FOIA Number: 2018-0141-F

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Social Security Nominee Put on Hold

Failure to Offer Plan for Solidifying System Angers GOP Senators

By Jennifer Dixon
Associated Press

President Clinton's nominee to oversee Social Security into the 21st century has been put on indefinite hold in the Senate by Republicans angered by her refusal to outline ways of shoring up the national retirement system.

Senate Democrats have not jumped to Shirley Chater's defense, either, leaving her nomination to run the newly independent Social Security Administration for the next six years in limbo.

Chater, who has been Social Security's commissioner since fall 1993, continues to oversee the agency day-to-day, despite the political uncertainties.

But an advocate for the elderly and a Republican lawmaker say Social Security, the government's largest single program and one that touches most Americans, suffers from the lack of stable leadership at a time when it is under pressure to confront its pending insolvency.

Unless changes are made, Social Security will run out of money in 2030.

Congress created the six-year term for commissioner when it took Social Security out of the Department of Health and Human Services and made it an independent agency. Under the 1994 law, the agency's top executive can be dismissed only for serious wrongdoing, a move designed to insulate the commissioner from politics. Because Chater has not been confirmed for the new job, she serves at the pleasure of Clinton.

Sen. Bob Packwood (R-Ore.), chairman of the Senate Finance Committee, which oversees Social Security, said Chater's nomination is "on the back burner." Packwood and other committee members were frustrated with Chater when, at her confirmation hearing in February, she refused to sketch possible ways of keeping Social Security solvent as the baby boom generation retires.

SHIRLEY CHATER
. . . nominated for six-year term

She has since declined to give the committee specific recommendations, despite a tough letter from Packwood seeking answers to his questions.

Keeping Social Security from going bankrupt could involve cutting benefits, raising taxes, lifting the retirement age, or paring cost of living increases—all politically risky maneuvers.

"Someone has told her to be careful, but by being careful, she may be history," said Sen. Alan K. Simpson (R-Wyo.), chairman of the Finance subcommittee on Social Security.

Aides to Senate leaders in both parties said that by putting Chater's nomination on hold, GOP lawmakers hope to install their own commissioner should a Republican win the presidency in 1996. They also hope the delay will force Chater to articulate politically sensitive cuts even though the White House has refused to do so.

Aides to senators from both parties said lawmakers have not pushed for a vote on her nomination. Simpson, and an aide to a Senate Democrat, said the White House has not pressed them to take up Chater's case.

Chater's chief of staff, Brian Coyne, said the Clinton administration "will continue to ask the Senate Finance Committee to move her confirmation forward. . . . She was confirmed before, and nothing over the last 20 months has raised any issues about her character and integrity."

Yesterday, White House spokeswoman Ginny Terzano said: "We support her. We want her. We're anxious for her to be confirmed. We're anxious for this to be voted out of the committee so the full Senate has the opportunity to vote on the nomination."

Coyne said that allowing Chater's nomination to languish "undermines the intent of the independent agency legislation to provide strong and stable leadership. The agency has had 12 commissioners in the last 20 years."

Simpson, who has criticized Chater for not being "forthcoming" about offering solutions for the agency's financial troubles, said Social Security suffers while its top leadership is uncertain.

Dan Schulder, legislative director for the National Council of Senior Citizens, an advocacy organization, agreed. "The entire agency, and the American people, get hurt by instability at the top," he said.

Hazards of Quick Downsizing Cited

Existing Proposals Could Cost More in the Long Run, Study Warns

By Stephen Barr
Washington Post Staff Writer

Democratic and Republican drives to downsize the government pose the danger of doing more harm than good, like a dieter who decides to lose weight by cutting off a leg, two Brookings Institution analysts contended yesterday.

University of Wisconsin professor Donald F. Kettl and Princeton University professor John J. DiIulio Jr. said current budget-cutting plans aimed at abolishing Cabinet departments and restructuring the executive branch would not save money and run against the downsizing lessons learned over the last decade by the nation's largest corporations.

"No restructuring is cheap," Kettl said. Efforts aimed at saving money usually create "short-term mischief" that lower morale, interrupt the delivery of services and could cause more damage to an organization's performance than the original problem.

"Downsizing or doing away with government agencies does not automatically do away with the people they serve, the public demands they embody, the programs they administer or the tasks they perform," DiIulio said. If the government is going to be put on a diet, he said, it should shed pounds in a way that makes sense and looks to long-term results.

Kettl and DiIulio offered their assessments at a luncheon where copies of their new study, "Cutting Government," was released. The report, one of a series from Brookings Center for Public Management, comes as House and Senate Republican task forces call for the elimination of at least four Cabinet departments—Energy, Education, Commerce, and Housing and Urban Development.

The first section of the report summarizes 10 tasks from across the federal government, ranging from air traffic control to monitoring pension funds to managing defense contracts. In the case of the Pension and Welfare Benefits Administration, Kettl and DiIulio point out that just 621 federal employees oversee $1 trillion in pension funds. Tinkering with the agency would produce minuscule savings but "potentially weaken the confidence of employees already rightfully nervous about the future of their retirement income," Kettl and DiIulio write.

The second section touches on past commissions named to reorganize the executive branch and efforts to restructure private-sector companies. "Managers who believed they could downsize once, solve their problems, and return to normal tended to fail," Kettl and DiIulio said. "Managers who built restructuring into a careful look at their operations, their mission, and how best to achieve it tended to succeed far more often. Restructuring, taken as an end in itself, led to failure."

The two analysts look to Congress to play a pivotal role if attempts to overhaul the executive branch are to succeed, in part because they think "the congressional committee that oversees an executive agency is a far stronger presence than the president or the White House staff." They predict "little will be accomplished" unless Congress decides to consolidate programs as it cuts and merges departments.

The most critical questions of restructuring depend on Congress, they write, starting with how many Cabinet departments to have. "While moving from 14 to 10 or even five departments would create more elbow room around the Cabinet table, such a move does not make government smaller unless government does less," they said.

The Washington Post
Tuesday, May 23, 1995

NOMINATIONS

Foster's Answers Keep His Bid For Surgeon General Alive

Committee is likely to send nomination to floor; confirmation prospects remain uncertain

The Senate Labor and Human Resources Committee appears poised to send the nomination of Dr. Henry W. Foster Jr. to be surgeon general to the Senate floor. As the spotlight shifts to the full chamber, senators will weigh Foster's qualifications against a backdrop of presidential politics and the national debate on abortion.

At the end of two days of testimony before the Labor panel May 2-3, Republican Sen. James M. Jeffords of Vermont said he would join the panel's seven Democrats in voting in favor of Foster. Jeffords' vote would guarantee at least an 8-8 split for Foster on the committee, and Chairwoman Nancy Landon Kassebaum, R-Kan., said she expected the committee would send the nomination to the floor.

She did not say, however, how she would vote or whether the nomination would receive a favorable recommendation. If the committee deadlocked at 8-8, it could then vote to report the nomination with no recommendation.

A vote is expected within three weeks.

Jeffords and Kassebaum, both moderates, were considered two of the three Republicans who hold the key to Foster's future. The other — freshman Bill Frist of Tennessee — remained publicly noncommittal. However, during the hearing, Frist appeared to come to Foster's defense on key medical and ethical questions.

If Frist or Kassebaum provides a ninth vote for a favorable recommendation, there would be added pressure on key Senate Republicans who have threatened to block the nomination. Majority Leader Bob Dole, R-Kan., for example, has said he may not schedule a vote on Foster, and one of his rivals for the 1996 GOP presidential nomination, Phil Gramm of Texas, has threatened a filibuster.

Democrats, in turn, suggested they would slow down action on GOP bills if Republicans block a vote on Foster. On May 3, Minority Leader Tom Daschle of South Dakota told reporters he "wants to make it very clear ... that no vote is not acceptable." Other Democrats, such as Barbara Boxer of California and Patty Murray of Washington, who introduced Foster to the committee, have made similar threats to force a vote.

RICHARD ELLIS

Foster defended his record at a May 2 hearing before the Senate Labor and Human Resources Committee.

Foster, an obstetrician-gynecologist from Nashville who often used humor and personal anecdotes during his testimony, said he wanted to focus on the "full range of health challenges" facing the nation, including cancer, AIDS, heart disease, children's and women's health, substance abuse and especially teen pregnancy.

But the political fight over the nomination, which has been brewing since February when President Clinton chose Foster to succeed the controversial Joycelyn Elders, continued to perk. The committee focused its questions on Foster's abortion record, his credibility, and his participation in controversial research projects, illuminating senators' concerns about whether Foster can serve effectively as the nation's leading spokesman on health policy. *(Weekly Report, p. 1182)*

Democrats remained convinced that he could. "Dr. Foster has had an honorable and distinguished career in medicine," said Edward M. Kennedy, D-Mass., the panel's ranking member. "He has been recognized by his professional colleagues and peers, his community and his patients as having the highest ability, integrity and compassion worthy of the post of surgeon general."

Gramm was one of the Republicans who disagreed. "We need a person who has the credibility to bring us together on public health issues," Gramm said. "I think Foster is not capable of doing that. It's nothing personal. He is the wrong person with the wrong record at the wrong time."

The Hearing

Much of the controversy about Foster centered on abortions: how many he had performed and whether performing any should disqualify a candidate for surgeon general.

By Colette Fraley

In February, the White House reported that Foster had performed one abortion. Foster then said he had performed "fewer than a dozen." Within a week, however, he said he was the physician of record on 39 abortions.

At the hearing, he characterized the confusion as an "honest" mistake. "In my desire to provide instant answers to the barrage of questions coming at me, I spoke without having all the facts at my disposal," he said. "There was never any intent to deceive. I had no reason to do so."

Several senators, including Frist and Kassebaum, said the hearing was not the proper setting for an abortion debate. And Kassebaum, in part to defuse the passions surrounding the abortion issue, limited the witness list to Foster and members of Congress and asked interest groups to submit written testimony.

Kassebaum said Foster had been made a "pawn in our abortion debates" and said the focus reduced the nominee to "little more than a cardboard caricature."

The confusion and misstatements gave some opponents, who may have found it unacceptable for a nominee to have performed even one abortion, a way to attack Foster without addressing abortion. Foster defended his credibility, which he said had never been questioned before.

"I have worked very, very hard to establish an impeccable record of credibility and ethical conduct," he said. "It is open to anyone who chooses to scrutinize it."

The issue of credibility remained an underlying concern to several of the panel's nine Republicans and dogged Foster throughout the hearing.

Daniel R. Coats, R-Ind., said he was concerned about attempts by the White House and Foster to "clarify the record" — particularly on abortion and the Tuskegee syphilis study, a decades-long project in which infected African-American men were deliberately left untreated so government officials could study the effects of the disease.

It was the Tuskegee, Ala., project, brought up numerous times during the hearing, that produced the most passionate exchanges. Early on, Foster said nothing had offended him more than suggestions that he knew of the project before it was publicly disclosed in 1972 — and that he did nothing to stop it.

Coats brought the issue up again May 3, saying Foster's testimony "appears to be in contradiction to a number of official government documents" suggesting that the Tuskegee medical community had been informed of the study in 1969.

Foster vehemently denied that he knew about the experiment or about treatment being withheld, saying he learned about it with the rest of the nation.

"Of all the things that have befallen this nomination, nothing is more offensive than the litany you put forth," Foster said. "That testimony is incorrect. Wrong, wrong, wrong."

Members also questioned Foster about the effectiveness of his highly touted "I Have a Future" program, which sought to discourage teen pregnancy by encouraging inner-city youth to avoid sex, stay in school and take responsibility for their lives.

While praising the "I Have a Future" concept, Jeffords questioned whether the program's effectiveness had been "oversold" by Foster's supporters. Kassebaum pointed to a critical analysis showing that the teen pregnancy rate among participants was not significantly different than that of a control group.

Foster did not dispute Kassebaum's figures, but said the study group had been small and the participants mobile. He added that he had tried to find ways to improve participation in the program.

Kassebaum, who called the effort worthy even if it changed only two or three youths' lives, pointedly said the program "could have used more leadership."

Mike DeWine, R-Ohio, questioned Foster about a 1974 case history Foster had written about the sterilization of four young mentally retarded women; DeWine asked whether proper medical and ethical procedures had been followed. Foster said the surgeries had been performed at the parents' request and followed ethical standards of the time.

A Lifetime Under Study

Foster, who was born in Pine Bluff, Ark., in 1933, was the only African-American in his medical school class at the University of Arkansas, from which he graduated in 1958.

He served a stint in the Air Force and practiced in Tuskegee until 1973, when he moved on to Meharry Medical College, a historically black college in Nashville, Tenn. At Meharry, he was chairman of the department of obstetrics and gynecology, dean of the

RICHARD ELLIS

Excerpts From Testimony

Surgeon general nominee Dr. Henry W. Foster Jr. faced questions May 2-3 about his views on abortion, his credibility and his plans as surgeon general. Here are excerpts from his confirmation hearing, followed by excerpts from written testimony submitted to the Labor and Humans Resources Committee by various interest groups.

RICHARD ELLIS

Kassebaum, left, and Kennedy, shown at an April 24 hearing, may not be on opposite sides where Foster is concerned.

From the May 2 Hearing:

He has been made a pawn in our abortion debates. I believe he deserves to be judged on his whole record, his professional credentials and his background, his life experience and his current views.

—Sen. Nancy Landon Kassebaum, R-Kan., chairman of the Labor and Human Resources Committee.

It is Dr. Foster's opponents who have a credibility problem, not Dr. Foster. They pretend to challenge his credibility on abortion when in reality, as all of us know, they are trying to make abortion the issue indirectly, in a way that will not embarrass them.

—Sen. Edward M. Kennedy, Mass., the committee's ranking Democrat.

First of all, I am a doctor who delivers babies. My life's work has been devoted to bringing healthy lives into this world, and trying to assure that every child born is a wanted child who has parents that can meet its needs ...

Now, as to my credibility, let me be clear. When I was asked in the middle of a casual conversation, whether I had ever performed abortions, I said I had and the one that I remember most was a young woman with a master's degree that had AIDS, and I went on. Then later, maybe two days, I was asked if I had performed more than one abortion, and I thought it was in jest. I said, "Well of course. Most obstetricians who've been out have." And they asked me how many, and I answered based on my memory without reviewing the record. That was a mistake; I should not have guessed.

But it was an honest mistake ...

Now let me be clear, in 22 years at Meharry Medical College, I am listed as the physician of record on 39 abortion cases. I do regret the initial confusion that this caused, but there was never any intent to deceive. I had no reason to do so. I have worked very, very hard and have established an impeccable record of credibility and ethical conduct. It is open to anyone who chooses to scrutinize it.

—Dr. Henry W. Foster Jr., nominee for surgeon general.

From Written Testimony:

The course of this nomination resembles a tent in spring rain. Touch its soggy canvas anywhere and more revelations seep through. It is hard to imagine an individual who has been implicated in more major public health controversies than Dr. Foster.

—Gary L. Bauer, president, Family Research Council.

We must nominate a person who will 'Just Say No' to immoral conduct as well as drugs, cigarettes and cholesterol.

—California Right To Life Committee Inc.

He is indeed a special human being — in his intellect, fairness, integrity, talent as a medical professional and, as most Americans have recently witnessed, his fortitude is exceptional.

—Dr. David Satcher, director, Centers for Disease Control and Prevention.

No physician should be criticized for performing legal services at the request and in the interest of his or her patients.

—Edd Doerr, executive director, Americans for Religious Liberty.

While each of us hold privately established beliefs regarding abortion, it should not be the only issue debated concerning confirmation of a surgeon general.

—Aidsand F. Wright-Riggins III, executive director, National Ministries.

[Foster is] a real elitist who knows how to work the system against his own people.

—Lydia Jones, executive director, Center to Preserve Black Life, Rochester, N.Y., in criticizing Foster for performing abortions and for his association with controversial experiments.

The African-American community is once again reminded how the Clinton administration has succumbed to pressure by removing support for dedicated African-American public servants. We have not forgotten the mistreatment of Lani Guinier, Mike Espy and Dr. Joycelyn Elders.

—Neal Darby Jr., executive secretary, Nashville Branch NAACP

—Compiled by Jeanne Ponessa and Weekly Report staff

medical school and, most recently, acting president of the university. This year he has been on sabbatical as a health policy fellow at the Association of Academic Health Centers in Washington.

At the hearing, he spoke movingly of his family, particularly of his parents; his wife, St. Clair; and his paternal grandmother, Grandma Hattie, "born just 16 years after slavery ended," who worked as a domestic to send her two children to college.

"As a young schoolboy, I wondered why her handwriting was poor, but as I grew older and wiser, I came to appreciate her great intelligence and character," Foster said. "Grandma Hattie was not formally educated, but without doubt, she understood the value and power of education."

He said his parents also stressed the importance of hard work and education. "As far back as I can remember, we had a copy of the American Constitution in our home. My father often told my sister and me that our freedom and justice were locked inside this document. And then he would tap his temple and say, 'The key to unlocking it is an educated mind.' He was correct."

Pivotal Senators

With Jeffords, Frist and Kassebaum considered the panel's pivotal votes, their decisions may provide clues to how the nomination may ultimately fare.

Before the hearing, Jeffords said he would vote to confirm Foster unless "the nominee is unqualified for the post, either because of a lack of experience or ethical or legal problems."

Afterward, Jeffords said that Foster had done a "superb job" answering questions and that he thought the committee should recommend confirmation.

Frist and Kassebaum said Foster had satisfactorily answered questions about his credentials, but said they still had concerns to resolve before the vote. Frist said he wanted to examine the documents Coats mentioned about the Tuskegee project and to see if any other troubling information emerges.

Frist, a heart and lung surgeon from Nashville, is in a delicate position politically. Even his questioning of Foster — which appeared to offer the nominee a chance to defend his medical career — could get him into trouble with abortion opponents who supported his 1994 election. And his vote, if favorable, would put him in conflict with the leadership's opposition to Foster.

At the hearing, Frist defended Foster against charges from Coats that the nominee had performed 40 — not 39 — abortions. In rapid-fire questioning of Foster, Frist made the point that a hysterectomy that Foster had done to save a woman's life could not be considered an abortion even though pathology reports showed later that she was pregnant.


RICHARD ELLIS

Democrats rally support May 1 for Foster, center, who is speaking with Sen. Paul Simon. Sen. Dianne Feinstein, right, and Vice President Gore and Sen. Patty Murray, left, look on.

He also gave Foster a second chance to say that he had acted in accordance with the medical ethics of the time in performing sterilizations on retarded women.

Kassebaum, who praised the nominee's performance during the eight hours of questioning, said she had lingering concerns about Foster's leadership of the "I Have a Future" program and about how long the Tuskegee syphilis victims had to wait for treatment after the project was disclosed.

However, Kassebaum said she thought the full Senate should vote on the nomination, which leaves her in a position of defying her state's senior senator, Dole.

But that also could put Dole in an awkward position. "It shows what kind of tightrope Dole is walking," said Burdett Loomis, a political science professor at the University of Kansas. "Obviously Kassebaum doesn't want to embarrass Dole, but conversely does Dole want to embarrass one of the nicest, most thoughtful people in the Senate?"

Full Senate

Foster's chances in the full Senate remain uncertain, but several senators and political observers said an up-or-down vote was more likely after Foster's performance at the hearing.

Blocking a vote could be risky for Dole. "He's now in a situation where he escalated expectations of those who opposed Foster and raised the dander of Foster's supporters," said Allen Schick, a visiting scholar at the Brookings Institution. "I think he'll get shot at from both sides."

Larry J. Sabato, a professor of government at the University of Virginia, said he thought Dole eventually would allow a vote.

"He doesn't need to avoid a vote, but he does need to prevent Foster from becoming surgeon general," Sabato said. He noted that Dole was competing with Gramm for the support of conservative GOP activists.

"Dole is strongly suspected of possessing moderate tendencies, which could prove fatal in the Republican nominating process," Sabato said. "He also needs to prove that he can withstand the firestorm of criticism from both sides whether he's voted on or whether he's voted down."

Advocates on both sides will now focus on the full Senate, where Foster would need a majority of votes to win confirmation and 60 votes to shut down a filibuster.

But even before the hearing, on May 1, Clinton and the Democrats turned up the heat on Dole and the Senate with rallies promoting Foster and a visit to Capitol Hill by Vice President Al Gore.

"If we can't confirm Henry Foster to be the surgeon general of the United States, what kind of person can we confirm?" Clinton said. "He deserves to be more than a political football in the emerging politics of the season." ■

CORRECTION

Abortion policy. Weekly Report, p. 1185, first column, federal employees. Abortion opponents want to reinstate the ban, lifted in 1993, on abortion coverage by the Federal Employee Health Benefits Program. ■

INSIDE STORY

The Art of Turmoil at IAIA

BY ANNE CONSTABLE

"There is no beginning or end to an Indian ceremony — nor is there any end to the potential for the IAIA . . ."

Lloyd New,
Director of the
Institute of American Indian Arts, 1978

When Lloyd New spoke those words at his retirement from IAIA, the Indian arts school was weary from its struggle for survival and recognition. In some ways, it still is. Although there have been some significant accomplishments over the last 16 years, the story of IAIA is still one of potential rather than reality.

The Institute of American Indian Arts achieved national recognition in 1988 when it was reborn as a two-year, congressionally chartered institution with its own line in the federal budget. But dreams of its own campus and a four-year program have been frustrated. Since 1981, IAIA has been a tenant of the College of Santa Fe.

One year after a story in this newspaper about an identity crisis at the institute, the school still is troubled by many of the same problems: the lack of an Indian identity, cronyism, high turnover at the top, absence of clearly defined policies and procedures, low morale, and insufficient accountability for fiscal and management decisions.

STILL IN [illegible]: The sculptures of the IAIA are more real than the campus — the school [illegible] College of Santa Fe. [illegible]

Last week, the nomination of Catherine Baker Stetson to the institute's Board of Trustees was blocked by Congressman Don Young of Alaska. In recent weeks Stetson has asked serious, and sometimes touchy, questions about the operation of the institute. She has shared these concerns with members of the board, as well as with the New Mexico congressional delegation.

* Young, who is a non-voting member of the IAIA board, apparently feels that it was inappropriate for her to raise these issues prior to her confirmation and has characterized Stetson's questions as "negative" and "accusatory."

In a six-page letter to U.S. Sen. Jeff Bingaman, D-N.M., also an ex officio member of the IAIA board, Stetson has asked him to intercede with Congressman Young to release her nomination. She also pointed out that after the names of the seven new members were released by the White House, the current board attempted to introduce legislation that would have allowed it to appoint its own members.

Three other nominations were approved by members of the Senate Indian Affairs Committee last week and forwarded to the floor for confirmation. The Senate is expected to act on them before it recesses on Friday. "The people who ask questions seem to be the ones getting punished," Stetson says.

Her concerns prompted Stetson, a non-Indian lawyer whose firm has done extensive work for Indian tribes, to suggest that the Government Accounting Office audit the IAIA — a step that has been recommended by numerous other close observers of the institute. "I believe we have every reason to ask for and expect a GAO audit and a management audit, at the very least," she says. "That will allow everyone involved to know where we are at this point in time."

The GAO evaluates government programs for members of Congress. IAIA receives more than $12 million annually from the federal government. GAO audits normally are requested by the chairs of oversight committees. Congressman Bill Richardson of New Mexico is chairman of the House Subcommittee on Native American Affairs, but no such request has yet been made.

"This is a wonderful institution," Stetson says. "It's not necessarily true something is wrong, but I'm determined to ask the questions and have the answers."

Stetson expressed her concerns in a Sept. 21 letter to Kenneth Blankenship, chairman of the Board of Trustees, (and copied to all voting members and nominees) She raised serious questions about:

- the decision to discontinue Native Images, one of IAIA's four centers;
- the termination of vice-president Schuyler Houser, former acting president;
- the incorporation of a new IAIA Foundation outside board control;
- the loan of $100,000 to the new fund-raising foundation;
- inaccuracies in the minutes of board meetings;
- the absence of financial policies and procedures;
- possible conflict of interest by the director of administrative services, and
- the cost of a board trip to Alaska in September.

Blankenship responded this week with an eight-page reply to Stetson and some documentation. In his letter, the chairman of the IAIA board, a Cherokee from North Carolina, suggested that Stetson should communicate more with the board. In

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IAIA

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point of fact, she has done so. Some contacts have been helpful: others have not.

Stetson — and others — are disturbed that that IAIA board made major decisions during its meeting in Anchorage in September when many of the current members are retiring. In addition to the four nominations currently before the Senate, the terms of three other trustees have expired or are expiring. Together the new members will comprise a working majority of the board and will be dealing with the consequences of these actions.

The board acted in spite of the wishes of Stetson and two other proposed members: Loren Kieve, an attorney, and Woyneve Cassidy, an artist. In a letter addressed to Robert Ames, a member of the Board of Trustees, they requested that the incoming trustees be consulted on any major long-term decisions. The letter was sent Sept. 9. It was ignored.

Stetson was not successful in her effort to persuade the members of the state congressional delegation to draft a joint letter to the IAIA board asking it to reverse its decision to close the Native Images Center, block the transfer of funds to the new foundation, and and to take no further major personnel actions.

Those attending the board meeting, including some whose terms have expired, agreed on:

The termination of Schuyler Houser: The board sanctioned the $12,000 buyout package offered the vice president. Houser has a master's degree in public administration from the Kennedy School of Government at Harvard University and extensive experience in Indian education. During a year at IAIA, he served as acting president through a nationwide search for a successor to Kathryn Harris Tijerina, who was dismissed by the board in November 1993. There were no charges of wrongdoing against him.

Perry Horse, a Kiowa, was inaugurated as president last summer. He has said he played no role in the decision, although he did attend the board meeting in Alaska.

The closing of Native Images: The National Center for Production of Native Images was established by IAIA to solicit contracts to make videos on Indian themes. The program was established in 1989, and the center was created in 1991. Native Images produced the Peabody Award-winning film "Surviving Columbus."

The center was funded initially by local IAIA funds, rather than federal appropriations. Ultimately, however, the institute hoped that the video production center would be self-supporting and able to contribute to the development of the new campus. In fact, Center Director Nedra Darling projected a deficit of $80,000 this year.

Darling was aware that members of the institute's board of trustees did not hold video production in the same esteem as fine arts. But she was shocked when Perry Horse returned from the board meeting in Alaska and informed her that the trustees had decided to abolish the entire center. Darling charges that she was never allowed to defend her program, nor permitted to attend the Alaska meeting where it was discussed. "The Indian way is to listen and communicate," she says.

Since then, Darling has had to cancel discussions concerning a film project for the Department of Agriculture that probably would have earned the institute $30,000.

"This is sad for artists in this medium," she says. "If we miss any opportunity to share our culture through art, then we don't have anything to share."

Darling may consider setting up the Native Images center outside IAIA. "Whatever the problems at IAIA, I pray for them," she vows. "I will continue to work for the institute. The people who do the work there — the professors, students, staff and alumni — are the heart and soul of IAIA. Not the politicians, board members and administrators."

The decision to fold Native Images for cost reasons raises questions about why the lame duck board would meet in Alaska, instead of Santa Fe, during a financial crisis. The trip, which included a fishing expedition, was estimated by one source to cost an extra $15,000. The board itself is reported to have exceeded its $202,000 budget by $140,000 this year.

How, too, is the board able to lend funds to a new foundation incorporated last July? "If you have enough money to make a $100,000 loan to a foundation over which you have no control, ... claim that because of financial problems you are closing one of four centers at IAIA?" Stetson asks.

Although some educational institutions have independent foundations, a number of observers raise concerns over this practice. "They can raise money in our name in a way we cannot direct and over which we have no control," says one.

Others point out that IAIA already has a development office that receives $610,000 annually from the federal government to help raise funds for the institute. That office is now directed by Della Warrior, a friend of Perry Horse's wife.

The new foundation was incorporated June 24, 1994. Robert Best, its vice-chairman, has indicated that it will replace another foundation of the same name that was created by a trust agreement authorized by Congress. The new foundation has different by-laws and is not under the control of the institute. Its directors are negoti- creates an "arm's-length" working relationship between the two entities.

The new IAIA Foundation plans to expand from 25 to 50 directors to increase its fund-raising impact. The foundation's goal is to raise money for the new campus of IAIA. One study conducted by an outside consultant, however, determined that the institute was too ambitious in thinking it could raise $60 million in a national campaign. The consultant said the most IAIA could hope to raise was about $10 million.

Since the completion of the IAIA museum downtown, fundraising has been somewhat dormant. Potential donors, moreover, want to see progress before writing checks. The foundation will have to convince them that the new campus will be a reality. A 2.7-mile extension of South Richards Avenue has been completed, but no other construction has been undertaken.

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IAIA

Continued from page 17

JoAnn Balzer, currently the director of development at the Western States Arts Federation, has been identified as the choice of the directors for the position of executive director. She was being congratulated on the appointment during a recent visit to the campus, although Best said recently that no one has yet been hired for the post. Balzer was a member of the original IAIA Foundation. The new foundation will have an initial budget of $100,000 and will raise money for its own operating costs.

On the campus of the College of Santa Fe, where IAIA rents space, employees are disturbed by these developments. Many also fear for their own jobs, particularly in light of the notice given by the president recently that he is authorized to evaluate all programs and cut where needed. "People are deeply demoralized," says a source close to the school. "They wonder who is in charge and for what reasons."

David Tobin, the former director of development at IAIA, and an acute observer of its politics, feels that the decision to fold Native Images and the incorporation of the new foundation illustrate that IAIA still is not an Indian institution. "IAIA has never embraced an Indian soul, never been accountable to Indians, never been run by Indians. All along the board has been dominated politically by non-Indians," he says.

Tobin, who has spent many years in the non-profit field, believes that the new foundation will not be successful raising money unless it does so in a way that reflects Indian culture.

The problems at the Institute of American Indian Arts apparently are attracting some congressional attention, although members ignored the issues raised in a letter last November from two local historians and former employees of IAIA. The letter alerted them to concerns about whether the students enrolled at the institute were getting "the quality education they are entitled to."

The letter also was sent to the North Central Association of Colleges and Schools. It did not investigate, either. In a previous accreditation process, North Central expressed reservations about health and safety issues in IAIA's studios, administrative effectiveness, and planning and curriculum. It is aware, as well, that former vice-president Sky Houser requested a delay in the current round. North Central's team was scheduled to visit the site in the spring of 1995, but IAIA has not completed the self-study that precedes such inspections. North Central indicated that it wanted to give the new president a chance to effect change.

These issues are very upsetting to the many people who would like to see IAIA achieve the promise to students set out in the enabling legislation by Congress. "If IAIA continues to be a political football, then it doesn't have much of a chance," Houser warns. The former vice-president, who has been hired to found the Salish-Kootenai College in Montana, adds that the 27 tribal colleges in the U.S. have thrived on accountability. "Every penny and every program has been carefully planned, carefully explained and carefully justified," he declares.

Stetson, is optimistic that IAIA can achieve its potential. "Every problem is fixable," she says. "I got into this to help." ■

DON. YOUNG
CONGRESSMAN FOR ALL ALASKA
WASHINGTON OFFICE
2331 RAYBURN BUILDING
TELEPHONE 202/225-5765

COMMITTEES:
NATURAL RESOURCES
MERCHANT MARINE AND FISHERIES
POST OFFICE AND CIVIL SERVICE

Congress of the United States
House of Representatives
Washington, D.C. 20515

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KENAI, ALASKA 99611-7716
907/283-5808

February 28, 1995

PERSONAL AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN ADMINISTRATIVE MARKING

INITIALS: JGP DATE: 1/26/18
2-18-0141-F

Ms. Peggy A. Clark
Office of Presidential Personnel
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Ms. Clark:

I am one of four congressional representatives to the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development (IAIA) and have served in that capacity since 1988.

During the 103rd Congress, the White House submitted the nomination of four individuals for confirmation as Board of Trustees, Ms. Catherine Baker Stetson, Ms. LaDonna Harris, Mr. Loren Kieve, and Ms. Barbara Blum. I am writing with regard to the nomination of Ms. Catherine Baker Stetson. At the request of Senator Frank Murkowski of Alaska, Senator Daniel Inouye of the Senate Committee of Indian Affairs withheld the confirmation of Ms. Stetson. The Senate did confirm the three other nominees as submitted by the White House and I look forward to working with the new Board members.

Catherine Baker Stetson's name has again been referred to the Senate Indian Affairs Committee for confirmation. I offer the following information regarding my concerns over her confirmation.

The Presidential Appointee's Handbook prepared by The National Academy of Public Administration clearly outlines the conduct of nominees for Presidential Appointments. Since her nomination by the White House, certain actions on Ms. Stetson's part regarding IAIA matters have been highly inappropriate. The Handbook specifically states:

"Reporters or friends and associates may want to know whether an individual is in fact

under consideration for an appointment..." "...First, it is wise to let the White House issue all public statements about the status of a search..."

Ms. Stetson has announced her own nomination and presumed appointment to individuals, the New Mexico State Bar Association Newsletter, the IAIA Board, the media and others, as referenced in the attached articles and letters, and by her statement that "My understanding that the dissatisfaction with some of the things that have happened at IAIA comes from a growing number of people, including faculty, staff, and other concerned citizens..."

Please reference the August 17-23, 1994 Santa Fe Reporter article quote by Ms. Stetson, "I would have liked a meeting with the new trustees in Santa Fe at the beginning of the school year," says Kate Stetson, an Albuquerque lawyer who is one of the nominees. It was not appropriate to discuss any Board of Trustees meetings with Press or other interested parties until her nomination was confirmed.

It is a result of discussions Ms. Stetson has had with "concerned citizens" regarding her concerns over the Institute and its leadership, that the Institute has taken a slower approach with regard to fund raising at the local level. Reference the documented reported comments made by Ms. Stetson to one of IAIA's major individual donors - again, totally inappropriate.

"...They may even ask the individual's views on policy issues relevant to the job in question. The attention is flattering and it is hard to say "no comment". But "no comment" is the prudent answer. No small number of potential nominations have gone awry after untimely or unfortunate public statements by leading candidates.."

Ms. Stetson's request for records of past Board meetings from the Chairman of IAIA to "provide a history of the Institute" were provided to her since, according to Ms. Stetson, "we expect to begin our new terms just as the new school year begins, the need is especially critical if we are to be optimately responsive..." which resulted in several additional letters to IAIA requesting more detailed information, clarification of materials and decisions made by the Board on policy issues. Her letter to the Chairman of the Board to change the official minutes to reflect a favorable record of a presentation by her law firm to do pro-bono work was not honored. Only a current Board member may request a change to official Board Minutes or records. Again, a very highly inappropriate request of a Presidential nominee.

"It is better to inform the White House of potential problems early in the process than to wait until public embarrassment and controversy are unavoidable. Trite though it may seem to say so, honesty in these matters is a very good policy".

Ms. Clark, based on the above, as a member of the Board of Trustees of the IAIA, I questioned Ms. Stetson's behavior and intent for coming on board. Her actions and the tone of her letters questioning decisions made at Board level have offended some Board members and seems counter productive for a potential board member's first introduction to the Board.

In closing, I must state that Ms. Stetson's actions with regard to her nomination by the White House is potentially embarrassing to the Administration, especially with the bad press she has generated in the State of New Mexico, the home of the IAIA Institute. I do not and will not tolerate any action by a potential Board of Trustee in attempting to set their own policy for the Board of IAIA without any regard to other Board of Trustees input. It is my feeling that the Administration and the Board of IAIA would not be positively served by Ms. Stetson. Her actions clearly indicate that she may have an agenda of her own for IAIA. I look forward to continuing my involvement and support for IAIA who not only represents the American Indian population of this country, but the Alaska Natives, and for this reason, have stated my concerns. Please contact me personally, or my staff assistant, Cynthia Ahwinona can answer any questions; (202) 226-0382.

I appreciate your attention to this matter.

Sincerely,

DON YOUNG
Congressman for All Alaska

DY:caa

THE WHITE HOUSE

WASHINGTON

BBG

~~[illegible]~~

KOROLOGOS – GOP, FEINGOLD, KERRY

(CH) BAO LORD – BIDEN

SPEILVOGEL ✓ (D)

(CH) KIRKLAND ✓ (D) BIDEN

MAS CANOSA – R

MICHAEL – R

FLEISCHAKER ✓ (D) POTUS

NATHANSON ✓ (D) – BERMAN

BIDEN

MICA – HAS TO BE ON (FOLEY)

KOROLOGOS – NO WAY

5808

THE WHITE HOUSE
WASHINGTON

BBG

BIDEN - 2 OF 8 SLOTS
LANE KIRKLAND }
BETTY BAO LORD }

DOLE - KOROLOGOS - BIDEN

VERONICA MAY BE CALLING PAT

HOTUS -

KERRY }
FEINGOLD } NOT HAPPY W BIDEN
PELL }

WE MAY NOT HAVE TO CAVE

BIDEN'S STAFF DOESN'T HAVE PRIORITIES

DAN MICA - BIDEN WANTS HIM

KERRY – BBG

DAVID LETTER

DON'T WANT TO FOLD AGAIN LIKE LAST YEAR. IF IT LOOKS LIKE A BIDEN-STACKED BOARD.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

07-Apr-1995 09:59am

TO: Ann M. Cattalini
TO: Erin A. O'Connor

FROM: Eric K. Senunas
Office of Legislative Affairs

SUBJECT: Railroad Retirement Board

Pat,

I wanted to give you a heads up about a problem (probably minor) that came up last night on the executive calendar. Two members of the Railroad Retirement Board who had been nominated for reappointment to the Board were moved out of Labor last week and on the exec for last night. About a half an hour before the Senate did the exec Abby said that there was a problem on the R side with Virgil Speakman, one of the two nominees for the Board. She said that the R cloakroom was trying to work it out, but didn't know if it would go. When the other 40 went, this was the one guy held up. I spoke with the Leg Affairs person at the agency last night, and she had not heard of any problems.

Abby is going to try to find out what she can, but last night neither she nor Nick Littlefield had any idea of what the deal was.

This morning, Craig Smith called me and told me about a larger political deal going on with the Board. It seems that there is a labor/management dispute going on, and that management is trying to break the union. He had been working with Mikulski's office to try to get the management guy held, but they didn't hold him up and the labor guy (Speakman) was held up instead. He should have told us this, but he didn't (we very easily could have said that the two noms are a package). My main fear is that labor is going to see a major conspiracy, and I'm not convinced that that is what's going on. No one had heard anything on this until 10:15 last night, which makes me think that this might be something more flakey than suspicious. I told Craig to tell the labor people he has been speaking with to try not to blow this up before we can figure out what is really going on. I don't want what might be something minor becoming something major.

Both nominees are reappointments, so neither's status on the Board will be effected (they have been hold-overs for almost a year now). In effect, nothing has changed. Also, we still have the option of not signing the appointment of the guy who was confirmed to retain some leverage if someone is trying to pull a fast one. Craig is going to talk to Podesta about holding the paper on the management guy. It would have been better to hold them together in the Senate, and Craig realizes that he should have clued us in to what was going on.

I just wanted to give you a heads up on this. I don't have any information yet, but I'll let you know when I do. I'm hoping that Craig will be able to keep the labor guys from making things worse by trying to raise hell.

S2238 Kennedy (D-MA) 06/23/94 (292 lines)
Introduced in Senate

Employment Non-Discrimination Act of 1994.

Special typefaces used in this bill version:
// \\ Italic
!! !! Bold roman
Item Key: 12641

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103D CONGRESS
2D SESSION

S. 2238

To prohibit employment discrimination on the basis of sexual orientation.

=======================

IN THE SENATE OF THE UNITED STATES

June 23 (legislative day, JUNE 7), 1994

Mr. KENNEDY(for himself, Mr.CHAFEE, Mr.AKAKA, Mr.JEFFORDS, Mr.BINGAMAN, Mr.PACKWOOD, Mrs.BOXER, Mr.BRADLEY, Mr.DODD, Mr.FEINGOLD, Mrs.FEINSTEIN, Mr.GLENN, Mr. HARKIN, Mr.INOUYE, Mr.KERRY, Mr.LAUTENBERG, Mr.LEAHY, Mr.LEVIN, Mr.LIEBERMAN, Mr.METZENBAUM, Ms.MIKULSKI, Ms.MOSELEY-BRAUN, Mr.MOYNIHAN, Mrs.MURRAY, Mr.PELL, Mr.RIEGLE, Mr.ROBB, Mr. SARBANES, Mr. SIMON, and Mr.WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

=======================

A BILL

To prohibit employment discrimination on the basis of sexual orientation.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION 1. SHORT TITLE.!!

This Act may be cited as the "Employment Non-Discrimination Act of 1994".

!!SEC. 2. FINDINGS AND PURPOSES.!!

(a) FINDINGS.--The Congress finds that--

(1) an individual's sexual orientation bears no relationship to the individual's ability to contribute fully to the economic and civic life of society;

(2) historically, American society has tended to isolate, stigmatize, and persecute gay men, lesbians, and bisexuals;

(3) one of the main areas in which gay men, lesbians, and bisexuals face discrimination is employment;

(4) employment discrimination on the basis of sexual orientation violates fundamental American values of equality and fairness;

(5) the continuing existence of employment discrimination

on the basis of sexual orientation denies gay men, lesbians, and bisexuals equal opportunity in the workplace and affects interstate commerce;

(6) individuals who have experienced employment discrimination on the basis of sexual orientation often lack recourse under Federal law; and

(7) gay men, lesbians, and bisexuals have historically been excluded from full participation in the political process, comprise a discrete and insular minority, and have historically been subjected to purposeful unequal treatment based on characteristics not indicative of their ability to participate in or contribute to society.

(b) PURPOSES.--It is the purpose of this Act--

(1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation;

(2) to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation; and

(3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution and to regulate commerce, in order to prohibit employment discrimination on the basis of sexual orientation.

!!SEC. 3. DISCRIMINATION PROHIBITED.!!

A covered entity, in connection with employment or employment opportunities, shall not--

(1) subject an individual to different standards or treatment on the basis of sexual orientation;

(2) discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated; or

(3) otherwise discriminate against an individual on the basis of sexual orientation.

!!SEC. 4. BENEFITS.!!

This Act does not apply to the provision of employee benefits to an individual for the benefit of his or her partner.

!!SEC. 5. NO DISPARATE IMPACT.!!

The fact that an employment practice has a disparate impact, as the term "disparate impact" is used in section 703(k) of the Civil Rights Act of 1964 (42 U.(k)), on the basis of sexual orientation does not establish a prima facie violation of this Act.

!!SEC. 6. QUOTAS AND PREFERENTIAL TREATMENT PROHIBITED.!!

(a) QUOTAS.--A covered entity shall not adopt or implement a quota on the basis of sexual orientation.

(b) PREFERENTIAL TREATMENT.--A covered entity shall not give preferential treatment to an individual on the basis of sexual orientation.

!!SEC. 7. RELIGIOUS EXEMPTION.!!

(a) IN GENERAL.--Except as provided in subsection (b), this Act shall not apply to religious organizations.

(b) FOR-PROFIT ACTIVITIES.--This Act shall apply to a religious organization's for-profit activities subject to taxation under section 511(a) of the Internal Revenue Code of 1986 as in effect on the date of the enactment of this Act.

!!SEC. 8. NON-APPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.!!

(a) ARMED FORCES.--

(1) For purposes of this Act, the term "employment or employment opportunities" does not apply to the relationship between the United States and members of the Armed Forces.

(2) As used in paragraph (1), the term "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) VETERANS' PREFERENCES.--This Act does not repeal or modify any Federal, State, territorial, or local law creating special rights or preferences for veterans.

!!SEC. 9. ENFORCEMENT.!!

(a) ENFORCEMENT POWERS.--With respect to the administration and enforcement of this Act--

(1) the Commission and the Librarian of Congress shall have the same powers, respectively, as the Commission and the Librarian of Congress have to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(2) the Attorney General of the United States shall have the same powers as the Attorney General has to administer and enforce such title; and

(3) the district courts of the United States shall have the same jurisdiction and powers as such courts have to enforce such title and section 309 of the Civil Rights Act of 1991 (2 U.S.C. 1209).

(b) PROCEDURES AND REMEDIES.--The procedures and remedies applicable to a claim for a violation of this Act are as follows:

(1) For a violation alleged by an individual, other than an individual specified in paragraph (2) or (3), the procedures and remedies applicable to a claim brought by an individual for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall apply.

(2) For a violation alleged by an employee of the House of Representatives or of an instrumentality of the Congress, the procedures and remedies applicable to a claim by such employee for a violation of section 117 of the Civil Rights Act of 1991 (2 U.S.C. 601) shall apply.

(3) For a violation alleged by an employee of the Senate, the procedures and remedies applicable to a claim by such employee for a violation of section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202) shall apply.

!!SEC. 10. STATE AND FEDERAL IMMUNITY. !!

(a) STATE IMMUNITY.--A State shall not be immune under the 11th amendment to the Constitution of the United States from an action in a Federal court of competent jurisdiction for a violation of this Act. In an action against a State for a violation of this Act, remedies (including remedies at law and in equity) are available for the violation to the same extent as such remedies are available in an action against any public or private entity other than a State.

(b) LIABILITY OF THE UNITED STATES.--The United States shall be liable for all remedies under this Act to the same extent as a private person and shall be liable to the same extent as a nonpublic party for interest to compensate for delay in payment.

!!SEC. 11. ATTORNEYS' FEES.!!

In any action or administrative proceeding commenced pursuant to this Act, the court or the Commission, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee, including expert fees and other litigation expenses, and costs. The United States shall be liable for the foregoing the same as a private person.

!!SEC. 12. RETALIATION AND COERCION PROHIBITED.!!

(a) RETALIATION.--A covered entity shall not discriminate against an individual because such individual opposed any act or practice prohibited by this Act or because such individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) COERCION.--A person shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised, enjoyed, assisted, or encouraged the exercise or enjoyment of, any right protected by this Act.

!!SEC. 13. POSTING NOTICES.!!

A covered entity shall post notices for employees, applicants for employment, and members describing the applicable provisions of this Act, in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.).

!!SEC. 14. REGULATIONS.!!

The Commission shall have the authority to issue regulations to carry out this Act.

!!SEC. 15. RELATIONSHIP TO OTHER LAWS.!!

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

!!SEC. 16. SEVERABILITY.!!

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

!!SEC. 17. EFFECTIVE DATE.!!

This Act shall take effect 60 days after the date of the enactment of this Act, and shall not apply to conduct occurring before such effective date.

!!SEC. 18. DEFINITIONS.!!

As used in this Act--

(1) the term "commerce" has the meaning given such term in section 701(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(g));

(2) the term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil

Rights Act of 1964 (42 U.);

(3) the term "covered entity" means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)) applies, an employing authority of the House of Representatives, an employing office of the Senate, or an instrumentality of the Congress;

(4) the term "employee of the Senate" has the meaning given such term in section 301(c) of the Civil Rights Act of 1991 (2 U.S.C. 1201(c));

(5) the term "employer" has the meaning given such term in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(6) the term "employment agency" has the meaning given such term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c));

(7) the term "employment or employment opportunities" includes job application procedures, hiring, advancement, discharge, compensation, job training, or any other term, condition, or privilege of employment;

(8) the term "instrumentalities of the Congress" has the meaning given such term in section 117(b)(4) of the Civil Rights Act of 1991 (2 U.S.C. 601(b)(4));

(9) the term "labor organization" has the meaning given such term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d));

(10) the term "person" has the meaning given such term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a));

(11) the term "religious organization" means--

(A) a religious corporation, association, or society; or

(B) a college, school, university, or other educational institution, not otherwise a religious organization, if--

(i) it is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association, or society; or

(ii) its curriculum is directed toward the propagation of a particular religion;

(12) the term "sexual orientation" means lesbian, gay, bisexual, or heterosexual orientation, real or perceived, as manifested by identity, acts, statements, or associations; and

(13) the term "State" has the meaning given such term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

January 24, 1995

SENT TO CRAIG SMITH

The Honorable Leon Panetta
Chief of Staff
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Leon:

We write to commend to your consideration the reappointment of Ms. Jana McKeag to serve an additional term as a Republican Commissioner of the National Indian Gaming Commission. First appointed to the Commission in April 1991 for a one-year term, Ms. McKeag was reappointed for a full three-year term in April of 1992. Her present term expires in April of 1995.

In our view, the reappointment of Ms. McKeag would lend a continuity and stability to the work of the Commission at a time when the Chairman of the Commission is still in the first year of his tenure, and the third Commissioner has been nominated by the President to serve as a federal district judge. As an enrolled member of the Cherokee Nation of Oklahoma, Ms. McKeag's reappointment to the Commission would also serve to fulfill the requirement of the Indian Gaming Regulatory Act that two of the three Commissioner positions be filled by persons of Native American ancestry.

We look forward to working with you in the 104th session of the Congress.

Sincerely,

DANIEL K. INOUYE
Vice-Chairman

JOHN McCAIN
Chairman

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

TELEFAX COVER SHEET

TO: Eric Sununu

FROM: Noelle Kahanu

DATE: Feb 27, 95

FAX NUMBER: 456-2604

NUMBER OF PAGES INCLUDING COVER SHEET 4

MESSAGE:

You may want to talk to Majority Staff Director Steve Heeley re nomination. Sen. Murkowski has written to Sen. McCain raising concerns re Stetson.

TO CONFIRM MESSAGE: (202) 224-2251
FAX NUMBER: (202) 224-2309

LEGAL AFFAIRS **W. JOHN MOORE**

FROM SHOO-IN TO SHUTOUT?


Shepard Sherbell/SABA

Peter B. Edelman, counselor to the Health and Human Services (HHS) Department, has the right stuff needed for President Clinton to nominate him to the U.S. Court of Appeals for the District of Columbia Circuit. His Clinton bona fides: He's a certified FOB (Friend of Bill). His wife, Marian Wright Edelman, head of the Children's Defense Fund, is one of Hillary Rodham Clinton's closest buddies. He once worked for Robert F. Kennedy. Before joining HHS, he was a distinguished professor at Georgetown University Law Center. So it's no surprise that the White House has floated Edelman's name.

Until the midterm elections, he looked like a shoo-in for the job on the nation's most important appellate court. But his prospects have dimmed considerably following the Democrats' electoral debacle. Now each Administration judicial nominee must traverse the minefield of a Republican-dominated Senate Judiciary Committee. *(See NJ, 11/19/94, p. 2715.)*

Sen. Orrin G. Hatch, R-Utah, the incoming Judiciary Committee chairman, has suggested in recent interviews that nominees can expect tougher review from his panel. And Hatch has signaled the White House that Edelman's nomination would be unwelcome.

Conservative judicial activists are already prepping themselves for an Edelman nomination. Thomas L. Jipping, head of the Free Congress Research and Education Foundation's Judicial Monitoring Project, said that he has a two-and-a-half-inch-thick file on Edelman. "He has a breathtakingly activist view of interpreting the Constitution," Jipping said. If Edelman is nominated, he added, "Clinton cannot claim to be a moderate or a centrist."

What inflames conservatives are Edelman's writings. In a 1989 article in *Legal Times*, Edelman endorsed university codes barring hate speech aimed at racial minorities. Second, and perhaps more troubling to conservatives, Edelman has described welfare as a constitutional right and has urged the courts to allow higher welfare payments. In the current climate, those statements could be deemed politically incorrect, even by a Democratic White House.

A leading conservative pundit, former Reagan Administration Treasury Department official Paul Craig Roberts, wrote recently that "it would be folly for any Congress . . . to confirm Edelman, who may have to be impeached for his antidemocratic activism."

For an Administration already under assault from moderate Democrats since the elections, a tough fight over a liberal nominee may be about as welcome as a Christmas party hangover. The easy call would be to drop Edelman in favor of another nominee with a sterling centrist pedigree. But dumping Edelman is not without its risks, especially for a President who's sometimes criticized even by his own supporters as lacking backbone.

Some liberals are urging a fight. "I would assume this Administration does not want to walk off the field before the game has even started," said Nan Aron, executive director of the Alliance for Justice, a liberal public-interest group that monitors judicial appointments.

In some ways, Clinton's quandary on Edelman highlights the dilemma he faces in governing. If he steers to the center, dumping every liberal liability along the way, will he be credited as a crafty pragmatist or damned as a spineless opportunist?

Edelman's qualifications for an appellate judgeship go beyond his long friendship with the Clintons, and he has strong support from leading Democratic activists. "We think he is a nominee with outstanding credentials," Aron said. "Once his record is fully before the U.S. Senate, my belief is that he will be confirmed."

So far, Clinton's judicial appointments have proved a political plus for him. Both of his nominees to the Supreme Court, Ruth Bader Ginsburg and Stephen G. Breyer, were centrists who quickly won bipartisan approval in the Senate—avoiding the acrimonious battles that occurred over past nominations. After a sluggish start, the Administration has moved to fill dozens of judicial vacancies.

Liberal activists such as Aron want more of the same. Clinton's judicial appointments "have been strong," Aron said. "I would certainly urge the President to put similar judges on the bench over the next two years. This is one area where we think there is no reason to yield to partisan opposition prematurely," Aron added.

So far, the White House appears to be hedging its bets. White House counsel Abner J. Mikva—whose departure from the D.C. Circuit bench created the vacancy that Edelman would be nominated to fill—told *Legal Times* last month that Edelman is "seriously under consideration." But so are several other prominent Washington lawyers.

Even Edelman's admirers agree that there are good reasons for Clinton to steer clear of him. It would take only 40 votes to block his nomination, and because he comes from Washington, which has no representation in the Senate, he would start off with no home-state Senator determined to push for him. As a white male, he would make an easier target than would a minority or woman nominee.

Other potential nominees to the D.C. Circuit share Edelman's progressive agenda without the intellectual baggage. Some Democrats worry that a nasty political fight over Edelman could slow Senate consideration of other judicial nominees. As a result, they have suggested that maybe the President should wait and fight another day for another liberal nominee.

Certainly, *Stand by Your Man*—or woman—isn't the White House theme song. Just ask ex-deputy Treasury secretary Roger C. Altman, former Surgeon General Joycelyn Elders or erstwhile Justice Department nominee Lani Guinier. It might be risky to nominate an old friend such as Edelman when Clinton is determined to steer his Administration to the center. But every President at times must decide when a gut check is as important as a reality check. ■

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

TELEFAX COVER SHEET

TO: ERIC SUNUNDS (or Steve Ruchitti)

FROM: BOB ARNOLD

DATE: 11/29

FAX NUMBER: 456 2604

NUMBER OF PAGES INCLUDING COVER SHEET 4

MESSAGE:

The IAIA board says two members with expired terms are "deemed reappointed" under terms of a 1988 amendment to the IAIA statute. Comment?

I didn't work on the 1988 amendment!

TO CONFIRM MESSAGE: (202) 224-2251
FAX NUMBER: (202) 224-2309

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

13-Oct-1994 02:47pm

TO Eric

TO: Erin A. O'Connor
TO: Ann M. Cattalini

FROM: Eric K. Senunas
Office of Legislative Affairs

SUBJECT: State wants to give Sam Brown personal rank of Ambassador

Pat,

The State Department has asked Personnel to give Sam Brown the personal rank of Ambassador, which does not require Senate confirmation.

Brown, if you recall, was the nominee who would have been given the rank of Ambassador as the head of the delegation to the CSCE in Geneva if we had been able to reach cloture on his nomination. The Senate failed in two votes to reach cloture, but he was sent to Geneva anyway.

Personnel wanted to run this by you to see if you thought there were any problems with giving him this six-month rank. The only downside I can think of would be if we wanted to renominate him for rank, hoping that the Senate would look more favorably on the job he has done. If we give him this rank without Senate approval, it might kill a chance to confirm him as rank of Ambassador.

What do you think? If you think personnel should go ahead with State's request, just let me know.

Thanks,

Eric

Institute of American Indian Arts

1600 St. Michaels Drive • P. O. Box 20007 • Santa Fe, New Mexico • 87504 • 505/988-6463

94 OCT 18 AM 10: 27

OFFICE OF THE CHAIRMAN
MR. KENNETH BLANKENSHIP

October 6, 1997

The Honorable Daniel K. Inouye
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

On behalf of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development (IAIA) we sincerely appreciate your call for a roll call vote to expedite the confirmation process to fill vacancies existing on our Board. We welcome the participation of Ms. Barbara Blum, Ms. LaDonna Harris and Mr. Loren Kieve.

With respect to the remaining vacancies, IAIA's enabling legislation, "Section 1506(2)(i) of the Higher Education Amendments, states:

"APPOINTMENT EXCEPTION FOR CONTINUITY.--

(1) In order to maintain the stability and continuity of the Board, the **Board shall have the power to recommend the continuation of members on the Board** pursuant to the provisions of this subsection. When the Board makes such a recommendation, the **Chairman of the Board shall transmit the recommendation to the President no later than 75 days prior to the expiration of the term** of the member.

(2) **If the President has not transmitted to the Senate a nomination** to fill the position of a member covered by such a recommendation **within 60 days from the date that the member's term expires, the member shall be deemed to have been reappointed for another full term** to the Board, with all the appropriate rights and responsibilities."

Mr. Chairman, attached is the letter to the White House dated December 30, 1993 (more than the 75 days prior to expiration of terms) recommending reappointments for David Lester and James Santini. The President has not transmitted to the Senate nominations to fill the vacancies which are created by the expiration of the terms of Mr. Santini and Mr. Lester, therefore, in accordance with IAIA's enabling legislation, the Board maintains that these members are reappointed and would appreciate confirmation of the reappointments of Mr. Lester and Mr. Santini as soon as possible.

Currently there exists two other vacancies for terms ended May 19, 1994 -- although IAIA has received no official notification, it is our understanding the White House has names in the clearance process.

In addition, a third seat becomes vacant at the close of this legislative session (a recess appointment). At the request of the All Indian Pueblo Council, the consortium for the nineteen Pueblo Tribes of New Mexico, the Board of Trustees respectfully supports their request for a Pueblo to be appointed to the Board.

Again, Senator Inouye, thank you for your efforts and concern on behalf of the Institute, it's students, faculty and staff.

Sincerely,

Ken Blankenship

Kenneth Blankenship
Chairman, IAIANCAD Board of Trustees

cc: Ms. Veronica Biggins, Director, Office Presidential Personnel
IAIANCAD Board of Trustees
19 Pueblo Governors/All Indian Pueblo Council
New Mexico Congressional Delegation

Institute of American Indian Arts

P.O. Box 1836 • Santa Fe, New Mexico • 87504 • 505/988-6289

December 30, 1993

Ms. Jan Piercy
Deputy Associate Director
Office of the Presidential Personnel
THE WHITE HOUSE
Washington, D. C. 20500

Ref: Institute of American Indian and Alaska Native Culture and Arts Development Board of Trustees - Openings

Dear Ms. Piercy:

The Institute's Board asked that the following be communicated to the Office of Presidential Personnel. The Board is requesting that the following incumbent Trustees be reappointed for new terms:

	Term Expiration Date
Mr. James D. Santini	May 19, 1994
Mr. A. David Lester	May 19, 1994

Each of the above Trustee's holds an important position on the Board, is in regular attendance at Board and Committee meetings, and has provided invaluable service to the College from the time of its creation in 1988.

Please let me know if there is anything we can do to assist this process. I look forward to hearing from you.

Sincerely,

Ken Blankenship

Ken Blankenship
Chairman, IAIANCAD Board of Trustees

Enclosure (2)
Resumes

Faxed To: Sara Enright @ 202/456-2498 (w/att) 2/9/94 e-

FILE COPY

Fed Ex 877088 5465 1/11

THE WHITE HOUSE

WASHINGTON

Office of Legislative Affairs
Fax Cover Sheet

Date: 8/8

To: ERIC

Fax Number:

From: ERIN at (202) 456-2230.

Comments:

Mack sent this
to Pat.
FYI.

Note: The information contained in this facsimile message is CONFIDENTIAL and intended for the recipient ONLY. If there is a problem with this transmission, please contact the sender as soon as possible.

Number of pages w/cover: ____

Cc:
Pat
Phil
Dest

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

August 1, 1994

The Honorable Mack McLarty
Counsellor to the President
The White House
Washington, D.C. 20500

Dear Mack:

I wanted to follow-up on our conversation concerning Wayne Schley's seat on the Postal Rate Commission. As you will recall, Senator Pryor joined me in recommending Wayne for appointment to a Republican vacancy on the Commission during the Bush Administration.

When President Clinton took office, I worked closely with David to get Ed Gleiman appointed to a Democratic vacancy and named Chairman. Ed, though he was filling a Democratic slot and had worked for years for a Democratic Senator and a Democratic Congressman, was technically registered as an independent. With Ed's appointment, the Commission is now composed of two Republicans, one of them being Wayne, two Democrats, and one independent.

In October, Wayne's term on the Commission expires. David joined Senator Glenn, the Chairman of the Governmental Affairs Committee which oversees the Postal Rate Commission, and the Assistant Majority Leader, Senator Ford, in recommending Wayne for reappointment. Recently, David was advised that the White House is now considering appointing a Democrat to fill Wayne's Republican seat. If Congress confirms the appointment, the Commission would then include three Democrats, one independent, and only one Republican.

When we spoke on the phone, you indicated that you had been advised that Presidents Reagan and Bush had followed that practice in the past -- that is appointing an independent so they would only be required to appoint one member of the party not in control of the White House. I checked the records and found that is not the case. Enclosed are copies of relevant pages from the "Plum Book" from 1980, 1984, 1988, and 1990 listing President Carter's appointees, outlining the appointees from President Reagan's first term, noting his second term appointments, and finally, listing President Bush's nominees.

You will find that under previous Administrations, the Postal Rate Commission has always included three members with the same party affiliation as the President, and two members of the opposing party. *

In light of historical precedent, I would very much appreciate your taking another look at reappointing Wayne Schley to the current Republican seat on the Postal Rate Commission. David will tell you that Wayne is one of the most knowledgeable people in Washington on issues affecting the Postal Service. He has worked on postal issues since 1971, and served as the Staff Director of the Postal Service Subcommittee of the Governmental Affairs Committee from 1980 to 1986. Thanks for your consideration. If you have questions, please don't hesitate to contact me directly at 224-1027.

With best wishes,

Cordially,

Ted
TED STEVENS

Enclosure

* Both as Chairman (1981 – 1987) and
Ranking Member of this Subcommittee, I
have always looked to Democrats
for Democratic appointments —
& clear appointments to the Postal Rate Commission
seats on the Postal Rate Commission subject
and all other appointments subject
to our review. I believe, Mac, that
bi-partisan concepts are all
is what it's an additional check & balance
element in our system.

T

1980 Plum Book
Carter

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

[illegible]on	Position	Incumbent	Type of appointment	Grade or salary	Tenure	Expires
C	Member (Chairman) Board of Directors.	Max N. Berry	PA	$192.72 p.d. (I)	6 years	Oct. 26, 1984.
	Member (Vice Chairman) Board of Directors.	Nathaniel A. Owings	PA	$192.72 p.d. (I)	do	Do.
	Member, Board of Directors	Donald J. Bruckmann	PA	$192.72 p.d. (I)	do	Oct. 26, 1979.¹
	do	Leonard A. Haft	PA	$192.72 p.d. (I)	do	Oct. 26, 1982.
	do	Thomas F. Murphy	PA	$192.72 p.d. (I)	do	Do.
	do	Orlando W. Darden	PA	$192.72 p.d. (I)	do	Oct. 26, 1980.
	do	Mitchell I. Kafarski	PA	$192.72 p.d. (I)	do	Do.
	do	Vacant	PA		do	
	Executive Director	W. Anderson Barnes	PL	$50,112		
	Assistant Director, Legal	Peter T. Mossoly	PL	$50,112		
	Assistant Director, Finance	F. David Harris	PL	$48,008		
	Director of Development	Charles A. Guerli	NEA	$GS-16		

[illegible]blic Law 92-578 incumbent continues to serve until successor has been named.

PENSION BENEFIT GUARANTY CORPORATION

C	Executive Director	Robert E. Nagle	C	Level V	VP	
	Secretary (Stenography)	Geraldine R. Erickson	C	GS-10	VP	

POSTAL RATE COMMISSION

	OFFICE OF THE COMMISSIONERS					
	Chairman	A. Lee Fritschler (D)	PAS	Level III	6 years	Oct. 14, 1982.
	Commissioner	Simeon M. Bright (D)	PAS	Level IV	do	Nov. 22, 1982.
	do	James H. Duffy (D)	PAS	do	do	Nov. 22, 1984.
	do	Clyde S. DuPont (R)	PAS	do	do	Oct. 14, 1980.
	do	Janet Steiger (R)	PAS	do	do	Oct. 14, 1986.
	OFFICE HEADS					3 D
	Director, Technical Analysis and Planning.	Robert H. Cohen	PL	$50,112		2 R
	Deputy Director, Technical Analysis and Planning.	Harold D. Orenstein	PL	$50,112		
	Assistant Director, Technical Analysis and Planning.	Charles McBride	PL	$40,832		
	General Counsel	David F. Stover	PL	$50,112		
	Deputy General Counsel	Stephen Gold	PL	$47,889		
	Assistant General Counsel	Mitchell Knisbacher	PL	$40,832		
	Officer of the Commission	Stephen Sharfman	PL	$47,839		
	Special Assistant to Commissioner Bright.	Gerald Cerasale	PL	$34,713		
	Special Assistant to Commissioner DuPont.	Elizabeth Delf	PL	$34,713		
	Special Assistant to Commissioner Duffy.	Arpad Kovacsy	PL	$34,713		
	Special Assistant to Chairman Fritschler.	Richard Legon	PL	$29,375		
	Special Assistant to Commissioner O'Doherty.	Mary Meade	PL	$29,375		
	Secretary to Commissioner Bright	Sandra Crist	PL	$18,760		
	Secretary to Chairman Fritschler	Maria T. Duke	PL	$18,760		
	Secretary to Commissioner DuPont	Ardine Harrison	PL	$18,760		
	Secretary to Commissioner Duffy	Elayne Hughes	PL	$18,760		

[illegible]S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

	Deputy Director for Management	Mary Ann Orlando	A	$40,832	VP	Dec. 31, 1982.
	Deputy Director for Studies	Barbara Mishkin	A	$40,832	S	Do.
	Attorney-Adviser	Alan Weisbard	A	$34,713	VP	Do.

1984 Plum Book
Reagan

INDEPENDENT AGENCIES

PENSION BENEFIT GUARANTY CORPORATION

Location	Position	Incumbent	Type of appointment	Level, grade, or salary	Tenure	Expires
agton, DC	Executive Director	Charles C. Tharp	C	Level V		
	Deputy Executive Director	David M. Walker	NEA	GS-17		
	do	Royal S. Dallinger	NEA	GS-16		
	Associate Executive Director	Roderick J. O'Neil	NEA	GS-16		
	Special Assistant to the Executive Director.	Kevin W. Putt	C	GM-14		
	Staff Assistant	Graziella A. Guerra	C	GS-11		
	Secretary (Stenography)	Arden C. Kendall	C	GS-11		
	do	Quita J. Dracos	C	GS-9		
	Secretary (Typing)	Felcia A. Brown	C	GS-9		

POSTAL RATE COMMISSION

Location	Position	Incumbent	Type of appointment	Level, grade, or salary	Tenure	Expires
gton, DC	Chairman	Janet D. Steiger (R)	PAS	Level III	6 years	Oct. 14, 1986.
	Commissioner	John W. Crutcher (R)	PAS	Level IV	do	Do.
	do	James H. Duffy (D)	PAS	do	do	Nov. 22, 1984.
	do	Henry R. Folsom (R)	PAS	do	do	Oct. 14, 1988.
	do	Simeon M. Bright (D) [1]	PAS	do	do	Nov. 22, 1988.
	Legal Advisor to the Chairman	Gerald E. Cerasale	PL	$46,567		
	Special Assistant to the Chairman	Maureen Drummy	PL	$41,882		
	Special Assistant to Commissioner Crutcher.	Elliott Rock	PL	$41,382		
	Special Assistant to Commissioner Duffy	Arpad de Kovacsy	PL	$46,567		
	Special Assistant to Vice Chairman Folsom.	Ronald R. Jensen	PL	$46,567		
	Special Assistant to Commissioner Bright.	Vacant	PL	NE		
	Secretary to the Chairman	Carol Chohn	PL	$24,024		
	Secretary to Commissioner Crutcher	Florance Broussard	PL	$24,024		
	Secretary to Commissioner Duffy	Elayne McHale	PL	$24,024		
	Secretary to Vice Chairman Folsom	Maria Duke	PL	$24,024		
	Secretary to Commissioner Bright	Sandy Crist	PL	$24,024		
	Chief Administrative Officer	Charles L. Clapp	PL	$66,400		
	General Counsel	David F. Stover	PL	$66,400		
	Deputy General Counsel	Vacant	PL	$63,500		
	Assistant General Counsel	Stephen L. Sharfman	PL	$61,615		
	Director, Office of Technical Analysis and Planning.	Robert Cohen	PL	$66,400		
	Deputy Director, Office of Technical Analysis and Planning.	Harold Orenstein	PL	$63,500		
	Assistant Director, Office of Technical Analysis and Planning.	Charles McBride	PL	$61,615		
	Director, Office of the Consumer Advocate.	Stephen A. Gold	PL	$66,400		

3 R
2 D

[1] ...rving under recess appointment.

1988 Plum Book
Reagan

POSTAL RATE COMMISSION

ocation	Position	Incumbent	Type of appointment	Level, grade, or salary	Tenure	Expires
n. DC	Chairman	Janet D. Steiger (R)	PAS	Level III	6 years	Oct. 14. 1992.
	Commissioner	John W. Crutcher (R)	PAS	Level IV	do	Do.
	do	Henry R. Folsom (R)	PAS	do	do	Oct. 14, 1994.
	do	W. H. "Trey" LeBlanc (D)	PAS	do	do	Nov. 22, 1994.
	do	Patti Birge Tyson (D)	PAS	do	do	Nov. 22. 1990.
	Legal Advisor to the Chairman	Gerald E. Cerasale	PL	$54,907		
	Special Assistant to the Chairman	Maureen Drummy	PL	$46,079		
	Special Assistant to Commissioner Crutcher.	Leonard Merewitz	PL	$54,907		
	Special Assistant to Commissioner Folsom.	Vacent	PL			3 R
	Special Assistant to Commissiner LeBlanc.	Jennafer Moreland	PL	$32,551		2 D
	Special Assistant to Commissioner Tyson	W. Lawrence Graves	PL	$54,907		
	Secretary to the Chairman	Sandra Crist	PL	$31,066		
	Secretary to Commissioner Crutcher	Joan Veit	PL	$31,066		
	Secretary to Commissioner Folsom	Maria Duke	PL	$31,066		
	Secretary to Commissioner LeBlanc	Vacant	PL			
	Secretary to Commissioner Tyson	Willemena Samuels	PL	$31,066		
	Chief Administrative Officer and Secretary.	Charles L. Clapp	PL	$73,400		
	General Counsel	David F. Stover	PL	$73,400		
	Assistant General Counsel	Stephen L. Sharfman	PL	$66,952		
	Director, Technical Analysis and Planning.	Robert Cohen	PL	$73,400		
	Assistant Director, Technical Analysis and Planning.	Charles McBride	PL	$68,952		
	Senior Financial Analyst	Harold D. Orenstein	PL	$71,910		
	Director, Office of Consumer Advocate	Stephen A. Gold	PL	$73,400		

PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

n. DC	Executive Director	Jay F. Rochlin	SES		NA	

RAILROAD RETIREMENT BOARD

L	Chairman	Robert A. Gielow	PAS	Level III	5 years	Aug. 29, 1987.
	Member of Board	Charles J. Chamberlain	PAS	Level IV	do	Aug. 29, 1989.
	do	John D. Crawford	PAS	do	do	Aug. 29, 1988.
	Attorney Advisor	Vacant	PL	GM-15		
	Assistant to the Board Member	Joseph M. Waechtar, Jr	PL	GM-15		
	Assistant to the Board Member	James C. Boehner	PL	GM-15		
	OFFICE OF THE INSPECTOR GENERAL					
	Inspector General	William J. Doyle III	PAS	Level IV		

1992 Plum Book
Bush

PENSION BENEFIT GUARANTY CORPORATION—Continued

Location	Position Title	Name of Incumbent	Pay Plan	Type of Appt.	Level, Grade, or Pay	Tenure	Expires
Washington, DC	Assistant Executive Director for Legislative Affairs.	Steven Hill	GM	SC	15		
Do	Assistant Executive	Chester Bryant	GS	SC	12		
Do	Confidential Assistant	Delores Ulman	GS	SC	12		
Do	Staff Assistant	Ramona Ely	GS	SC	11		
Do	do	Joseph Gruss	GS	SC	10		

PHYSICIAN PAYMENT REVIEW COMMISSION

Location	Position Title	Name of Incumbent	Pay Plan	Type of Appt.	Level, Grade, or Pay	Tenure	Expires
Washington, DC	Chairman	Philip R. Lee	PD	PA	$310		
Do	Commissioner	Linda H. Aiken	PD	PA	$310		
Do	do	Drew D. Altman	PD	PA	$310		
Do	do	Richard Anderson	PD	PA	$310		
Do	do	William P. Curreri	PD	PA	$310		
Do	do	Karen Davis	PD	PA	$310		
Do	do	John Meyer Eisenberg	PD	PA	$310		
Do	do	Jack Guildroy	PD	PA	$310		
Do	do	Robert B. Keller	PD	PA	$310		
Do	do	W.G. Wenane	PD	PA	$310		
Do	do	Michael D. McKinney	PD	PA	$310		
Do	do	Patricia M. Nazemetz	PD	PA	$310		
Do	do	Thomas R. Reardon	PD	PA	$310		
Do	do	Uwe E. Reinhardt	PD	PA	$310		
Do	Executive Director	Paul B. Ginsburg	OT	XS			
Do	Associate Director	Marilyn J. Field	OT	XS			
Do	Deputy Director for Management External Affairs.	Lauren B. Leroy	OT	XS			
Do	Senior Economist	Jonathan H. Sunshine	OT	XS			

POSTAL RATE COMMISSION

Location	Position Title	Name of Incumbent	Pay Plan	Type of Appt.	Level, Grade, or Pay	Tenure	Expires
	OFFICE OF THE COMMISSIONERS						
Washington, DC	Chairman	George W. Haley (R)	EX	PAS	III	6 years	10/14/92
Do	Commissioner	William Hardee, LeBlanc III (D).	EX	PAS	IV	do	10/14/94
Do	do	John W. Crutcher (R)	EX	PAS	IV	do	10/14/92
Do	do	Henry R. Folsom (R)	EX	PAS	IV	do	10/14/94
Do	do	H. Edward Quick, Jr. (D)	EX	PAS	IV	do	11/22/96
Do	Chief Administrative Officer and Secretary	Charles L. Clapp	OT	XS			
Do	Special Assistant to the Chairman	Irving Bramall	OT	XS			
Do	do	Robert Mitchell	OT	XS			
Do	Secretary to the Chairman	Augustine Farmer	OT	XS			
Do	do	Leonard Merewitz	OT	XS			
Do	Special Assistant to a Commissioner	James Arbury	OT	XS			
Do	do	John Bovard	OT	XS			
Do	Secretary to a Commissioner	Suzanne Tudor	OT	XS			
Do	do	Vacant	OT	XS			
Do	do	Anne Cornelius	OT	XS			
Do	do	Joyce Taylor	OT	XS			
	OTHER OFFICIALS						
Do	General Counsel	David F. Stover	OT	XS			
Do	Assistant to the General Counsel	Stephen L. Sharfman	OT	XS			
Do	Director, Office of Consumer Advocate	Stephen A. Gold	OT	XS			
Do	Director, Technical Analysis and Planning	Robert Cohen	OT	XS			
Do	Assistant Director, Technical Analysis and Planning.	William Ferguson	OT	XS			
Do	Senior Financial Analyst	Harold D. Greenstein	OT	XS			

bc-health-moy
MOYNIHAN RAPS WHITE HOUSE
OVER HEALTH CARE CRITICISM
Photo: GPN16 and GPN17 available May 17
By JOHN MACHACEK=
and KEITH WHITE=
Gannett News Service=

WASHINGTON Senate Finance Committee Chairman Daniel Patrick Moynihan Tuesday struck back at White House criticism that he isn't pushing hard enough for President Clinton's health care reform plan.

''It hasn't sunk in (at the White House) ... that the (Clinton plan) could be filibustered indefinitely,'' the New York Democrat said in defending his strategy of working with Finance Committee Republicans to forge bipartisan consensus on health care reform.

Some Senate Democrats suggested this week that Moynihan is undercutting his party by working too closely with committee Republicans on a compromise measure that would leave out major elements of the Clinton plan, such as price controls and a requirement that employers provide health coverage.

Moynihan said in an interview with Gannett News Service that the White House is the source of the criticism.

In fact, Sen. Jay Rockefeller, D-W.Va., one of Clinton's strongest health care allies on the Finance Committee, told reporters Monday that Moynihan was ''dodging the bullet'' on health care while other congressional leaders on the issue are moving ahead.

Moynihan introduced the Clinton bill in his role as Finance Committee chairman. But he doubts there are enough votes to pass it in its current form either in his committee or on the Senate floor. Also, he said he believes that legislation of such magnitude ought not to be narrowly passed.

Hence, he has initiated bipartisan discussions he hopes will lead to a broad agreement on a compromise measure that would get Clinton's approval.

Moynihan said he understands that the White House may be thinking of trying to ram the Clinton plan through the Senate with a bare majority perhaps with Vice President Al Gore casting a tie-breaking vote as he did on the Clinton economic plan last year.

But White House strategists seemed to have forgotten there was a fixed time limit debate on the budget reconciliation bill, Moynihan said. Democrats would need 60 votes to break a GOP filibuster on an extended health care reform debate.

Rockefeller said last week after the Finance Committee concluded hearings on health care reform that it was dangerous to ''play to a bipartisan spirit ... if we keep saying that we need a bill that will get 75 votes'' as Moynihan has suggested.

''A huge and controversial bill ... that is comprehensive and has meat in it probably won't get more than 52, 53 or 54 votes,'' he said. ''If you are saying you can't get 75 votes ... then you are saying we'll do a little insurance reform and call it quits.''

Moynihan forced the issue Tuesday by calling a meeting of Senate Finance Committee Democrats to see if they wanted to move ahead with a bill ''along the president's lines'' or continue discussions with GOP members. Although no vote was taken, the Democratic conclave ended with agreement to continue Moynihan's strategy, according to one participant.

''We've decided that we should continue to talk among ourselves but that we should also have a lot of emphasis on bipartisan conversations,'' said Sen. David Boren, D-Okla., who, along with Sen. Bob Kerrey, D-Neb., recently signed on to a GOP health care measure sponsored by Sen. John Chafee, R-R.I.

Moynihan has not indicated a preference for any of the alternative health care plans that have been proposed. But he seems to be leaning toward a measure that would reform the existing insurance system with or without the requirement that all employers provide coverage.

During a year of hearings on the health care reform issue, Moynihan said, ''I found myself thinking we are filling out a health care system, not creating one.''

''I don't have any problem with mandates except the votes aren't there,'' he said.

Moynihan said he believes ''we can get an agreement'' on insurance reform that, among other things, would eliminate pre-existing condition restrictions on coverage, guarantee continued coverage for workers who change jobs, and allow everyone to pay the same premium rate regardless of previous medical condition.

**** filed by:GN-F(--) on 05/17/94 at 17:34EDT ****
**** printed by:WHPR(197) on 05/17/94 at 18:03EDT ****

2ND STORY of Level 1 printed in FULL format.

The New Republic

October 18, 1993

SECTION: Vol. 209 ; No. 16 ; Pg. 20; ISSN: 0028-6583

LENGTH: 5796 words

HEADLINE: The access capitalists - influence-peddling: the next generation; The Carlyle Group; Cover Story; Company Profile

BYLINE: Lewis, Michael

BODY:

When you first meet David Rubenstein, you have to force yourself to remember that as a young staffer in the Carter White House he believed that the best thing in the world to be was a public servant. In those days he was known mainly for his unwillingness to go home at night. One of his former White House colleagues describes him as "the personification of the sheer, boring insistence that enables people to rise to the top." He himself says that he was "the first one to arrive on the first day of the administration and the last one to leave on the last," though he didn't, as was rumored, actually live in his West Wing office. He became famous, briefly, when a magazine article described his ascetic daily regime, which included eating dinner from White House vending machines. "Machine food is underrated," he said. That did it. A sperm bank called from California and asked him to contribute a specimen.

But then Carter lost and Rubenstein became just another Washington lawyer, peddling influence on behalf of clients he didn't care about with causes he didn't believe in. "I found it demeaning," he says. "It was legalized bribery. You'd go up to talk to a senator and the minute you got back to your office the phone would be ringing and it would be the senator's aide asking when you might be able to throw a fund-raiser." So in the middle of 1987 he and Stephen Norris, a Washington lawyer who worked for the Marriott Corporation, opened their own merchant bank.

"Merchant bank" is a term of art that obscures more than it describes; the one thing merchant bankers don't do is bank. Rubenstein and Norris planned to insinuate themselves into the Wall Street fad of buying companies with money borrowed from real banks: leveraged buyouts. It hardly mattered that neither man had any experience on Wall Street. By the middle of 1987, just about anyone could rent space and declare himself a financier, and just about anyone did. "I thought I had a pretty good i.q. myself," says Rubenstein, "and people were making a lot more money than me who I thought maybe weren't so smart."

Six years later The Carlyle Group --the name was inspired by the New York hotel and chosen because, like "merchant bank," it sounded old and established--holds a majority stake in a dozen or so companies, which employ about 45,000 people and generate about $ 5 billion in revenues annually, principally from the United States government. But what Rubenstein has done is in a way less impressive than whom he's done it with. He employs former Secretary of Defense Frank Carlucci, former Secretary of State James Baker, former budget director Richard Darman and many lesser rolodexes: the son of

Bahrain's ambassador to the United States, a former U.S. ambassador to nato and so on. Colin Powell is the most recent big shot considering an offer from Carlyle. Former Treasury Secretary Donald Regan, former Bush Campaign Chairman Fred Malek, former first son George Bush Jr., former cia Director Robert Gates and current sec Chairman Arthur Levitt are advisors to, investors in or board members of Carlyle's companies. Vernon Jordan and Bob Strauss, the Tweedledee and Tweedledum of Washington Insiderdom, are on the list of references Carlyle includes in its press kit.

The Carlyle Group, in short, has become a kind of salon des refusees for the influence-peddling class. It offers a neat solution for people who don't have a whole lot to sell besides their access, but who don't want to appear to be selling their access. "Jim Baker wouldn't have joined us if we lobbied," says Rubenstein. The former Carter operative is right. He is able to attract political celebrities such as Baker, Carlucci and Darman precisely because he has found a way to exploit their connections without seeming to be doing so. Almost unwittingly, he has helped to create the finest specimens of a new social type: the access capitalist.

The access capitalist enjoys a number of advantages over his progenitor, the Washington lobbyist. For a start, he stands to become very rich, very quickly. The lawyer-lobbyist merely rents his influence. The access capitalist effectively sells the present value of all his influence, in perpetuity, each time he makes a phone call. What's more, the access capitalist can plausibly represent himself as a higher social type--a businessperson rather than an influence- peddler--which gives him an edge if he decides to return to politics. But per- haps best of all for those who have spent their lives in politics, the access capitalist doesn't really need to know much about business. Wall Street has proved brutal to the many beginners, such as David Stockman and Larry Speakes, who have gone there to work from Washington. That true capitalism requires something more than connections is the source of Carlyle's appeal: only a merchant bank that trades more on whom one knows rather than on what one knows can provide a real home for the access capitalist.

My first meeting with the man who runs what must now be the best game in town occurred beneath one of the English hunting scenes that decorates his lobby. Rubenstein has an almost charming disregard for conventional charm. He shakes hands unhappily, his eyes aimed into his carpet. He doesn't often smile; when he wants to convey the idea of a smile, he grimaces. This he did as he began his monologue, which lasted four hours, with a couple of short breaks for questions. It opened: I've thought more about what I was going to say to you than I do before I go in to negotiate a deal. Everyone you've talked to has called me. I figure you will go one of two ways with your story. You could write a story saying, what are all these former government officials doing making all this money? Or you could say, who are all these bozos who think they know how to manage money? I called Jim Baker and asked him what he thought about your story. He said there was no way that you were going to write anything nice about us because The New Republic hates him. Now, he grimaces brightly if you were writing for another publication you could write a story about how all these smart guys had got together and were making all this money. You ought to think about that. You could tell it as an adventure story. How a bunch of smart guys got together, raised $ 5 million and started something....

He then went on shallow background to dispute what I thought I had learned about The Carlyle Group. First he argued that he and his partners, most of whom had no previous experience in finance, had made so much money that they would never be able to spend it all. Then he reversed himself, sensing perhaps that quick success was implicitly damning: the more successful they were the more loaded the question of whether Jim, Frank, Dick and the others had been exploiting their connections. The conversation flipped back and forth. One moment Rubenstein was rich, the next he was poor. One moment The Carlyle Group was struggling to make ends meet, the next it had amassed profits of more than $ 1 billion in just six years. Four or five times he stopped himself to say, apropos of nothing, "I don't spend money. I don't enjoy spending money. The car that I drive is an 11-year-old Honda." On and on this went, while outside, the rush-hour traffic on Pennsylvania Avenue collected and then dispersed.

The way Rubenstein tells it, the creation of Washington's leading merchant bank was good old-fashioned American entrepreneurship, similar to, if more modest than, Bill Gates's founding of Microsoft. But this is one of those half-truths that contains even less truth than a lie. The Carlyle Group has passed through several distinctly original phases of money-making, each more grandiose than the last, none of which would have occurred in a properly functioning capitalist economy. The first of these was what is known jokingly around the Carlyle office as The Great Eskimo Tax Scam of 1987. The Great Eskimo Tax Scam grew out of a brief, curious tax loophole that permitted Alaskan companies owned by Eskimos to sell their losses for hard cash to other American corporations. By offsetting the Eskimo losses against their gains, American corporations were able to avoid income taxes. All of a sudden there was a business in matching up profitable American corporations with Eskimos. Rubenstein and Norris spotted the window of opportunity and leapt through.

Since no one likes to pay taxes, finding the corpo- rate buyers was easy. The trick was to flush out the loss-making Eskimos. Through a friend in Washington, Rubenstein plugged himself into a group in northern Alaska that had discovered a dubious technique for showing tax losses on idle property. (The Internal Revenue Service now challenges the validity of the Eskimos' accounting.) To persuade the Eskimos to deal with him, Rubenstein flew them to Washington and put them up in a fancy hotel on the condition that they listen to his pitch. In less than a year Rubenstein and Norris shuffled between $ 1 billion and $ 2 billion dollars of dubious Eskimo losses into profitable American companies, for which they took a 1 percent fee, or between $ 10 million and $ 20 million. "I wouldn't be surprised if they made more on that than they've made on everything else since," says a Carlyle associate. According to Rubenstein, "It gave me and some of the others here the confidence that we could compete in the investment world." Still, he only acknowledges his debt to the business of tax avoidance after the subject has been raised. The official company literature--and his own oral history of the firm--fails to mention The Great Eskimo Tax Scam.

About the same time he was romancing the Eskimos, Rubenstein was raising $ 5 million from a handful of big investors, mainly friends. ("David really leveraged his old political connections to raise money," says a friend who watched him do it and who, like nearly everyone else in this article, spoke only on the condition of anonymity.) At least part of his appeal was that he would be able to exploit the false, but common, perception among foreign investors that they need Washington insiders to facilitate their American business deals. Explaining to Forbes in 1991 why he had committed funds to such an unusual operation, Arthur Miltenberger, the chief investment officer for the Mellon family, Carlyle's most important investor, said, "I was intrigued by a merchant bank based in Washington, d.c. Foreigners have to come to Washington." (The son of the Mellon family's general counsel now works for Carlyle.)

But Rubenstein wanted to do more than just grease the skids in Washington for credulous Arab sheiks and gullible Japanese real estate tycoons. In 1987 the big money was being made in leveraged buyouts. As if inhabited by some rogue virus that transforms people into creatures of the zeitgeist, Rubenstein, former devoted assistant domestic policy advisor to saintly ex-president Jimmy Carter, hired a few bright young men to analyze publicly traded companies. When they found one that seemed undervalued, they staged a raid.

In September 1987 The Carlyle Group, represented by Drexel Burnham, made their first bid for Chi-Chi's, a chain of Mexican restaurants, but ended up losing out to a rival bidder, also represented by Drexel. They made bids for several other companies in various industries, rewarding themselves and their backers modestly and annoying corporate managements greatly. "What do they add to the picture?" an executive of one Carlyle target, a defense firm called Fairchild, asked a reporter for The Washington Post. "These aren't guys who know the industry." Though their desire to purchase companies (with borrowed money) was sincere, they seemed relegated to the role of small-time greenmailers.

While it was true that in the 1980s a lot of people without much business experience made a great deal of money buying undervalued companies with money borrowed from banks, The Carlyle Group represented an extreme case. Even after their hiring, in the summer of 1987, of William Conway, a highly respected chief financial officer from mci Communications (actual business experience!), they had little credibility with bankers or sellers. One of the biggest investors in leveraged buyout firms told me that he has refused to finance their ambitions, "principally because they didn't have enough experience actually doing it." Says an investor who gave them money for one aborted hostile raid, "Was it a successful experience? Not really. I wouldn't do it again." Finally, toward the end of 1988 Carlyle spent $ 90 million to acquire a New Jersey chemical company called Oakite Products, but only, as the firm now admits, by paying far more than it was worth.

What transformed The Carlyle Group from a collection of third-stringers in the leveraged buyout jamboree into a thriving enterprise of a kind that had never before existed was, oddly enough, a political scandal. Fred Malek was forced to leave the Bush campaign after The Washington Post revealed that in 1971, as a young aide to Nixon, he had toted up the number of Jews in the Department of Labor statistics. (Nixon suspected a Zionist conspiracy there.) Malek was friendly with Norris and Daniel D'Aniello, another Carlyle partner, from his time at the helm of the Marriott hotel chain, and he sought temporary asylum in the firm's offices. In early 1989 he persuaded his fellow Republican, Frank Carlucci, recently retired as Secretary of Defense, to join the firm.

When Carlucci came on board, the defense industry was in turmoil, with as many as fifty-five different businesses for sale. To profit from the disarray, Carlyle needed to secure invitations to the sort of private corporate sales in which the price is kept down by the absence of bidders. "Everyone in our business is trying to figure out ways to avoid getting into an auction ... run by Wall Street," Rubenstein explains. "Get into auctions--that's the way to lose a lot of money. That's why Baker, Darman and Carlucci are so valuable to us." Pressed to explain why a ceo looking to sell a division of his company would entertain the call of a former Cabinet officer over one from a businessman, Rubenstein says, "Let's suppose you're the ceo of g.m. and you get a call from

Baker. You think, Hey the former secretary of state wants to come out and have lunch with me. I'll get the photographer out ... have my picture taken.'"

In other words, Carlyle's chief innovation was to insert the former defense secretary systematically into leveraged buyouts. Carlucci was ideally suited to the task. He still had a bit o' the old glitz. He possessed a reservoir of goodwill with the defense contractors who were the main sellers of businesses. (The result, no doubt, of his having spent billions of taxpayer dollars on items for our national defense.) And his presence conferred a self-fulfilling financial credibility on a deal. "Somehow bank presidents are reassured when they learn there is someone involved who can place a call," says a leading defense industry analyst. "An assurance from Carlucci that this business is sound is more influential than the best financial analysis.... There's an awful lot of atmospherics in this business."

Over the next four years The Carlyle Group was able to exploit Frank Carlucci's connections within the industry, and within the Pentagon, to turn itself into one of the twenty-five largest defense contractors in the world. In September 1990, a year or so after Carlucci joined the firm, The Carlyle Group paid $ 130 million for a defense consulting subsidiary of Ford Aerospace called bdm, which Ford had bought two years before for $ 425 million. (The ceo of bdm, a close friend of Carlucci's named Earle Williams, threatened to walk out with his top management unless his owner sold him.) In March 1992 Carlyle paid a still-undisclosed sum for Vinnell Corporation, which trains the Saudi Arabian Defense Force and allegedly has ties to the cia. (The company was owned by another friend of Carlucci's.) In August 1992 Carlyle paid $ 215 million for Vought Aircraft, which makes parts for the b-2 bomber and the c-17 transport plane. In October 1992 Carlyle paid an undisclosed sum for gde, an electronics division of General Dynamics. (Carlucci sits on the board of General Dynamics.) In July 1993 Carlyle paid $ 400 million for Magnavox, a military electronics division of Phillips. (Carlucci is friends with--and, again, formerly a big customer of--the ceo of Phillips.)

Rubenstein claims--and others confirm--that The Carlyle Group earns returns on these companies of between 40 percent and 60 percent a year. This is, of course, in addition to the several million dollars in fees that it bills the companies for the privilege of being acquired.

Perhaps a more telling indication of the value of Carlucci's connections is how much better the firm has done with defense companies than it has with the businesses it acquired without the same edge in access. After the disastrous purchase of Oakite, the firm paid $ 300 million to Sears in April 1989 for the real estate brokerage firm Coldwell Banker. Immediately the real estate market crashed, Coldwell's revenues plummeted, $ 107 million in equity value vanished and shares owned by Coldwell's employees (similar to those purchased by Carlyle) fell from $ 10 to $ 2. For their next trick, Carlyle sunk $ 24 million of equity into a chain of radio stations called Four Seasons Communications; nearly all of that money is now gone. Also in 1989, the firm bought Caterair, the world's largest in-flight catering business, from the Marriott Corporation. They billed the company $ 8.6 million for the privilege of leveraging it to the hilt; but then the airline industry fell out of the sky and Caterair lost several big customers to bankruptcy. (Rubenstein claims to have hidden profits in the company of $ 250 million. Another investor in the deal, when I related the number, laughed and asked, "He really said that?" Wall Street's nickname for Caterair is "Craterair.")

Probably only Rubenstein and his partners know for sure whether their gains in defense offset their losses elsewhere. In late 1989 three of the firm's original four major institutional investors asked for their money back, leaving the Mellon family as the sole outside partner. In 1991, according to two well-placed sources, Carlyle almost failed to meet its payroll; the firm was saved by a $ 2 million fee from a Saudi prince whom they had represented during the Gulf war in the purchase of shares in Citicorp. (Rubenstein denies the payroll crisis.)

Though Rubenstein announced several times over the next eighteen months that Carlyle was raising two investment funds totaling $ 2.3 billion, the firm failed to raise a dime. The main reason is that it hasn't completed a successful leveraged buyout by selling a business back to the public for a profit, presumably because there have been no profits for the taking. Rubenstein puts a noble face on the situation, saying that he is a long-term investor who does not want to sell: "If we were in the business of cashing in we'd have sold bdm," the most successful and most advertised of his acquisitions. This would be more admirable if it were more true. By prior agreement with the seller, Carlyle is not permitted to unload bdm until sometime in 1994, and Carlyle partner William Conway told me that the firm would probably sell bdm as soon as it could.

What Rubenstein freely admits is that there is no money to be made buying companies at a fair market price and then managing them more efficiently. Money is to be made buying companies cheaply. Carlucci has enabled Carlyle to buy cheaply into the defense industry. Baker may be more broadly useful. As Rubenstein says, "Baker and Carlucci both have the ability to call any ceo in America. But Baker just puts us in a different league." Baker (like Darman) is new to the business, however, and so is not fully developed as an example of how little success in this line of work has to do with ordinary business principles.

Frank Carlucci, on the other hand, may be the closest thing there is to a pure study of the market value of political contacts. He has spent all but two years of his career as a government bureaucrat. He has held jobs in every administration from Kennedy to Bush and rose, without leaving many footprints (except for his insistence that after a press leak everyone take a lie-detector test), through the State Department, omb, hew, the cia and dod. His first big career break reads like a literary invention. Riding with fellow foreign service officers through the Congo in 1960, his car hit and killed a cyclist. A mob formed around the car and, in the ensuing melee, Carlucci was nicked in the back with a knife. He was decorated by his government for heroism. His service in the Congo brought him to the attention of Prime Minister Cyrille Adoula, who, surveying the photographs of Cabinet officers in the White House state dining room in early 1963, asked President Kennedy, "Ou est Carlucci?"

Carlucci's rise in government was unimpeded by his tendency to botch things up the few times he was thrust into anything remotely resembling a business problem. Presiding over the federal flood relief program that followed Hurricane Agnes in 1972, for example, he became the subject of a scathing series of articles in The Washington Post by Jack Anderson, who described in hilarious detail "the bureaucratic havoc wrought by Frank Carlucci, a human windstorm out of Washington." Before he became vice chairman of The Carlyle Group, he had held two jobs in the free market. After graduating from Princeton (he and Baker were both in the class of '52), he spent a few months as a trainee with the Jantzen swimsuit company--years ago he told reporters he had quit because he didn't like business. And before he accepted his final Defense Department posting, he spent two years, from 1983 until 1985, as president and chief executive officer of a subsidiary of Sears called Sears World Trade.

Sears World Trade was the giant retailer's attempt to compete with Japanese trading companies in shuttling goods around the world. "His job was to ride hard on 180 people and prevent them from overrunning their budget," says Rod Hills, who oversaw Carlucci's work at Sears. "He couldn't do it." "I think they're klutzes," an unnamed analyst at E.F. Hutton told The New York Times at the time, in a colorful but typical assessment of the venture. By the time Sears World Trade closed, it had dropped a cool $ 60 million. Carlucci now says that Sears World Trade was "a good experience" but that "it was hard to have an entrepreneurial company in a big bureaucracy." A Sears employee who watched his work closely now says that "Frank's a nice guy, but he's got to be the worst businessman I've ever met."

Yet by some miracle of corporate politics Carlucci has remade himself into the darling of the American ceo class. He sits on the boards of thirty-two companies. A typical day in Carlucci's life--described by Kathleen Day of The Washington Post--consists of racing back and forth to the board meetings he's meant to attend at the rate of one per day. Meetings in a doctor's office by speakerphone! Conference calls from National Airport! Frequent flier miles! (He says he doesn't have time to use them.) So much for so little. "People think you make a lot of money out of boards," he says. "You don't, you know." That remark reveals as much as anything how thoroughly Carlucci's standards have changed since he left public office. From just nine of his board memberships he receives annual fees of $ 342,000 plus perks and pension benefits.

I spent an hour with Carlucci at his Carlyle office, which put me in mind, probably unfairly, of one of those special stage sets they used to design to make Alan Ladd seem tall. A toy cannon given to him by the officers and soldiers of the 109th Artillery guards the door; a miniature oriental rug lies on the floor; a tiny statue of Columbus gesticulates on the sideboard. Between the statue and the three letters of gratitude from Ronald Reagan, there rests a framed National Journal cover of the diminutive Carlucci leaning back in an armchair, hands clasped behind his head in the classic pose of corporate porn. Beneath him are the words: "In Control"--the one thing he most clearly is not. Carlucci's success, like that of other professional board members, depends entirely on going along with the people who actually are in control. Of his ridiculous number of board memberships he gives this revealing account: "All these things just happened. For example, Bill Anders from General Dynamics came in. He sat right there and said, Frank, I need your help because here's the game plan and I need support on the board for it.' Same thing with Upjohn...." In any case, Carlucci hardly has time to be in control. Apart from his board memberships and his commitment to Carlyle, he has opened his own investment bank in Bulgaria, and who knows what else. "I'm part of a group that advises Korea secretly," he said, blowing the secret. "I mean we meet behind closed doors with prominent Koreans."

Of course, the reason Carlucci--and now Baker--can work on so many fronts at once is that he doesn't do much more than make a few phone calls for each deal. One imagines Carlucci saying to a potential seller or lender the sort of things he said to me: "Les Aspin and Bill Perry have called me several times to ask my advice about the defense budget." (Perry, the deputy secretary of defense, oversees procurement. He is now deciding, for example, how much to spend on c-17 transport planes, built partly by Vought Corporation, a Carlyle Group company.) Carlucci's advice to the Defense Department is reassuring for owners of defense-related businesses. "I think the cuts in defense spending--I know they're too deep," he says. "You are going to destroy the coherence of the military if you implement these cuts."

It's a bit of a mystery what access capitalists say or do during those precious seconds when they are fully employed, since no one involved in the deals has any incentive to expose himself. This gives Rubenstein the confidence to claim that, no matter how long I looked, I would find no case in which Carlucci, Baker and the others used their political connections on behalf of The Carlyle Group. "It's not fair to say that we're lobbying the government," he said. "That's not what we do." He's right--the use of influence is usually much more subtle. Still, I didn't have to look far to disprove his claim. One piece of Carlyle's business fell briefly into the public domain. And it nicely illustrates the manner in which political people who turn their hands to finance are able to blend their former public roles with their private interests.

In the early part of last year The Carlyle Group, in partnership with Thomson csf, the French government-owned electronics company, purchased the missile manufacturing and aerospace divisions out of the bankruptcy proceedings of the ltv Corporation. ltv's prized missile technology was what the Pentagon calls a "black box program," which means no one from outside is meant to know what's inside. Because the French are notorious both for the theft of industrial secrets and for the sale of advanced weapons to all takers, the purchase was challenged in Congress on national security grounds. That Carlyle was paying an extremely low price for its half of the deal, while Thomson was paying through the nose for the missiles, heightened suspicion that the French buyers, despite their promises not to peer into the black boxes at ltv, were, in effect, buying American military secrets.

Hearings into the deal were to be held by the Senate Commerce Committee. According to one committee staffer, the first sign of Carlyle's clout came when Senator Ernest Hollings, the committee's chairman, "received an ominous sounding phone call from someone who said, I want you to know that Arthur Levitt owns Roll Call.'" (Roll Call is an influential Capitol Hill publication and Levitt, now sec chairman, is a Carlyle investor.) During the hearings similar messages were delivered to staffers, though never by a Carlyle employee. "They were very subtle," says the staffer.

Carlyle appointed Frank Carlucci to testify on behalf of the partnership, a move that was a bit strange because, of the several Carlyle partners involved, he knew the least about the deal. In response, the Commerce Committee decided it required someone of equal stature--perhaps another former defense secretary--who might be more objective. "At first we thought it wasn't going to be a problem, but then we couldn't find anyone to testify," says a person involved in the process. "But it was a problem . I had the sense that Carlyle had spoken to all of our sources."

In addition to the interested parties, the committee heard the testimony of two independent expert witnesses: Frank Gaffney, a former defense department official, and Alton Keel, a former ambassador to nato. Gaffney came down strongly against the deal, and was scathing about Carlucci's role. ("The one thing that people like Frank Carlucci know how to do is to work the system," he says now.) Keel came down strongly in favor of it. "Al's testimony was so striking," says Gaff- ney, "that afterward I asked him if he had any interest in the transaction. He said he did not." Following a hunch, a participant in the hearings telephoned The Carlyle Group and was immediately put through to the firm's newest associate--Alton Keel. The hearings occurred on May 14. According to one Carlyle partner, Keel had joined Carlyle in February. Yet during the hearings Keel kept this seemingly relevant data to himself.

But it was Carlucci's manner, in both the Senate and the House hearings, that revealed the most about the mindset of the political bigwig turned business tycoon. He was at once a businessman representing his own interests, and those of the French, and a kind of ex officio public official. "I've been working with this subcommittee since 1977," he explained in his House testimony before a subcommittee of the Armed Services Committee, "when I first became deputy director of the cia. I think the members of this subcommittee are well aware of my commitment to U.S. national security.... I am absolutely convinced that this deal will add to the capability of our defense industrial base." During the hearing, after a Congressman claimed he had seen a secret Defense Department study recommending the rejection of the sale, Carlucci left the room, called his friend Donald Atwood, the undersecretary of defense, returned to the room and reported that his friend did not oppose the acquisition.

Although Carlucci recalls having been grilled mercilessly on both sides of the Hill, he was for the most part treated with deference. There was one exception. Hollings: I could not possibly see, and I am sure Mr. Carlucci cannot see, General Schwartzkopf being employed by Saddam Hussein to train his troops. Why should we allow you to come in now, as a former secretary of defense, and take over our defense technology for France? Carlucci: Senator, I resent that question. Hollings: I do not resent it. That is a very serious question. Carlucci: I devoted a lifetime of service to my country. Hollings: Yes, sir. Carlucci: I rose up through the civil service ranks. I have seen a bayonet jammed in the face of my daughter in service to my country. I have been arrested. I have been stabbed. I have been brought in to clean up the mess after Iran-contra. I would not do anything to undermine the security of this country.

Propped up on a coffee table in Carlucci's office is a framed letter from George Bush. It says how sorry the president was to hear that Congress had stymied Thomson's purchase of ltv's missile systems (which it did), but how happy he was to hear that Carlyle had found an American partner for its deal (which it did). The letter is another one of those inside jokes--like The Great Eskimo Tax Scam--that the outsider doesn't get. "No one but Carlyle could have gotten this thing as far along as it went," says Gaffney.

My second session with Rubenstein began much like the first, except that he kept himself on the record. In the three weeks between our two encounters he and other Carlyle employees had placed a sensational number of defensive phone calls to my friends, colleagues and potential sources. "The last time we met," he began, "I told you that you could go one of two ways with your story ... so which is it?"

But before I could answer, he was off and running: "I'm concerned that the tone of the article will be that what I've done is illegal, unethical and immoral. I just think it's unfair. I've been very careful to make sure that Baker isn't out raising money in the Middle East.... I've leaned over backward so far to avoid using government contacts. I didn't want anyone to be able to write an article saying we were trading on our connections."

I have no doubt that Rubenstein's concern for appearances is sincere. The access game is growing more complicated as the seriously well-connected juke and jive to adapt to the nation's moral climate. The distinctions they make grow finer all the time. Of course, the point of all these distinctions is that they don't require any truly well-connected person to forego his one shot at the main chance. Rubenstein may not have asked Baker to pass the hat in the Middle East, but he is passing the hat in the Middle East, and implicit in that pitch is that James Baker works for him.

Perhaps the best indication of the nature of The Carlyle Group's business is that each week it receives hundreds of resumes from Washingtonians as free of financial sense, and as frustrated with conventional influence peddling, as its founders once were. "I get resumes from some of the biggest names in town," says Rubenstein, "lawyers who are making $ 800,000 a year. They call and say they'll come and work for free. It's almost embarrassing."

Finally, I was able to ask Rubenstein a question. I asked if it was true, as I'd heard, that he told people he wouldn't consider returning to public service until he had made $ 50 million. "I don't think I said that," he said. "What I said was that someone in the Bass family said that when you make $ 50 million you have a different perspective on life."

As the doors were closing behind me at The Carlyle Group, he asked me his final question: "How do I keep it from being a cover story?"

GRAPHIC: Cartoon

SIC: 6153 Short-term business credit

IAC-NUMBER: IAC 14217067

IAC-CLASS: Magazine

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 13, 1994

NOMINATION OF LAURI FITZ-PEGADO
Senate proceedings
(CRXPRESS 05/25/94 p.S6299; 167 lines.)

[pS6299]

NOMINATION OF LAURI FITZ-PEGADO

Mr. FAIRCLOTH. Mr. President, today the Senate debates the nomination of Sam Brown to be U.N. Ambassador to the Conference on Security and Cooperation in Europe. His history of supporting regimes which are hostile to the United States is shameful. But at least as unfortunate is the fact that he is not alone. In their own way, other nominees have equally shameful pasts. That is worth exploring in the context of the Sam Brown nomination.

A good example is the nomination of Lauri Fitz-Pegado to be Assistant Secretary and Director General of the U.S. Foreign and Commercial Service in the Department of Commerce.

Mr. President, Lauri Fitz-Pegado has orchestrated lies to Congress. She has served as a lobbyist for the Communist government in Angola. She worked for the murderous Duvalier regime in Haiti, a regime which has left us with the tragic legacy we are dealing with today.

Mr. President, this is just the tip of the iceberg. She has done much more. She has been a hired gun for disreputable foreign interests. She has deliberately attempted to mislead Senators about her past. She has taken an active role in orchestrating perjured testimony before a congressional committee.

In short, Lauri Fitz-Pegado has disqualified herself from service in the position to which she has been nominated.

None of these facts and allegations were disclosed either to Chairman DON RIEGLE, or ranking Republican ALFONSE D'AMATO, or to the other members of the Banking Committee when her nomination was voted on there.

Mr. President, today I will talk about only one of the reasons why her nomination should be returned to the Banking Committee for further review. When the Senate is aware of this and other facts, it will know what many already know; America can do better than Lauri Fitz-Pegado. In fact, it could hardly do worse.

A reason-which by itself should be sufficient to reject the nomination of Lauri Fitz-Pegado-is her role in orchestrating perjury before Congress and the U.N. Security Council as the representative of "Citizens for a Free Kuwait."

In 1990, after the Iraqi invasion of their country, the Kuwaiti Government in exile formed "Citizens for a Free Kuwait". They hired the lobbying firm of Hill and Knowlton to attempt to influence public opinion in the United States toward entering the conflict. Lauri Fitz-Pegado was in charge of the effort.

Her strategy was to use alleged witnesses to atrocities to tell stories of human rights violations in occupied Kuwait. Using their testimony live and on video news releases, she orchestrated what has come to be known as The Baby Incubator Fraud.

She first coached a 15-year-old Kuwaiti girl, identified only at the time as Nayira, to testify before Congress that she had seen Iraqi soldiers remove Kuwaiti babies from hospital respirators.

Nayira claimed to be a Kuwaiti refugee who had been working as a volunteer in a Kuwaiti hospital throughout the first few weeks of the Iraqi occupation. She said that she had seen them take babies out of incubators, take the incubators, and then leave the babies on the cold floor to die.

Nayira's emotional testimony riveted human rights organizations, the news media, and the Nation. That incident was cited by six Members of the Senate as reason to go to war with Iraq. However, it was later discovered that the girl-who had only been identified as an escapee from occupied Kuwait-was in fact the daughter of the Kuwaiti Ambassador to the United States. It also turned out that Lauri Fitz-Pegado had concealed Nayira's real identity.

Since then, every reputable human rights organization and journalist have concluded that the baby incubator story was an outright fabrication.

Even a study commissioned later by the Kuwaiti Government could not produce a shred of evidence that the Ambassador's daughter had managed to sneak back into occupied Kuwait in order to do a few weeks of volunteer work in a hospital overrun by bloodthirsty Iraqis.

When the perjured testimony was discovered by John MacArthur of Harpers magazine, and later reported by the television news program "60 Minutes", Fitz-Pegado first maintained that she had believed the girl's story, and that she hadn't meant to deceive anyone.

But, Hill and Knowlton later said that they did know about Nayira's family ties, but that Congress wanted the fact withheld.

They blamed Congress for their lies. What is more, they put on a repeat performance in front of the U.N. Security Council on November 27, 1990.

In the testimony before Congress, they claimed they could not fully identify who the witness was because they wanted to protect her family that was supposedly still trapped in Kuwait which was totally false. In front of the United Nations, Lauri Fitz-Pegado abandoned that pretense and instead employed witnesses who testified using false names and occupations.

The most important of these phony witnesses was a man who called himself Dr. Issah Ibrahim. With Lauri Fitz-Pegado there in New York, he claimed to have personally buried 40 babies pulled from incubators by the Iraqis.

Dr. Ibrahim told the Security Council that he was a surgeon. But after the war when the incubator scam was exposed as a total fraud, he admitted to being a dentist who never buried any babies.

Fitz-Pegado did not inform the Banking Committee of this baby incubator scam. However, in an on-the-record interview with John MacArthur of "Harpers" magazine, she was taped admitting that she was involved in the lying to Congress.

She said she took "total responsibility and much pride in everything that Hill and Knowlton did." She went on to say that she thought any negative comments about her were sexist and racist, and said she wanted to make it clear that "I don't work in the kitchen, I am not a clean-up woman."

But when she was pressed to account for the lies, she said-and I quote-"Oh come on John. Who gives a ***"-and then she used a word that is so foul that I will not repeat it on the Senate floor.

I will make an unedited copy of that interview available to any Member of Congress or the press who would like it.

Mr. President, as a supporter of our country's involvement in the Gulf war, I am offended that Lauri Fitz-Pegado believes that those kinds of illegal and unethical activities were necessary to get this country to face the threat of Saddam Hussein.

I am more offended, however, that she thinks that her orchestrating lies to Congress is no big deal and that anyone who says it is racist and sexist.

I believe that if the other members of the Banking Committee, Democrat and Republican alike, had been aware of even this limited set of facts during the confirmation process, her nomination would have been rejected by that committee.

Now they will hear even more about Lauri Fitz-Pegado's involvement with the Marxist Government of Angola. They will hear about her ties to the bloody Duvalier regime in Haiti. They will hear other facts and allegations about her past that she has deliberately attempted to hide from Congress.

If confirmed, Lauri Fitz-Pegado would have control over a global network of 200 trade offices in 70 countries. Mr. President, my opposition is not based on party or on ideology. It is based on the fact that there are few people in America who have less business being in charge of our Nation's trade secrets than Lauri Fitz-Pegado.

Lauri Fitz-Pegado's nomination should be returned to the Banking Committee for further and full review. If it is not, then facts that are far more embarrassing to Ms. Fitz-Pegado and to others in government will be revealed in other speeches and in long and protracted debate on the Senate floor.

Mr. President, the Senate Banking Committee was hoodwinked by a professional scam artist.

Lauri Fitz-Pegado should be asked to disclose her entire past, and then be prepared to defend what I believe is an indefensible past.

Mr. President, in the near future I will inform the Senate of other aspects of Lauri Fitz-Pegado's past.

When the puzzle is completed, Senators will know about Lauri Fitz-Pegado what others already know about Sam Brown; America can do better than Lauri Fitz-Pegado, and it would be hard to do worse.

I thank the chair and yield the floor.

[pS6300]

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

MAY 13 1994

MEMORANDUM FOR: Carol C. Darr
Deputy General Counsel

FROM: Barbara S. Fredericks
Assistant General Counsel
for Administration

SUBJECT: Recusal of Lauri Fitz-Pegado Regarding Her Husband's Business Activities

An editorial in *The Wall Street Journal* dated May 15, 1994, questioned whether Lauri Fitz-Pegado, nominee to the position of Assistant Secretary and Director-General of the U.S. and Foreign Commercial Service, International Trade Administration, should have specifically recused herself from matters concerning the business activities of her husband, Fernando H. Pegado. As explained below, ethics statutes and regulations specify when a recusal involving a spouse's activities is appropriate and Ms. Fitz-Pegado's actions are consistent with those rules.

There are two restrictions regarding a spouse's interests or activities:

- 18 U.S.C. § 208 (a criminal conflict of interest statute) requires an employee to recuse herself from any matter likely to have a direct and predictable effect on her husband's financial interests; and

- 5 CFR 2635.502 (part of the Government-wide standards of conduct) requires that, if an appearance of impropriety is likely, an employee must recuse herself from working on a matter if one of the parties is:

  -- a member or her household or a close relative
  -- an entity for whom <u>the spouse</u> serves as an:
    -- officer,
    -- director,
    -- trustee,
    -- general partner,
    -- agent,
    -- attorney,
    -- consultant,
    -- contractor, or
    -- employee.

Regarding Mr. Pegado, he did not serve in any of the above-named categories (officer, director, employee, etc.) with a company or other entity in 1993; therefore, Ms. Fitz-Pegado did not need to, and could not, recuse herself from matters concerning any particular entities based on her husband's activities.

Ms. Fitz-Pegado did issue a comprehensive ethics agreement which specifically states that she will not participate in matters affecting entities which were clients of hers during the previous year, consistent with Government-wide ethics standards.

Ms. Fitz-Pegado will, of course, comply with all ethics regulations, including recusing herself from matters in which her husband's employer is a party at any time in which he is serving as an employee or a consultant and the employer is a party before the Commerce Department.

However, absent such a relationship, recusal regarding a potential future employer is not required by the standards of conduct nor is it even feasible. It is difficult to imagine how such a recusal would be crafted and, even if one could narrow the universe of potential employers or clients, a recusal based on such potentialities would create an unreasonable and unnecessary restriction on Ms. Fitz-Pegado's duties and establish a stricter ethics standard than those set forth in Government-wide regulations or those which apply to other Government officials.

The question of the scope of the recusal and her husband's activities was specifically discussed with Ms. Fitz-Pegado by myself and other ethics attorneys on my staff, who prepared her disqualification. We advised that her husband's activities would not be reflected on the recusal because there was no current employment or other business relationship between her husband and a specific party which would trigger the recusal provisions of the ethics regulations or the conflict of interest statute.

Ms. Fitz-Pegado has agreed to seek specific advice from agency ethics officials before participating in any matter if her husband should acquire a financial interest or become a consultant or employee of a specific entity.

We have been advised that Mr. Pegado's field concerns petroleum. Although not required by ethics rules, to avoid any possible appearance problem, Ms. Fitz-Pegado has agreed to seek advice from an ethics official before participating in any petroleum industry issue. To date, she has not participated in any such issue.

REVIEW & OUTLOOK

Who is Lauri Fitz-Pegado?

There's a fine line between promoting U.S. business in the abstract—as the Clinton Administration has pledged to do—and promoting specific companies that may be past or future campaign donors and employers for top officials. To traverse these ethical swamps, we would expect the administration to appoint trade officials who meet the Caesar's-wife standard.

Dream on.

Heading the Commerce Department is Ron Brown, a former Beltway operator who hasn't disclosed the nature of his holdings in telecommunications companies even as he paves the information superhighway. Now coming on board Mr. Brown's Commerce cruise is an even bigger ethics disaster area: Lauri Fitz-Pegado, the administration's nominee for director general of the U.S. and Foreign Commercial Service, which runs 134 U.S. trade offices in 69 countries.

A former Foreign Service officer, Ms. Fitz-Pegado worked for Mr. Brown at the 1988 Democratic National Convention and serves on an advisory board at WKYS-FM, partially owned by Mr. Brown. During the 1980s, she inhabited Gucci Gulch on behalf of such clients as the Marxist government of Angola and the Duvalier regime in Haiti (which Mr. Brown also represented).

Ms. Fitz-Pegado

Her most well-known activities came on behalf of the Kuwaiti government before the Gulf War. Ms. Fitz-Pegado engineered heart-wrenching testimony before Congress by a Kuwaiti girl who said she had witnessed Iraqi soldiers tearing babies off incubators and killing them. It later turned out that the girl was the daughter of the Kuwaiti ambassador and that no human-rights group could find a shred of evidence for her account.

On the official forms submitted last year to Congress, Ms. Fitz-Pegado says that she worked at Hill & Knowlton, the powerhouse PR firm in Washington, from 1982 to 1988. Not quite. Between 1982 and 1985, she actually worked for Gray & Company, a PR firm under investigation then by the SEC and the Justice Department for shady dealings. Gray was acquired by Hill & Knowlton in 1986, so Ms. Fitz-Pegado is pretending that she worked at the bigger—and more respectable—firm all along.

It's been more difficult to find out much about the financial affairs of her husband, Fernando H. Pegado. During the 1980s, Mr. Pegado was in London, employed at Sonangol, the Angolan state oil company, before marrying Lauri Fitz in 1988. What he does now is unclear, except that he is a "consultant" with a Washington office.

We had a fairly circular conversation with Ms. Fitz-Pegado on this subject. First she said that she's "been forthcoming about all of my husband's business dealings." When we asked what he does and who his clients are, she replied, "He's self-employed. His clients depend on the projects he's working on." Then she abruptly cut off the conversation, saying, "I really don't want to go into any of his business dealings."

Normally a nominee doesn't have to disclose a spouse's clients (though income must be disclosed). But in past administrations, ethics officers have gone to extraordinary lengths to make sure that an official's spouse didn't pose a conflict of interest. Since ethics-in-government laws make no distinction between the business dealings of an officeholder and those of a spouse, Ms. Fitz-Pegado should be more forthcoming, especially with the prospect looming of a Haitian protectorate.

She is seeking to become chief salesman for U.S. products abroad. Her husband has been engaged in international business ventures. Though Commerce staffers assure us Mr. Pegado has no current clients, the potential for a conflict of interest is obvious. And it can't be dealt with by Ms. Fitz-Pegado's airy promise: "If my husband has any clients that have a potential conflict, I would be happy to talk about them." The public has no way of judging whether she's living up to that standard as long as she refuses to divulge anything about her husband's dealings.

Considering the outsized ethics problems dogging Ms. Fitz-Pegado, it's no wonder her nomination has been on the slow boat to China—so far. After winning easy confirmation from Don Riegle's Senate Banking Committee last year, she ran into opposition at the Commerce Committee, which must also approve her nomination. At her hearing on Feb. 10, Senators Ernest Hollings and Byron Dorgan—Democrats—raised strong reservations about her role in the Kuwaiti hoax.

Chairman Hollings has come under pressure to approve her and he hasn't received support from the ranking Republican on his committee, Sen. Jack Danforth of Missouri. So it appears that a vote on Ms. Fitz-Pegado's nomination is likely soon, perhaps even next week. Then it presumably will go to the floor, where GOP Sen. Lauch Faircloth will fight it hard.

We obviously have nothing against people making money. Our tastes, however, run toward the Sun Microsystems and Southwest Airlines of the productive world. We are very concerned about the growing population of Beltway pilot fish, who swim alongside both public budgets and private enterprise, gulping pieces of the action. When the Clinton Administration starts talking about enshrining public-private "partnerships" as a way of life, we worry a lot about keeping track of who's on which side of the deals.

As her nomination sails along, we hope that senators will at least ask some tough questions about Ms. Fitz-Pegado's business dealings and her husband's, and the extent of her recusals (she hasn't pledged yet to recuse herself from policy affecting any of her husband's business affairs). How the Senate handles this nomination will tell a lot more about the prevailing ethics climate in Washington than any campaign-finance bill.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release **October 22, 1993**

PRESIDENT NAMES FERRARO TO UNHRC

President Clinton announced his intention today to appoint former Congresswoman Geraldine Ferraro to be the U.S. Representative to the United Nations Human Rights Commission (UNHRC), with the rank of Ambassador.

"In addition to earning her place in our own country's political history, Geraldine Ferraro has been a highly effective voice for the human rights of women around the world," said the President. "As alternate head of the U.S. delegation to this year's session of the UNHRC, she spoke eloquently on behalf of women in the former Yugoslavia, and brought all of the parties involved to a consensus position. I look forward to her continuing her strong and much-needed advocacy in this new position."

Geraldine Ferraro was first elected to Congress from New York's 9th Congressional District in 1978, and served three terms in the House before leaving after her 1984 Vice Presidential campaign, in which she was the first woman ever to be nominated for national office by a major party. Since leaving public office, she has remained an active participant in the nation's foreign policy debate, serving as a board member of the National Democratic Institute of Foreign Affairs and a member of the Council on Foreign Relations.

Before entering public life, Ferraro taught elementary school in the New York City Public Schools, while putting herself through Fordham Law School at night. After spending thirteen years at home raising her three children, she joined the Queens District Attorney's Office.

She is currently managing partner in the New York office of Keck, Mahin & Cate, a national law firm, and serves on the boards of the Fordham Law School Board of Visitors, the New York Easter Seal Society the Planned Parenthood Federation of America, the National Breast Cancer Research Fund, and the Pension Rights Center. Ferraro and her husband, John Zaccaro, have three children. She is 58 years old.

# # #

House. The America for the 1990s would break with its unredeemable recent past.

Forget even Whitewater for a moment. Recall early last year when the President and Mrs. Clinton decided

Clintons' business history, compared with their current, large responsibilities, is so much "petty financial juggling." They're right. On the evidence so far, it is all very penny-ante. And there seems to be so much of it.

Reno's Surrender

In "A Man for All Seasons," someone asks Sir Thomas More if he would abandon the law to defeat the devil. He says no, because once the law was gone there would be nothing to prevent the devil from going after him.

We thought of that famous scene last week after Attorney General Janet Reno sacrificed one of her top career prosecutors to appease Representative John Dingell. Neil Cartusciello (kar-tah-CHEL-o) resigned Friday as chief of the Justice Department's environmental crimes section, largely because the Democratic House baron was lining him up for a beheading. But instead of standing by her man, Ms. Reno all but held the ax as it fell.

John Dingell

This episode matters because it demonstrates how much Ms. Reno bends to political pressure at the Justice Department. Presidential crony Webb Hubbell first ran the shop and now Mr. Dingell is showing he has sway even over the fate of career prosecutors. Mr. Cartusciello's forced resignation should worry anyone who thinks that decisions to prosecute shouldn't be subject to Congressional whim.

For appearance's sake, of course, the resignation is being advertised as a friendly parting. Ms. Reno expressed her "deep gratitude" to Mr. Cartusciello, who wrote thanking Ms. Reno for her "many courtesies." But our sources say that Ms. Reno told Mr. Cartusciello last week he had no choice but to step aside. We're also told that Lois Schiffer, who has been nominated as an assistant attorney general for the environment, told him the same thing weeks ago.

This capitulation is especially strange because it follows an internal Justice review that exonerated Mr. Cartusciello of the allegations Mr. Dingell has been making against him. The basic Dingell charge, which is largely a political agenda, is that Mr. Cartusciello and his fellow prosecutors haven't harassed enough "corporate polluters."

But the internal review, conducted by four career attorneys, concluded that, "The suggestions of incompetence, improper motivation and wrongdoing are baseless. The [Dingell] Subcommittee mistakenly relied on dubious sources and incomplete analyses to question the ability and integrity of career attorneys who made entirely appropriate prosecutive decisions."

Indeed, Mr. Dingell's jihad has relied heavily on the testimony of a witness who appears to have lied about his credentials. Raleigh Farlow, a supposedly expert witness against the PureGro company in a pollution case, claimed in sworn testimony to have "a medical degree from Far Eastern University" in the Philippines. But maybe not. Mr. Farlow acknowledged to us that, "I'm not a licensed physician," although "I do have the training." However, the registrar of Far Eastern in Manila tells us that Mr. Farlow attended that school for only 18 months (not the required four years) and was never granted a diploma.

Justice's internal review concluded that, "Mr. Farlow would have been a disastrous witness for the government." In other words, Mr. Cartusciello and his colleagues did the right thing in letting PureGro plead on a misdemeanor charge rather than pursue a felony trial that they would have lost. Now savor the irony: Mr. Dingell, oft-time critic of scientific fraud, claims that based on Mr. Farlow's expertise Mr. Cartusciello should have thrown the book at PureGro?

The big picture here is whether the Reno Justice Department is going to stand for nonpolitical prosecution. On this point, we'd like to see the Senate Judiciary Committee question Ms. Schiffer at her confirmation hearings about just when she learned about the PureGro case and Mr. Farlow's dubious credentials. If she agrees with Mr. Dingell, she will have shown herself too much a sycophant for the job.

Rick Filkins, a line prosecutor who worked with Mr. Cartusciello, sums up the entire sorry episode like this: "In the confrontation between Justice and John Dingell, Justice first blinked, then cowered sheepishly and then laid prostrate." Whose head will be next?

year price tag of $100 billion!

What do we know about SSI-disability recipients? The typical recipient is in his or her 30s, has a high-school education or less, and, in contrast to the familiar image of someone who is blind or in a wheelchair, was granted benefits based on a mental disorder. Fully one-third of adults on SSI disability have mental illnesses and another one-fourth have mental retardation. Young people with mental disorders are the fastest-growing segment of the adult SSI population.

Thanks to a 1990 court order that loosened eligibility for children, youngsters with disabilities are the fastest-growing segment of the overall SSI population. Stretching SSI in ways never contemplated in 1974, 225,000 children with disabilities (mainly mental disorders—including the much-debated attention deficit disorder—and mental retardation) were added to the rolls last year, triple the number in 1989; the total number of children on the rolls now approaches one million.

* * *

As some on Capitol Hill and in the press have noted, even alcoholics and drug addicts are finding their way onto SSI in growing numbers. According to the General Accounting Office, the number of SSI alcoholics and drug addicts with disabling complications, such as chronic depression or organ damage, tripled between 1990 and mid-1993, rising to 69,000 from 23,000.

While SSI does not present the problems in the forefront of the welfare reform debate—teen pregnancy, out-of-wedlock births, and the cycle of dependency—it nevertheless presents problems that demand public attention.

While few would deny assistance to people with disabilities that is well-targeted and designed to help those who can work do so, SSI falls short of these aims. For adults, at the point of entry to the program, SSI creates strong disincentives to work, disincentives that are no less potent than in AFDC. Once on the SSI rolls, people receive cash assistance, but no rehabilitation, job training or employment services, services that are no less critical to promoting work among people with disabilities than among mothers on AFDC. And in providing cash support with basically "no strings attached," SSI tends to perpetuate the very conditions (alcoholism, drug addiction, or certain forms of mental illness, for example) that preclude work and promote dependency.

Further, whether in assessing an adult's ability to engage in "substantial gainful activity" or a child's ability to engage in "age-appropriate activities of daily living," the government's decisions about who is disabled and to what extent are costly, complex, inherently subjective, and frequently disputed.

For these reasons and more, Congress would do well to put SSI on the table when it takes up welfare reform later this spring. SSI is a critical if neglected aspect of the welfare crisis in America.

Ms. Weaver is resident scholar and director, Social Security and Pension Studies, of the American Enterprise Institute.

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Mark C. Hansen

Smear at Justice

The reputations of career prosecutors in the Department of Justice's Environmental Crimes Section have in recent months been sullied with a dreadful canard. They have been accused of subverting criminal cases against corporate polluters—in substance, taking a dive, for (Republican) political ends.

Now, with the long-awaited release of a comprehensive report prepared by experienced and respected federal prosecutors from outside the Environmental Crimes Section, the facts can be separated from the sound bites. Those facts point to one conclusion: that politically motivated second-guessing of career prosecutors should be left to the stump speech. It should never have been allowed to seep into the halls of the Department of Justice.

Were it not for the reputations and serious issues involved, the episode might seem almost comical. Unruly grand jurors go on a rampage, picket the Denver federal courthouse and break into the headlines with the charge that they weren't allowed to indict corporate officials at Rockwell International (after the company pleaded guilty and paid a substantial fine). Then a junior law professor with a talent for publicity but no experience in federal or state prosecution—he had never tried a case—surfaces to claim that *he* would have prosecuted the individuals and indeed that he would have prosecuted *lots* of people whom the Environmental Crimes prosecutors decided not to charge.

Then Rep. John Dingell (D-Mich.), in a fine display of modern-day McCarthyism, gets into the act in the role of environmental crusader—and manages to get a lot of network TV face time in the bargain.

Disaffected junior prosecutors, not surprisingly, surface to complain about their supervisors, under the protection of Rep. Dingell. In an astonishing abdication, the Clinton Justice Department decides to require its line prosecutors to answer for their decisions directly to Dingell and his people, many of them press-hungry tyros with little or no experience in the prosecution of federal criminal cases.

Hearings are held, and dark allegations of "political" decisions to wink at the activities of environmental criminals are bruited about on the 6 o'clock news. With no evidence (and with a cowed Department of Justice doing nothing to defend its line prosecutors), the verdict is rendered in the press: The Environmental Crimes Section went soft on corporate criminals. Case closed.

For all its tabloid appeal, the story never made any sense. First, let's consider the supposed villain of the piece. Neil Cartusciello has logged more than a decade of government service as an

assistant U.S. attorney in Manhattan and, most recently, as chief of the Environmental Crimes Section at Justice. Like any effective career prosecutor, Cartusciello has endured his share of accusations. Most prominent has been the criticism that he was *too tough* as a prosecutor of alleged corporate wrongdoers, such as the principals of the Princeton/Newport securities firm and Robert Freeman of Goldman Sachs. I served with him as a federal prosecutor; the thought that he would lie down on a case is ridiculous.

Now four distinguished career prosecutors from outside Environmental Crimes, with no ax to grind and no reason to whitewash decisions made in a prior administration, have rendered a real verdict. In a thorough (325-page) and comprehensive report, they have determined that Neil Cartusciello did the right thing every time. After interviews with all of the persons involved and based on all of the available evidence in the cases in question—and, equally important, with the benefit of judgment that can only be forged in the searing heat of years of federal criminal trials—these lawyers have established, to the satisfaction of any fair-minde[d] person, that the prosecutorial decision[s] in the Environmental Crimes Unit wer[e] made on the merit (or lack of merit) [of] the cases. Not a peppercorn of impropr[i]ety can be found in any of them.

The report stands as a complet[e] vindication of Cartusciello and thos[e] who made the tough calls with him. [It] shows that he did much to make Envi[ronmental] Crimes a more effective battle-ready unit, that he improve[d] criminal enforcement of environmenta[l] law and that every decision he mad[e] was based on the lodestar principle: whether there was evidence sufficien[t] to permit a jury to convict, beyond a reasonable doubt. Where people were not prosecuted, they were not prosecuted for the right reason: because the government lacked the evidence. Sober judgment is what we expect from career prosecutors. That is why we want people like Cartusciello, not Dingell, deciding who gets prosecuted.

Neil Cartusciello decided late last week that he had fought the good fight long enough and announced his resignation. The Department of Justice he has served so well responded (at least in public) with two cheers for the departing chief. He and his colleagues can nevertheless take their vindication and move on, secure in the knowledge that their performance has withstood the most searching scrutiny.

But the report cannot undo the damage this fiasco has done to the revered principle of prosecution free from politics. It brings a bittersweet end to an episode in which the Justice Department, for the first time in history, breached the wall between branches of government and subjected its career employees to a congressional witch hunt.

Those who follow Cartusciello will no doubt remember the pathetic spectacle of line prosecutors—and their lawyers—being paraded up to the Hill to answer for their actions. And as career prosecutors across America step up to the hard decisions that are their daily task, will the lesson of Environmental Crimes cause them to hesitate in making fair and objective decisions on which cases to prosecute? It's almost too much to hope it won't.

The writer is a Washington lawyer and a former federal prosecutor.

ward Singapore

William Raspberry

Equality for Haitians

Environmental Crimes Controversy Still Shadowing Reno

By Jim McGee
Washington Post Staff Writer

Among the many problem areas that confronted Janet Reno when she took over a denigrated and dispirited Justice Department early last year, the Environmental Crimes Section (ECS) was one of the thorniest.

Officials at its closest federal partner, the Environmental Protection Agency (EPA), had charged that under Republican administrations the section had been soft on big business polluters. A number of federal prosecutors, including some of the section's own lawyers at Justice's main office in Washington, also were concerned. A powerful congressional Democrat, Rep. John D. Dingell (Mich.), chairman of the House subcommittee charged with oversight of the EPA, had already accused the section of less than aggressive pursuit of "significant" cases and of stonewalling congressional inquiries.

Reno had arrived at Justice as an agent of change, and soon staked her personal reputation for probity on the task of restoring the public's trust in a department whose reputation for delivering professional, non-partisan law enforcement was under challenge.

Asked about the environmental crimes section at her confirmation hearing on March 9, 1993, she had said it was important. "I want to see that the laws of this country are enforced in every way possible to protect the environment," she told the Senate Judiciary Committee. ". . . I look forward to building an environmental and lands division. . . . that can pursue these cases vigorously."

Yet more than a year after Reno's confirmation, the situation at ECS is far from resolved, and to some of her critics it has become a symbol of what they claim is diffused and lackluster leadership. Among the critics is Dingell's subcommittee, now investigating the environmental crimes section itself. It has charged Justice under Reno with blocking its efforts and has subpoenaed documents it says Justice had refused to turn over.

An internal Justice review of the ECS controversy was released March 14, six months after the date it was promised. It called for immediate changes in a staff whose work, it said, was being hurt by internal acrimony and external suspicion. While it concluded that nothing "improper" had occurred in specific environmental cases it reviewed, it described several longstanding management problems, pointed to "pervasive [internal] distrust at every level" and said "individuals who should be working cooperatively toward a common objective suspect each other's competence or motivation."

In comments indicative of the bad blood that the issue has provoked between a Democratic Congress and a Democratic executive branch, Dingell told Reno in a January letter that her department "has chosen to defend the policies of the previous administration, has failed to chart a new course for this program and has apparently tolerated continued harassment against various DOJ employees who have acknowledged problems or suggested improvements in the environmental crimes program."

In one of the milder epithets senior Justice officials have used to describe Dingell, one recently called him a "legislative bully."

Meanwhile, the point man on the ECS controversy, Associate Attorney General Webster L. Hubbell, resigned three weeks ago in the face of allegations by his former Arkansas law firm of client overbilling and expense irregularities.

In an interview last month Reno defended her deliberative management style and said she wanted to have the re-

ton-Gore campaign climbed on the ECS-bashing bandwagon. "The Bush administration is letting criminals off the hook after they pollute our air and our water and our land," said a campaign press release. "Worse still, the Bush administration is letting politics get in the way of prosecutions."

Dingell Continues Oversight Offensive

After the election, Dingell pressed ahead.

The Bush administration had refused to allow subcommittee staff to interview most of the trial attorneys in the six disputed cases and resisted disclosure of Justice Department documents about the cases. In one of her early official acts, Reno allowed the interviews and promised cooperation in the disclosure of documents.

Meanwhile, Hubbell took over management of the issue. He appointed a committee of four career attorneys to review the environmental crimes program and to examine Dingell's assertions that the six cases "are indicative of serious management and performance problems plaguing the federal criminal enforcement program." The results were promised by last September.

At the time, Dingell applauded the internal review, but warned Reno in a letter that "the Department, under

ipants said was "unduly protracted and adversarial," according to the report, and which led to a decision-making process the report described as "destructive," Cartusciello traveled to Alabama and persuaded the local U.S. attorney not to seek an indictment.

"Reasonable minds could have disagreed in this case with respect to the probability of conviction," said the report. "Mr. Cartusciello's judgment on the prosecutive merit of this case was appropriate and defensible. As section chief he was entitled to overrule [the prosecutor]."

In a recent letter to Reno, Cartusciello said the report "vindicated" his decisions and "refuted accusations of mismanagement" in the section. "The report speaks for itself," he said in an interview.

The afternoon the report was released, Hubbell resigned in the unrelated controversy with his Little Rock law firm.

Report Perpetuates Dispute

Instead of putting to rest congressional criticism of the department, the report's methodology virtually guaranteed that the ECS controversy would continue. In at least two of the six cases reviewed, for example, the reviewers did not question trial prosecutors about the particulars of the cases.

"They didn't talk to the guy who was responsible for the case," said ECS trial lawyer Howard Stewart, who was the lead counsel in the ChemWaste case. Stewart said he was interviewed about general issues within the section, but that when he brought up ChemWaste, the internal reviewers told him they would get into the specifics at a later date. They never followed up, he said.

A former ECS attorney, Rebecca Dewees, now an assistant U.S. attorney in Los Angeles, was criticized by name in the report for her work on one of the six cases. She said she was never questioned about the details of the prosecution, told she would be criticized, or given a chance to respond. She said she had a single telephone conversation with reviewer Mary Incontro on March 7, three days before the book-length report was printed and turned over to Reno.

The only question Incontro asked her about the case, Dewees said, was, "Now that I was a more experienced lawyer, would I still have indicted the case? And I said yes, I would."

The report said the tension between the Justice Department in Washington and the field began during the Reagan administration under former ENRD Deputy Assistant Attorney General Richard Leon who, it said, was perceived as "philosophically opposed to aggressive criminal enforcement."

"It is regrettable that they didn't take the opportunity to interview me," said Leon, who called the report's characterization of him "clearly false" and described as "inaccurate" its account of one case in which he was involved.

The report also criticized former Baltimore U.S. Attorney Breckenridge Wilcox, who said, "I was not interviewed and what they said about me was not correct."

The internal reviewers declined to be interviewed on the record for this article. Reno has not responded to written questions submitted two weeks ago.

Department spokesman Carl Stern said the review was not intended to be a thorough investigation of the six disputed cases, but simply an evaluation of the "reasonableness" of the decisions about prosecution in Washington based on the information available to supervisors. "The four reviewers believe that the report speaks for itself," Stern said. "And they believe that they interviewed [witnesses] that they deemed necessary and appropriate to interview." In recent weeks Reno has expressed her impatience with the persistance of a controversy that began under the Republicans. "What we want to try to do is address any immediate concerns that people have and then move on and try to address what is most important, which is the vigorous, fair enforcement," Reno said.

But the issue promises to hang on. The House subcommittee is now reviewing ECS records that the department recently turned over under subpoena, and is pursuing allegations that three of the trial attorneys who gave statements about the six cases were later subjected to retaliation inside the department. And last Friday, ECS Chief Cartusciello announced his resignation.

Staff researcher Barbara J. Saffir contributed to this report.

INSIDE:
THE JUSTICE DEPARTMENT

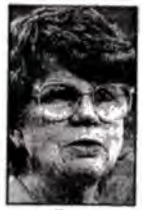
How the controversy over the Environmental Crimes Section grew:

1992

Sept. 10: The investigations subcommittee of the House Energy and Commerce Committee says ECS failed "to pursue aggressively a number of significant environmental cases" and that ECS supervisors displayed "a lack of environmental law expertise." Also, that ECS had "serious morale problems" and failed to explain to the Environmental Protection Agency why cases were not prosecuted.

Oct. 19: A House Judiciary subcommittee issues a consultant's report that says Justice preferred to seek the indictment of corporations rather than individuals and inhibited wetlands prosecutions. A Justice official calls the report "an obvious political hatchet job commissioned by a Democratic congressman."

Dingell



Reno

1993

Jan. 4: The investigations subcommittee of the House Committee on Science, Space and Technology criticizes plea bargain involving actions at the Rocky Flats, Colo., nuclear weapons facility. The Justice Department says the case is still under review.

Nov. 3: In a second House Energy and Commerce subcommittee hearing on ECS, Chairman John D. Dingell (D-Mich.) says the department's current policy on the supervision of environmental cases means ECS "would have a stranglehold on the majority of federal environmental crimes prosecutions in Washington, rather than in the field." Then-Associate Attorney General Webster L. Hubbell defends the ECS staff as lawyers who are "very dedicated to enforcing the laws of this country" and says "there have been no disputes brought to my attention with the U.S. attorneys offices."

1994

March 14: A report prepared by a Justice Department internal review panel concludes that decisions in the six cases under review were "reasonable." It says congressional criticism questioning the motives of ECS lawyers has hurt the program but there is "no basis" for that distrust.

March 31: At a press briefing, Attorney General Janet Reno says, "I think the most important thing for this nation is that we move ahead now to really pursue environmental enforcement in a vigorous, fair, firm manner and that's what I'm dead set and determined to do."

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port before she made any changes. "The way you restore credibility is to make informed judgments," she said. "You don't make snap judgments if you are going to do anything about credibility."

Changes in Case Procedure

During the early 1980s, the nation's 94 U.S. attorneys handled environmental cases much as they did other complex criminal matters. Their procedural Bible, the U.S. Attorney's Manual, authorized them to "commence the prosecution of any" environmental case unless the assistant attorney general of the Environmental and Natural Resources Division [ENRD] asked for time to review the matter. Cases traditionally were developed through close cooperation between regional EPA investigators and U.S. attorneys in the field.

The environmental division in Washington was free to pursue cases with litigators from the Justice Department.

Two events in 1987 changed all that. The Justice Department in Washington set up its own full-fledged litigation section specifically for environmental crimes—the ECS—and then-Attorney General Edwin Meese decided to revise the U.S. Attorney's Manual.

One revision that surprised local U.S. attorneys was a change that gave the Justice Department in Washington the explicit authority to approve environmental prosecutions. Instead of having broad autonomy to seek indictments and litigate cases, the prosecutors now had to first get approval from Washington.

Defense attorneys tended to prefer this arrangement. If they could not dissuade the local U.S. attorney from seeking indictments, they could ask for redress from Washington. But it was hard for local prosecutors and EPA agents to know what the standards for prosecution were, and a number saw the decisions in Washington as ad hoc. Moreover, Justice often refused to supply EPA with letters explaining why cases were not prosecuted.

Another source of tension was the appointment to the environmental section of supervisors who had no experience in environmental law, including Neil S. Cartusciello, who was named ECS chief in 1991.

Complaints Brought to Congress

After years of internal tension, the environmental crimes controversy finally broke out into the open in 1992, when frustrated EPA officials and others complained to Congress that supervisors at ECS had undermined important cases by overruling more experienced trial prosecutors. Six cases were mentioned in particular, and Dingell's subcommittee studied each of them in depth.

Each case involved lengthy EPA investigations that resulted in the case agents, often with the support of prosecutors, wanting to proceed with serious criminal charges.

Some indictments were, in fact, brought. But in each case ECS supervisors in Washington intervened on legal or evidentiary grounds and opted for less significant action than sought from the field—either preventing indictment entirely, negotiating plea bargains that brought lesser penalties, or opting for civil remedies.

During the same period, another House subcommittee issued a consultant's report charging that ECS had displayed a "pronounced failure to prosecute environmental crimes to the same degree as conventional crimes."

Justice officials vehemently objected to the criticism and countered that members of Congress were trying to second-guess their prosecutorial discretion in legally and factually complex cases. They were supported by a chorus of defenders, ranging from the editorial page of the Wall Street Journal to defense attorneys who represented corporations charged with environmental crimes.

Shortly before the 1992 presidential election, the Clinton campaign warned Reno in a letter that "the Department, under your predecessors, sought to undermine the independence of the Department's Inspector General, resisted" some congressional inquiries and "dragged its feet" on others. "This sorry record creates a substantial doubt as to the adequacy or credibility of any review conducted by Department personnel in position prior to Inauguration Day."

One of the most combative chairmen in Congress, with a particular interest in EPA's criminal enforcement program, Dingell waited until November for Reno to act. On Nov. 3, he held a hearing and declared that ECS had a "stranglehold" on environmental prosecutions throughout the country.

Three former U.S. attorneys, all of them Republicans, testified that leaving ECS in charge of approving prosecutions was a mistake because it fostered micromanaging from the head office. Hubbell followed them to the witness table to explain that environmental crime now had a "higher priority" at the department, but there were "no plans to change" the current structure or responsibilities of ECS. So far, Hubbell said, there had been "no disputes" with the new U.S. attorneys in the field.

On March 11, Dingell's subcommittee subpoenaed the documents he had sought for months, accusing the Justice Department of stonewalling. He and the subcommittee's ranking Republican, Rep. Dan Schaefer (Colo.), wrote to members of their respective parties on the Senate Judiciary Committee, asking that the confirmation of Lois Schiffer as assistant attorney general for the Environment and Natural Resources Division be delayed.

Such confirmation delays in Congress have hampered Reno's efforts to reorient the department after 12 years of Republican rule. "With respect to the 'expectations'," that she would bring change, Reno said recently, "one of the frustrations I have had" is getting assistant attorneys general confirmed.

Justice Releases Internal Review

On the morning of March 14, the department released the long-awaited ECS review, a 325-page report. Although the review attacked the Dingell subcommittee's methods and characterizations, it confirmed that there were management problems at ECS and suggested that some of the past discontent resulted from Republican appointees who were "philosophically more reluctant" to prosecute than their subordinates.

"As general characterizations go," the review said, "we think it is fair to say that from 1989 to 1992, Assistant Attorney General [Richard] Stewart and Acting Assistant Attorney General [Barry] Hartman [in charge of the division during that period] took a more cautious and conservative approach to prosecuting particular cases than others—including some career attorneys . . . would have followed."

Still, the report noted that while "decision-making" in the six cases could have "been improved," the outcomes reflected a "reasonable exercise of prosecutorial discretion."

For example, the report said, the proposed case against Chemical Waste Management Inc., a subsidiary of WMX Technologies, the nation's largest disposal firm, "illustrated management problems within the ECS" of the sort detected by the reviewers.

Prosecutors and EPA agents had gathered "sufficient credible evidence to prosecute" the company and its officials for "a knowing violation of federal hazardous waste regulations" related to the handling of a herbicide similar to Agent Orange, the report concluded. Lawyers for ChemWaste argued that its employees made a good faith effort to follow ECS policy by responding promptly to discovery of the herbicide, by reporting the incident to Louisiana authorities and by sending the chemicals to a legal dump site in Alabama for storage and testing.

After a 1992 prosecution review at Justice that partic-