN TO ME HERE, IS ONLY EXCEEDED BY MY ENORMOUS RESPECT FOR ITS LEADERSHIP IN PROMOTING HUMANITARIANISM, AS WELL AS THE HIGHEST LEVELS OF PROFESSIONALISM IN ITS FINANCIAL ENDEAVORS.

I WANT TO BEGIN BY SAYING THAT I AM EXTREMELY HONORED TO BE RECOGNIZED BY THE B'NAI B'RITH OF ARGENTINA. THIS IS A VIBRANT BRANCH OF WHAT I BELIEVE TO BE ONE OF THE MOST IMPORTANT AND INFLUENTIAL HUMAN RIGHTS ORGANIZATIONS IN THE WORLD. THE WORK THE B'NAI B'RITH CONTINUES TO DO HERE IN ARGENTINA, IN THE UNITED STATES, IN ISRAEL AND IN 52 OTHER NATIONS ENSURES THAT THE JEWISH PEOPLE HAVE A STRONG VOICE AND A POWERFUL ADVOCATE AROUND THE WORLD.

THE B'NAI B'RITH OF ARGENTINA HAS MY UTMOST RESPECT FOR MAINTAINING UNITY AND STRENGTH IN THE JEWISH COMMUNITY HERE, OFTEN IN THE FACE OF TREMENDOUS ADVERSITY AND HARDSHIP. AS A RESULT OF ITS EFFORTS, THE JEWISH COMMUNITY IN ARGENTINA REMAINS A MODEL OF COURAGE AND A SOURCE OF PRIDE FOR JEWS EVERYWHERE.

WHEN DR. KOPEC INFORMED ME THAT I WAS GOING TO BE PRESENTED WITH THE DIGNITY AND JUSTICE AWARD, IT GOT ME THINKING ABOUT THOSE TWO PRINCIPLES AND EXACTLY WHAT THEY MEAN. DIGNITY

AND JUSTICE. THESE ARE NOT MERELY ABSTRACT PRINCIPLES. NOR SHOULD THEY BE CONSIDERED LUXURIES. THEY ARE ESSENTIAL AND VITAL PARTS OF THE FOUNDATIONS OF FREE SOCIETIES.

WHEN I THINK OF THE CONCEPT OF DIGNITY, I PARTICULARLY FOCUS ON THE IDEA OF SELF-RESPECT. ALL PEOPLE, IN THEIR RELATIONSHIPS WITH GOVERNMENT, AND IN THEIR INTERPERSONAL RELATIONSHIPS, MUST BE AFFORDED THE RIGHT TO SELF RESPECT, AND ALSO MUST GIVE RESPECT TO OTHERS. THE SOCIAL CONDITIONS THAT ALLOW SELF-RESPECT TO BE ATTAINED, AND TO THRIVE, ARE, REGRETTABLY NOT ALWAYS EASY TO ACHIEVE - EVEN IN DEMOCRATIC SOCIETIES. ONE INSTITUTION THAT IS NECESSARY TO NURTURE SELF RESPECT IS A FAIR SYSTEM OF JUSTICE.

NOW, I DON'T BELIEVE THAT I AM ABUSING MY WELCOME HERE BY POINTING OUT THE FAILURES IN ARGENTINA'S PAST IN ENSURING INDIVIDUAL RIGHTS OR IN PROVIDING A FAIR AND PROPER JUSTICE SYSTEM. WHAT I WOULD LIKE TO ADDRESS TODAY ARE MY OBSERVATIONS CONCERNING THE PRESENT STATE OF AFFAIRS IN ARGENTINA.

I BELIEVE THAT SUBSTANTIAL PROGRESS IS BEING MADE ON THIS FRONT. AS AN EXAMPLE, IN MY MANY CONVERSATIONS WITH PRESIDENT MENEM AND OTHER GOVERNMENT OFFICIALS, I HAVE DEVELOPED CONFIDENCE THAT THEY ARE COMMITTED TO BRINGING THE TERRORISTS RESPONSIBLE FOR THE AMIA AND ISRAELI EMBASSY BOMBINGS TO JUSTICE AND MAKING REAL CHANGE HERE. BUT SOMETIMES A NATION'S ENTRENCHED POLITICAL SYSTEM MAKES IT DIFFICULT TO ACHIEVE REFORMS AND MOVE A NATION FORWARD. IN MY OPINION, THAT IS THE CASE HERE IN ARGENTINA.

THE POLITICAL HISTORY OF ARGENTINA HAS HAD TURBULENT PERIODS, BUT I BELIEVE PRESIDENT MENEM HAS THE COUNTRY GOING IN THE RIGHT DIRECTION. THERE IS PROBABLY MORE STABILITY IN ARGENTINA NOW THAN THERE HAS EVER BEEN BEFORE, BUT THERE IS STILL MUCH WORK TO BE DONE TO ENSURE ARGENTINA'S PROPER ROLE IN A GLOBALIZED ECONOMIC COMMUNITY. IT'S MY CONVICTION, BASED UPON THE GENERAL CRITICISM I HAVE HEARD THAT THE GOVERNMENT MUST MAKE REFORMING THE JUSTICE SYSTEM A TOP PRIORITY - AND THE PEOPLE MUST SUPPORT THESE EFFORTS BY MAKING THEIR VOICES HEARD. YOUR JUSTICE SYSTEM, ACCORDING TO NUMEROUS NEWSPAPER AND OTHER ACCOUNTS, HAS BEEN HURT BY CORRUPTION, AND INSTANCES OF DISHONESTY AND ANTI-SEMITISM - NOT UNLIKE, I MIGHT NOTE, THE LEGAL SYSTEMS OF MANY NATIONS. IT'S TIME FOR THIS TO CHANGE. ONLY THEN WILL THE PEOPLE OF ARGENTINA ENJOY THE LIBERTIES TO WHICH THEY - AND EVERYONE - ARE ENTITLED, AND ONLY THEN WILL THEY HAVE THE CONFIDENCE THAT THEIR GOVERNMENT IS DOING ALL IT CAN TO PROTECT THEM FROM FURTHER ACTS OF SENSELESS VIOLENCE.

I READ, NOT TOO LONG AGO, ABOUT A POWERFUL BUSINESSMAN FROM EUROPE WHO HAD EXPLORED SIGNIFICANT INVESTMENT OPPORTUNITIES HERE IN ARGENTINA, BUT ULTIMATELY DECIDED AGAINST PURSUING THOSE OPPORTUNITIES BECAUSE OF THE STATE OF AFFAIRS HERE. HE SAID IN THE ARTICLE, QUITE BLUNTLY, THAT UNTIL ARGENTINA HAS AN HONEST COURT SYSTEM IN PLACE, HE WASN'T GOING TO PUT HIS CAPITAL IN JEOPARDY. HE ISN'T ALONE. BUSINESSES, LIKE INDIVIDUAL CITIZENS, CANNOT PROSPER IN AN ENVIRONMENT WHERE THEIR RIGHTS ARE NOT SUFFICIENTLY PROTECTED BY THE LEGAL SYSTEM.

JUST TWO MONTHS AGO, I PARTICIPATED IN A LEGAL SEMINAR IN SALZBURG, AUSTRIA WITH REPRESENTATIVES OF 38 NATIONS. THE BIGGEST CONCERN EXPRESSED BY THE MAJORITY OF THOSE INVOLVED WAS ENSURING THE INTEGRITY OF THE COURTS IN THEIR RESPECTIVE COUNTRIES. I FOUND IT INTERESTING - AND ENCOURAGING - THAT THIS CONCERN WAS ESPECIALLY STRONG AMONG REPRESENTATIVES FROM ARGENTINA, MEXICO AS WELL AS OTHER COUNTRIES. THEY WERE QUITE OPEN ABOUT CORRUPTION IN THEIR COURTS AND SOUGHT ASSISTANCE TO CURE THE PROBLEM. THE GROUP DECIDED TO FORM A LAWYERS' ASSOCIATION TO EXPLORE WAYS TO REFORM THE SYSTEMS SO AFFECTED.

IN MANY WAYS, THE POLITICAL AND LEGAL SYSTEM IN THE UNITED STATES, EVEN THOUGH NOT PERFECT, HAS SERVED AS A MODEL OF INTEGRITY FOR MORE THAN TWO HUNDRED YEARS. U. S. CITIZENS HAVE HAD, FOR THE MOST PART, GREATER ACCESS TO THE LEGAL SYSTEM AND THE COURTS THAN ANYONE ELSE IN THE WORLD. WHETHER THEY HAVE BEEN WRONGED BY THE GOVERNMENT, BY HUGE CORPORATIONS, OR BY OTHER INDIVIDUALS, U.S. CITIZENS ARE ABLE TO SEEK REMEDIES IN COURT THAT PROTECT THEM FROM BEING EXPLOITED OR HAVING THEIR RIGHTS VIOLATED.

THE CLASS ACTION SUIT IS A SHINING EXAMPLE OF WHY THE U. S. LEGAL SYSTEM WORKS, I THINK, BETTER THAN MOST. CLASS ACTIONS EMPOWER MILLIONS OF CONSUMERS WHO HAVE BEEN WRONGED. THESE ARE AVERAGE PEOPLE WHO HAVE BEEN TREATED UNFAIRLY BY SOME OF THE BIGGEST CORPORATIONS IN OUR COUNTRY. THEY ARE VICTIMS OF AUTO MANUFACTURERS' FAULTY PRODUCTS; CUSTOMERS WHO HAVE BEEN DUPED BY THEIR INSURANCE COMPANY'S UNSCRUPULOUS SALES PRACTICES;

AND SHAREHOLDERS WHO'VE BEEN MISLEAD BY DISHONEST EARNINGS PROJECTIONS THAT RESULTED IN SERIOUS FINANCIAL LOSS. THE CLASS ACTION LAWSUIT IS A UNIQUE ELEMENT OF THE U. S. LEGAL SYSTEM THAT ALLOWS THESE AVERAGE CITIZENS TO FIGHT BACK. THE LARGER POINT, OF COURSE, IS THAT A FAIR AND ACCESSIBLE JUSTICE SYSTEM BETTER ENSURES DIGNITY AND SELF RESPECT FOR ITS CITIZENS.

I AM NOT HERE TO TELL YOU THE U. S. SYSTEM OR ITS VALUES ARE MANDATORY TO ACHIEVE JUSTICE. WHAT IS MANDATORY IS THAT THE PEOPLE HAVE CONFIDENCE IN A LEGAL SYSTEM'S FAIRNESS, EFFECTIVENESS, INTEGRITY AND OPENNESS.

FOR THE JEWISH PEOPLE, LAW AND DIGNITY ARE AS INTEGRAL TO OUR HERITAGE AS ANYTHING ELSE. WHAT I THINK HAS TRULY DISTINGUISHED OUR PEOPLE THROUGH THE CENTURIES IS THE DIGNITY WE HAVE MAINTAINED IN THE FACE OF ONGOING PERSECUTION - FROM ANCIENT TIMES, TO THE HOLOCAUST, TO THE TERRORISM OF TODAY. WE HAVE ALWAYS LOOKED FIRST TOWARD PEACE, EVEN THOUGH WE HAVE CONSTANTLY BEEN TAUNTED TO COMBAT VIOLENCE WITH VIOLENCE.

AS A JEW, OF COURSE MY FIRST INSTINCT HAS ALWAYS BEEN TO WORK ON BEHALF OF MY PEOPLE. THAT IS WHY I HAVE BEEN SO ACTIVE HERE IN ARGENTINA, WITH THE ANTI-DEFAMATION LEAGUE IN THE U.S. AND WITH THE ISRAEL POLICY FORUM, AMONG OTHER CAUSES. BUT I HAVE COME TO REALIZE THAT IT IS EQUALLY IMPORTANT TO FIGHT AGAINST HATRED AND INJUSTICE AGAINST ALL PEOPLE, NO MATTER THEIR NATIONALITY, RACE OR RELIGION. DEMONSTRATIONS OF HATRED TOWARD ONE GROUP - LIKE HORRORIFIC ACTS OF TERRORISM - ARE AN ASSAULT ON THE DIGNITY OF THE ENTIRE INTERNATIONAL COMMUNITY.

UNFORTUNATELY, TERRORISTS ARE OFTEN SUCCESSFUL IN EXPLOITING OUR DIFFERENCES. BUT WE MUST NOT HATE EACH OTHER BECAUSE OF OUR DIFFERENCES. INSTEAD, WE SHOULD CELEBRATE WHAT MAKES EACH CULTURE DISTINCT AND UNIQUE - AND WE SHOULD EMBRACE THESE DISTINCTIONS THAT CREATE A NATIONAL PERSONALITY.

LET EACH NATION INSIST UPON THE FULL BENEFITS OF A JUST SOCIETY BY ENSURING EVERY PERSON THE RIGHT TO HUMAN DIGNITY. ONLY BY MAINTAINING A HIGHLY PROFESSIONAL AND FAIR JUSTICE SYSTEM, THAT IS OPERATED OPENLY AND PROVIDES ACCESS TO ALL, CAN THESE IDEALS BE ACHIEVED.

LET THE NATIONS OF THE WORLD BEGIN TO WORK TOGETHER TO ESTABLISH COMMON STANDARDS OF JUSTICE IN THEIR LEGAL SYSTEMS. BY DOING THIS, WE, AS AN INTERNATIONAL COMMUNITY, WILL IMPROVE RELATIONS AMONG NATIONS AND CULTURES. WE WILL BRING GREATER PEACE TO THE WORLD. OUR MARKETS WILL BE ABLE TO WORK COOPERATIVELY, AND MOST IMPORTANTLY, WE WILL GO A LONG WAY TOWARD GUARANTEEING THE DIGNITY OF THE INDIVIDUAL.

A\MIW.SPE-DEB
10/31/97

LA NACION

Buenos Aires, jueves 16 de octubre de 1997

Melvyn Weiss mostró, orgulloso, su premio (Fabián Marelli)

Un importante galardón

La B'nai B'rith Argentina distinguió ayer al doctor Melvyn Weiss, abogado norteamericano de gran participación en el campo de los derechos humanos, con el premio Dignidad y Justicia.

En una ceremonia que se realizó en la Bolsa de Comercio de Buenos Aires, Weiss recibió de manos de Jaime Kopec, presidente de B'nai B'rith, la distinción que honra su trayectoria y su labor desplegada en el ámbito de los derechos humanos.

El homenajeado es miembro de The American College of Trial Lawyers y recibió hace cuatro años la medalla Arthur T. Vanderbilt, de la Escuela de Leyes de la Universidad de Nueva York.

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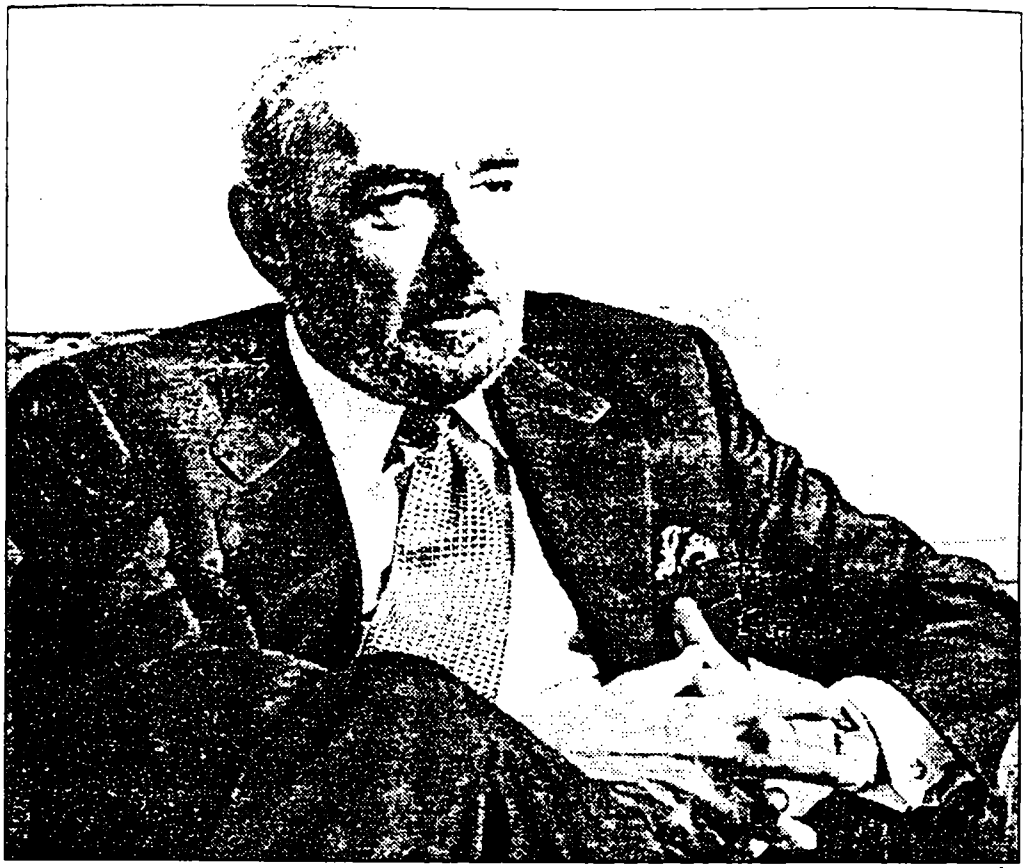
Entre otras muchas actividades, es director del Foro de Política de Israel, organismo dedicado a impulsar la paz en Medio Oriente.



Weiss: "Hay necesidades de capital de USS 20 a USS 50 millones" (Patrick Liotta)

Siguen apostando por los shoppings

Megainversiones: Mel Simon, el "rey de los shopping malls", planea realizar inversiones en el negocio inmobiliario en el Tigre y la costa atlántica.

Detrás de George Soros ya hay otros megainversores norteamericanos con un fuerte interés por las oportunidades que existen en el país para los negocios inmobiliarios.

Uno de ellos es Mel Simon, conocido en su país como el "rey de los shopping malls" por los cientos de centros comerciales que posee, sus cuantiosos intereses en hoteles y casinos, especialmente en Atlantic City, una hora al sur de Nueva York por autopista.

Simon fue traído al país por el prominente abogado norteamericano Melvyn Weiss, quien estuvo la semana última en Buenos Aires, en coincidencia con la visita del presidente norteamericano, Bill Clinton, con quien participó el jueves de un encuentro con líderes de la colectividad judía.

En diálogo con LA NACION, cómodamente instalado en el despacho de Julio Macchi, presidente de la Bolsa de Comercio de Buenos Aires, con quien ha desarrollado una sólida relación, Weiss señaló que el mayor interés actual de Simon apunta a la zona del Tigre y la costa atlántica bonaerense.

"Vemos que el Tigre es una enorme oportunidad para el desarrollo multifacético. Se encuentra muy cerca de la ciudad a partir de la superautopista que se ha construido y la zona esta muy subdesarrollada en términos inmobiliarios", dijo.

"La idea que tenemos podría incluir viviendas, shoppings y casinos. Serían inversiones muy cuantiosas", agregó.

Tal vez en busca de imitar el esquema que manejan en Atlantic City, Weiss tiene en mente la ciudad de Mar del Plata, como posible destino para grandes inversiones en el negocio del juego.

La relación de Weiss con la Argentina tiene motivos tanto económicos como de interés personal. Vino por primera vez en 1995, para interiorizarse sobre la investigación al atentado contra la AMIA, pero el recibimiento que le brindó Macchi lo puso en contacto con centenares de empresarios locales.

Por medio de una asociación con el Banco de Valores, Weiss señala que un área de enorme potencial de crecimiento es la de la financiación de pequeñas y medianas empresas mediante emisiones de títulos.

"Las compañías americanas vienen a buscar los grandes negocios. Y sin embargo hay enormes oportunidades en los negocios más pequeños con necesidades de capital que ronden los 20 a los 50 millones de dólares", indicó Weiss.

Daniel Helft

THE WALL STREET JOURNAL AMERICAS.
LA NACION
LA NACION y Grupo de Diarios América Buenos Aires, lunes 20 de octubre de 1997

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Enclosed

- Ticket

#2 - Invitation

#3 - Panelists

#4 - Directions

#5 - Talking Points

Compares Info from LA, SF, NYC Surveys

(1)

U.S. Department of Labor Compliance Surveys

Los Angeles

Compliance Comparison 1994 vs. 1996

Firms Found in Compliance	*1994*	*1996*
Overall Compliance Rate	22%	39%
Minimum Wage	39%	57%
Overtime	22%	45%
Average back wages per shop	$7,284	$3,235

Compliance Comparison - 1996

Monitored vs. Nonmonitored		
Minimum Wage	73%	36%
Overtime	61%	25%
Average back wages per shop	$1,972	$4,872

San Francisco

Compliance Comparison 1995 vs. 1997

Firms Found in Compliance	*1995*	*1997*
Overall Compliance Rate	57%	79%
Minimum Wage	84%	100%
Overtime	57%	79%
Average back wages per shop	$1,207	$930

Compliance Comparison - 1997

Monitored vs. Nonmonitored		
Minimum Wage	100%	100%
Overtime	87%	68%
Average back wages per shop	$498	$1,475

1997 New York City*

Firms Found in Compliance	
Overall Compliance Rate	37%
Minimum Wage	80%
Overtime	46%
Average back wages per shop	$6,989

* 1997 is the first year that a compliance survey was conducted

(3)

This year, the Wage and Hour Division has hired 16 additional investigators for the New York City metropolitan area --all with bilingual ability in Chinese or Spanish. In light of the survey results, Wage and Hour has instituted a new strategy for targeting manufacturers with a history of contracting with garment shops routinely found in violation of labor laws. Specifically, this new strategy includes:

- targeting contractor shops who repeatedly violate labor laws;
- working with manufacturers who contract with repeat violators to monitor their contractor shops for compliance with labor laws;
- seeking legal actions, such as temporary restraining orders to prevent the shipment of "hot goods" (goods made in violation) by these manufacturers;
- increasing surveillance to address the serious payroll falsification problem;
- working in partnership with other federal, state and city agencies to increase overall enforcement effectiveness; and
- conducting monthly seminars with manufacturers to assist them in implementing and maintaining an effective monitoring program.

The New York City survey consisted of a random sample of the latest available information regarding known garment contractors in all five boroughs. Among other purposes, this and other investigation-based surveys help establish a statistically valid baseline of compliance in order to track industry compliance over the long term.

Surveys also provide information on how to better focus the department's efforts to improve compliance. For example, Wage and Hour investigators will give increased attention to the locality with the highest violation rate, the Chinatown section of Manhattan, where nearly nine out of ten shops were found in violation of the monetary provisions of FLSA.

-more-

(4)

Investigators also learned that fewer than 10 percent of the contractors were being informally monitored by their manufacturers, a technique which has been shown to be effective in reducing the number of violations.

"The results clearly suggest that manufacturers should be monitoring contractor shops more," said Herman. "Through effective monitoring and other efforts, all levels of the industry and the government must commit to work in partnership to ensure that these hard-working garment workers are protected and paid the wages they so justly deserve."

A 1996 survey in Los Angeles found a comparable rate of compliance at 39 percent, but nearly one-half of all shops were being monitored. There, 61 percent of the monitored shops were in compliance with the overtime requirement as compared to 25 percent of the non-monitored shops. A 1997 survey in the San Francisco Bay area found 87 percent of the monitored shops in compliance with overtime as compared to 68 percent in the non-monitored shops.

# # #

SF compliance Survey (5)

RESULTS OF THE 1997 COMPLIANCE SURVEY ON THE SAN FRANCISCO BAY AREA GARMENT INDUSTRY SHOW MONITORING WORKS

- A spring 1997 investigation-based compliance survey involving a sample of garment industry employers in the San Francisco Bay area found significant improvements over a similar survey conducted in 1995.

- The survey was conducted as part of the Targeted Industries Partnership Program (TIPP), a joint effort of the U.S. Department of Labor and the State of California.

- Overall, the survey found 79% of the contractor shops investigated in compliance with Federal wage and hour laws with all of the firms in compliance with the minimum wage requirements and four of five in compliance with the overtime requirement.

- The 1995 survey found overall 57% of the employers in compliance with Federal law with 84% in compliance with the minimum wage and 57% in compliance with the overtime requirement.

- The 1997 survey found that sewing contractors monitored by manufacturers are less likely to violate the law with 87% of the monitored garment firms in compliance with the overtime requirement as compared to 68% of those not being monitored. The survey also found that the back wage liability for monitored shops was one-third the amount for non-monitored shops -- $498 compared to $1,475.

- The increased compliance level found in monitored shops is consistent with a 1996 survey in the Los Angeles area. There, 61% of the monitored shops were in compliance as compared with 25% of those shops not being monitored.

- The Department's Wage and Hour Division is conducting compliance surveys as part of its multi-prong strategy to eradicate sweatshops in the U.S. The surveys not only measure the effectiveness of the "No Sweat" program, but also identify where the industry needs help from the department to improve compliance.

(6)

News Release

U.S. Department of Labor
Office of Public Affairs
Washington, D.C.

LA Compliance Survey (1996)

OFFICE OF PUBLIC AFFAIRS

CONTACT: Scott Sutherland
PHONE: 202-219-8211

USDL: 96-181
For Release: Immediate
Thursday, May 9, 1996

INDUSTRY MONITORING CREDITED FOR IMPROVED GARMENT INDUSTRY COMPLIANCE WITH MINIMUM WAGE AND OVERTIME LAWS

Labor Secretary Robert B Reich said today a newly completed survey of California garment companies is "powerful proof" that initiatives designed to encourage the industry to better police itself are working. The survey found that monitoring programs in the garment business have significantly reduced minimum wage and overtime violations.

However, the recently completed survey also indicates that labor law violations are a continuing problem in the industry and are being ignored by far too many manufacturers, contractors and retailers.

"This survey clearly indicates that monitoring for labor law compliance can have a substantial impact on working conditions," Reich said. "Unfortunately, the survey also reminds us just how very far America has to go to wipe out sweatshops in this century. The government cannot do it alone. We need the support of the industry and the public."

The most significant findings in the survey of 76 randomly selected California sewing firms are two-fold -- almost half of all sewing shops are being monitored for compliance by the manufacturer, and monitored sewing shops were found to have less than half the violations found in other shops.

Investigators found that 48 percent of sewing contractors are monitored by manufacturers, either according to a direct agreement between the manufacturer and the Labor Department's Wage and Hour Division or by manufacturers who have voluntarily initiated a monitoring program of their own.

-more-

(7)

"Getting garment manufacturers to share responsibility for the fair treatment of workers by the sewing shops with whom they contract has been the cornerstone of our garment initiative," said Maria Echaveste, administrator of the Wage and Hour Division. "The survey results will help convince manufacturers that monitoring is an effective way to reduce their potential liability for goods produced in their name in violation of the wage and hour laws."

During the past two years, the Wage and Hour Division has increased from four to 44 the number of manufacturers who have signed formal agreements with the agency to monitor sewing contractors for compliance. Under the terms of the Augmented Compliance Program Agreement, manufacturers agree to conduct periodic audits of time and payroll records of their sewing contractors.

The recent survey indicates a dramatic improvement in the compliance of garment shops being monitored. The average total number of violations for a monitored sewing shop was 2.9, compared to 4.9. Only 27 percent (vs. 64 percent) were cited for minimum wage violations. Roughly half as many monitored shops were cited for overtime violations and backwages (39 percent cited vs. 75 percent).

The survey, formally released on Wednesday in Los Angeles, shows compliance has improved in almost every area measured when compared to a similar survey conducted in 1994.

Over the two-year time span, the percentage of firms violating minimum wage requirements dropped 18 percent, from 61 to 43 percent. Shops cited for overtime law violations dropped from 78 percent to 55 percent. No shops were cited for child labor violations, compared to 4 percent in the 1994 survey.

The 1996 survey also showed firms on average owed far less in back wages and penalties as a result of violations. Back wages owed workers who were paid less than the minimum wage totaled $1,592, compared to $3,866 in 1994. Unpaid overtime owed workers was $1,643 -- down from $3,418 two years ago. Employers were fined $1,128 for failure to maintain workers' compensation insurance, compared to $4,407 in the previous survey.

The 1996 survey was based on the results of investigations of 76 apparel sewing contractors in the Los Angeles Basin counties of Los Angeles, Orange, Ventura, San Bernardino and Riverside. Random samples were pulled from California Employment Development Department records of 4849 apparel firms. A random selection program provided the names of 110 firms, of which 34 were dropped as unsuitable or no longer in business.

Just last week, the department released its first-ever national garment enforcement report. The report revealed that almost half of garment contractors investigated across the country were in violation of minimum wage or overtime laws.

(8)

The enforcement report was another development in the department's three-prong strategy that includes recognizing companies working to stem labor abuses, aggressively enforcing the nation's laws against worker abuse and educating the public about continued violations throughout the industry. Over the last year, Reich has named to a *Trendsetters* list, almost three dozen national manufacturers and retailers who are aiding efforts to eradicate sweatshops.

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U.S. Labor Department news releases are accessible on the Internet at: http://www.dol.gov.

The information in this news release will be made available to sensory impaired individuals upon request. TDD Message Referral Phone: 1-800-326-2577, Voice phone: (202) 219-7316.

Announcement that SRI supports AIP - 10/22/97 (9)

Q and As for Socially Responsible Investors Press Event

Today's Announcement:

(NOTE to the Secretary: Refer any questions on the statement itself or related to investing to the industry members at the roundtable.)

Last year a group involved in socially responsible investing made a statement on sweatshops. How is today's announcement different?

The Department and the Administration were very pleased last year when the socially responsible investment community joined the effort to eradicate sweatshops. Today we are equally pleased with their public support for the Apparel Industry Partnership. I'd like to let Steve Schueth (pronounced "sheeth") tell you about how today's announcement builds on last year's announcement.

Direction of the Garment Initiative

Critics have suggested that you are retreating from former Secretary Reich's aggressive garment initiative. How do you respond to that?

With surprise. I have no intention of backing down on the garment initiative. As Secretary of Labor, it is my responsibility to make sure that all workers - including garment workers - are treated fairly and according to the law. I can assure you I take that responsibility very seriously. Enforcement is, and will continue to be, the backbone of our efforts in the garment industry.

On the other hand, we simply do not have the resources to make sure every worksite complies with the law - that's why the Department developed a strategy to increase compliance by leveraging its resources through enforcement, education and recognition.

As today's announcement illustrates, **partnerships** are also essential to the success of our garment initiative. I plan to continue forging partnerships, with socially responsible investors, religious leaders, consumers, all aspects of the industry - retailers, manufacturers, unions - and with anyone else who wants to join us in making sure that garment workers are paid fairly and treated with dignity.

Apparel Industry Partnership

What is the status of the AIP's work? When do you expect them to have something more to announce?

When the AIP presented its report to the President last April, the members committed to developing an association which would recruit new members and develop ways to let consumers know what garment companies are abiding by the AIP's Code of Conduct and

(10)

monitoring principles. The Partnership is working hard to set up organization that can accomplish these goals, and expects to finish by the end of the year.

Only six garment companies are in the Apparel Industry Partnership, and industry reaction to the Partnership has been mixed at best. Can the Partnership succeed without broader support from the industry?

The Partnership certainly has a big task ahead of it, but you have to start at the beginning. The work they are doing now to establish an association is really the preliminary groundwork. Once the association is up and running, I am confident that the industry will understand what a valuable resource it will be - both to let consumers know how products are manufactured, and to help manufacturers and retailers set up cost-effective monitoring programs that work.

Nike is being criticized for its alleged employment practices overseas. Do you think Nike's membership hurts the Partnership?

No I do not. All of the organizations in the Partnership, including Nike, have seen that there is a problem in the industry that they need to help address, and have chosen to go out on a limb by taking a leadership role in finding the solution. We are never going to achieve 100% compliance throughout the industry 100% of the time. The important question is, what does a company do when it finds a problem with one of its business partners? Does it act responsibly to make the situation right?

The Department wants manufacturers to monitor their contractors, and monitoring is a part of the AIP's program. But how do we know if monitoring actually works?

The Department and the State of California conducted two compliance surveys in 1996 and 1997, both of which show that monitoring works. In both surveys, shops which were not monitored were more likely to have overtime violations than monitored shops, by approximately a 2:1 margin.

[***NOTE** (in case you are asked a follow-up question about the survey results):*

- In the 1996 survey of contract sewing shops in the Los Angeles area, only 39% of the monitored shops had overtime violations, compared to 75% of non-monitored shops.
- The survey this year in San Francisco found 13% of the monitored shops surveyed had overtime violations, compared to 34% of the non-monitored shops.]

Possible follow-up question:

The Department recently completed a compliance survey in New York City - what were the results?

News Release

U.S. Department of Labor

Office of Public Affairs
Washington, D.C.

Office of Public Affairs

CONTACT: Anne Bushman
(202) 219-8211

USDL: 97-330
FOR RELEASE: Immediate
Monday, September 22, 1997

LABOR SECRETARY HERMAN ANNOUNCES SECOND SWEATSHOP CALL TO ACTION BY SOCIALLY RESPONSIBLE INVESTMENT COMMUNITY

In continuing efforts to rid this nation of sweatshops in the garment industry, Secretary of Labor Alexis M. Herman announced today the second sweatshop call to action by leaders of the socially responsible investment community. Representing a market of $639 billion in socially responsible investment dollars, the signatory investment firm leaders challenged the rest of the apparel industry to make a commitment to ensure that their goods are produced in compliance with wage and hour laws. Since the first call to action one year ago, this investment community has included a couple of dozen companies in their list of stocks that investors who care about conditions under which products are made could include in their portfolios.

"The demonstrated efforts of the socially responsible investment community leaders prove that looking after the bottom line does not mean looking toward the bottom," said Herman. "Everyone has a stake in doing their part to eradicate sweatshops in the garment industry."

The socially responsible investment community also applauded the efforts of the Apparel Industry Partnership, a group of leaders from the apparel and footwear industries, human rights groups, unions and consumer groups who agreed to find strategies to end sweatshops.

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Earlier this year the Apparel Industry Partnership delivered a report to the President with its findings and recommendations for significant change and action within the garment industry. The Partnership agreed to a code of conduct and independent monitoring that will, if properly implemented, assure and inform consumers that the products they buy are made under decent working conditions.

"By encouraging the work of the Apparel Industry Partnership, the socially responsible investment community leaders are taking the message from Wall Street, to Fashion Avenue, to the malls on Main Street, that it is time to combine all of our efforts to rid this nation of sweatshops," said Herman. "It is my belief that partnerships between leaders in all phases of the apparel industry and government is the best strategy for bringing real change to working conditions in the garment industry."

"We are a community representing more than 400 social investment practioners and institutions, and we believe there is no reason in this day and age for worker abuse. Our commitment as an association is to promote the concept, practice and growth of socially responsible investing," said Steve Schueth, chairman and president of the Social Investment Forum. "The Apparel Industry Partnership is an example of industry leaders who are making a commitment to doing that kind of business. Now is the time for the rest of the industry to join this important effort."

Members of the socially responsible investment community endorsing the Apparel Industry Partnership include Calvert Group; Citizens Trust; Co-op America; Franklin Research and Development Corporation; Kinger, Lydenberg and Domini; Parnassus Investments; Progressive Asset Management; Social Investment Forum; and United States Trust Company of Boston.

# # #

News Release

13

U.S. Department of Labor
Office of Public Affairs
Washington, D.C.

Newark Archdiocese Event

- Archdiocese announces No Sweat efforts in its schools
- DOL provides Teen-oriented info packet

Office of Public Affairs

CONTACT: Anne Bushman
(202) 219-8211

USDL: 97-370
FOR RELEASE: Immediate
Thursday, October 16, 1997

SECRETARY OF LABOR UNVEILS NEW NO-SWEAT GARMENT INITIATIVE FOR TEENS

Secretary of Labor Alexis M. Herman today released results of the first-ever survey of New York City garment shops during a news conference with the Archbishop of Newark Theodore E. McCarrick, where the Archdiocese kicked off its education initiative designed to raise levels of awareness about garment sweatshops.

"The Department of Labor's survey revealed 63 percent of contractors investigated within New York City's five boroughs were in violation of labor laws, a clear indication of abuse of garment workers continues in this century," said Herman. "I applaud the leadership of Archbishop McCarrick who is bringing to the high school students of his Archdiocese a deep understanding of labor laws and the role young consumers can play in ending sweatshops in the modern era."

McCarrick introduced a two-pronged initiative within the Archdiocese designed to combat sweatshops by:

-- ascertaining that the Archdiocese's manufacturers and vendors are in compliance with the Fair Labor Standards Act, and

-- beginning an education curriculum for grades 7-12 to inform students of the injustices of sweatshops and what they can do to avoid becoming a consumer of sweatshop goods.

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"I'm pleased that such diverse agencies -- federal, state and union -- could join the Archdiocese in constructing an educational initiative that I hope will spread throughout educational systems across the United States," said McCarrick. "It is heartening to know that when we all work together to raise human dignity and educate for justice, good things can happen."

The Department of Labor, which has an extensive No-Sweat information homepage for consumers on the Internet (www.dol.gov/dol/esa), contributed teen-centered brochures for the Archdiocesan education initiative. Called "getta clue," they offer students shopping tips, information on the garment business and a poster on the "sweatshop cycle of blue jeans." For teachers, the department produced a simple resource guide.

Herman reaffirmed the Department of Labor's commitment to educating consumers about worker abuses in the garment industry. The department's teen-centered information will be piloted in Newark's Archdiocesan schools for possible wider distribution in 1998.

"Every worker is entitled to a fair wage, safe working conditions, and a sense of dignity and respect," said Herman. "And that is why sweatshops have no place on the American landscape. I hope this initiative and the leadership demonstrated by the Archdiocese of Newark will serve as a model for other communities and faith-based organizations to emulate and replicate."

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U.S. Department of Labor

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COMMENTS/INSTRUCTIONS:

- Info on NYC, SF, LA Surveys (re. monitoring) (p.1-8)
- Soc'y Resp. • Investor Event (p 9-12) Note ¶ on Partnerships
- Press Release from Newark Archdiocese Event (13-17)

→ We announced both the NYC Survey Results & Archdiocese No Sweat efforts at Newark Event

→ AMH adds "partnerships" as 4th prong

Marge

→ All info is from mid September - nothing in writing (TPs etc) that reflects any more recent developments, but I assume ME knows anyway the latest. KC.