

own racial assumptions. How, in fighting against Hitler's doctrine of the Master Race abroad, could Americans maintain a doctrine of white supremacy at home? How, with China a faithful American ally, could Americans continue to forbid Chinese to become American citizens? If the war did not end American racism, at least it drove much racial bigotry underground. The rethinking of racial issues challenged the conscience of the majority and raised the consciousness of minorities.

Emboldened by the Creed, blacks organized for equal opportunities in employment, opposed segregation in the armed forces, and fought in their own units on many fronts. After the war, the civil rights revolution, so long deferred, accelerated black self-reliance. So did the collapse of white colonialism around the world and the appearance of independent black states.

Across America minorities proclaimed their pride and demanded their rights. Women, the one "minority" that in America constituted a numerical majority, sought political and economic equality. Jews gained new solidarity from the holocaust and then from the establishment of a Jewish state in Israel. Changes in the immigration law dramatically increased the number arriving from Hispanic and Asian lands, and, following the general example, they asserted their own prerogatives. American Indians mobilized to reclaim rights and lands long since appropriated by the white man; their spokesmen even rejected the historic designation in which Indians had taken deserved pride and named themselves Native Americans.

demagogues and a relentless racial politics that erodes more national common ground every day.

America suffers as much today from a well-intentioned identification of its citizens by race as it does from old-fashioned racism. This is what joins President Clinton's defense of affirmative action last summer to Louis Farrakhan's speech at the Million Man March last week. Both men announced worthy goals while using race as a convenient means to power. Invoking 'diversity' let Mr. Clinton support racial preferences, a position he no doubt hopes will secure the black vote. And the theme of black male responsibility justified Mr. Farrakhan's organizing of a huge and exclusively black gathering that he no doubt hopes will win him power in the political mainstream.

The affirmative action debate is about whether or not to keep using race as a distinction of convenience in American life. If this debate is different in scale from the struggle over segregation 30 years ago, it is not different in essence. Racial preferences, like segregation, are conveniences that have created an ancestral entitlement right in the middle of a democracy and are fundamentally an assault on democratic principles.

To be against affirmative action is not to be against reform. Surely America can bring marginalized people into the mainstream without so dangerous an oversimplification of society. It can do this by fostering higher educational expectations, safer neighborhoods and pre-natal care, to take a very few examples. In a democracy, race will never find its rightful place until we recognize that race as a means will always corrupt our ends.

1/15/95

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Access No: 9300050241 ProQuest - The New York Times (R) Ondisc
Title: RACE AND THE CURSE OF GOOD INTENTIONS
Authors: Shelby Steele; Shelby Steele, a research fellow at the Hoover Institution, is the author of 'The Content of Our Character.'
Source: The New York Times, Late Edition - Final
Date: Tuesday Oct 24, 1995 Sec: A Editorial Desk p: 27
Length: Medium (600 words) Type: OP-ED
Subjects: BLACKS; DEMONSTRATIONS & RIOTS; WASHINGTON (DC)
Names: FARRAKHAN, LOUIS; SIMPSON, O J
Companies: NATION OF ISLAM

Abstract: Shelby Steele warns against using race as a distinction of convenience, saying that whenever we give a convenient meaning to race, we are generalizing and therefore blinding ourselves to the humanity of individuals. Steele asserts that racial preference programs are conveniences that have created an ancestral entitlement right and are fundamentally an assault on democratic principles.

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Article Text:

MONTEREY, Calif. -- In the furor over the O. J. Simpson verdict and the Million Man March, Americans seem to have forgotten something that was

more obvious during the civil rights movement: ~~that race, though a biological fact, is a dangerously empty distinction because it can carry whatever meaning we give it without the support of reason or evidence. This freedom from reason is what makes the idea of race so perniciously convenient. Make the color black mean inferior and, without ever having to prove inferiority, you've got a couple of centuries of slavery.~~

~~Whenever we give a convenient meaning to race, we are generalizing and therefore blinding ourselves to the humanity of individuals. Early civil rights leaders understood that inequality, dehumanization and racial division would follow any use of race as a convenience. The Rev. Dr. Martin Luther King Jr. dreamed of an enlightened society of reason and brotherhood in which race would finally become a minor thing.~~

~~But around 1970 America made a stunning mistake. In the name of social reform, it embraced racial preference programs as a road to equality. The Government decided that race was a dangerous distinction to draw only when it was used to justify bad policies like segregation. If the intentions were good --- diversity, inclusion, fairness --- then it was not just all right to use race to categorize people. It was virtuous to do so. This set up a now familiar contradiction: a genuine desire to fight racism even as our policy blinds us to individuals by linking black skin to deprivation and white skin to privilege.~~

~~Yet race remains a dangerous shorthand whether the intentions are good or bad. America has spawned a language of good intentions --- diversity, cultural identity, multiculturalism, pluralism --- that often conceals a use of race as a currency of power. Thus lurking behind worthy ideas is a society deeply divided by persistent inequality, the proliferation of demagogues and a relentless racial politics that erodes more national common ground every day.~~

~~America suffers as much today from a well-intentioned identification of its citizens by race as it does from old-fashioned racism. This is what joins President Clinton's defense of affirmative action last summer to Louis Farrakhan's speech at the Million Man March last week. Both men announced worthy goals while using race as a convenient means to power. Invoking 'diversity' let Mr. Clinton support racial preferences, a position he no doubt hopes will secure the black vote. And the theme of black male responsibility justified Mr. Farrakhan's organizing of a huge and exclusively black gathering that he no doubt hopes will win him power in the political mainstream.~~

~~The affirmative action debate is about whether or not to keep using race as a distinction of convenience in American life. If this debate is different in scale from the struggle over segregation 30 years ago, it is not different in essence. Racial preferences, like segregation, are conveniences that have created an ancestral entitlement right in the middle of a democracy and are fundamentally an assault on democratic principles.~~

~~To be against affirmative action is not to be against reform. Surely America can bring marginalized people into the mainstream without so dangerous an oversimplification of society. It can do this by fostering higher educational expectations, safer neighborhoods and pre-natal care, to take a very few examples. In a democracy, race will never find its rightful place until we recognize that race as a means will always corrupt our ends.~~

Access No: 9300104982 ProQuest - The New York Times (R) Ondisc
Title: AFFIRMATIVE ACTION MUST GO
Authors: Shelby Steele; Shelby Steele is author of 'The Content of Our Character.'
Source: The New York Times, Late Edition - Final
Date: Wednesday Mar 1, 1995 Sec: A Editorial Desk p: 19

Length: Long (995 words) Type: OP-ED Illus: Drawing
Subjects: AFFIRMATIVE ACTION

Abstract: Shelby Steele criticizes affirmative action but admits that he is troubled to see its demise 'glibly' urged by the political right. Steele asks that those who oppose preferences acknowledge the reality of black alienation and suggests that current affirmative action policies be replaced by making discrimination a criminal, rather than a civil, offense.

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Article Text:

MONTEREY, Calif. -- ~~There are many indications that affirmative action may soon provoke what it has never provoked before: a national debate on group preferences that will be so open and contentious that no important politician will be able to avoid a hard yea or nay position.~~

This has all been started by the threat of another of those California statewide initiatives in which some long-simmering public bitterness explodes onto the ballot and is then argued out in the national village of talk radio. Next year, Californians are to vote on the appropriateness of preferential treatment by sex, race and ethnic origin as a form of social redress. What an odd opportunity: to vote in secret on the idea that some citizens should be preferred over others in public employment, contracting and higher education.

I wish my parents had had such a vote back in the 1950's, when I was languishing in a segregated elementary school created by white preferential treatment. My guess is that Californians will vote as my parents would surely have voted then: against preferences of any kind. Significantly, most of the new interest in affirmative action seems to be political rather than social. The buzz is all about how the issue will wedge the Democrats into white male moderates on one flank and minorities and women on the other -- an ugly resegregation of America's 'civil rights' party that will make President Clinton even more vulnerable than he already is.

~~There is little talk about affirmative action as public policy. One reason, I think, is that affirmative action has always been what might be called iconographic public policy --- policy that ostensibly exists to solve a social problem but actually functions as an icon for the self-image people hope to gain by supporting the policy.~~ From the beginning, affirmative action could be cited as evidence of white social virtue and of emerging black power -- the precise qualities that America's long history of racism had denied to each side.

~~Had America worked from the 1960's on to educate blacks to the same standards as whites, had it truly labored to eradicate discrimination, there would be more virtue and power on both sides of the racial divide today. The disingenuousness of affirmative action --- born of the black struggle for freedom --- can be seen in two remarkable facts: middle-class white women have benefited from it far more than any other group, and 46 percent of all black children live in poverty.~~

~~The perniciousness of an iconographic social policy is that you cannot be against it without seeming to be against what it purports to represent. The white who argues against affirmative action looks like a racist and the black looks like an Uncle Tom. Iconographic policies perpetuate themselves by hiding behind what they represent. This is why, after 25 years, affirmative action is one of the least evaluated social policies in American history. The price for accepting its illusion of virtue and power is ignorance.~~

Not only do we blind ourselves to the workings of a social policy that becomes an icon, but in search of a flattering self-image we justify the policy by vague ideals like 'diversity.' And the emptiness of these ideals makes the policy unaccountable for any result it may have, so it remains an icon whether or not it accomplishes anything in the real world.

Diversity policies (today's euphemism for affirmative action) exist in virtually every important institution even though no one really knows what diversity means. Both proportionate and disproportionate representation reflect diversity; integration is one kind of diversity and segregation another. Here is an idealism that destroys accountability in social policy, and a language of willed ignorance in which the words mean only that the speaker has good intentions.

~~Still, as much as I loathe affirmative action -- for the indignity and Faustian bargain it presents to minorities, for the hypocrisy and shameless self-congratulation it brings out in its white supporters -- I must admit that it troubles me to see its demise so glibly urged from the political right. The Republican Presidential aspirants are stumbling over one another to condemn it. While they are right to do so -- and right is right even when it is nothing more than right -- there is also the matter of moral authority. And this is something anyone who wants to dismantle affirmative action will have to earn.~~

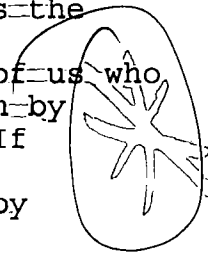
I would ask those who oppose preferences to acknowledge and account for the reality of black alienation. As a black, I still fear discrimination, still have the feeling that it is waiting for me in public America. ~~Discrimination does not justify preferential treatment, but I want to know that the person who stands with me against preferences understands the problem that inspired them.~~

~~To my mind there is only one way to moral authority for those of us who want affirmative action done away with: to ask that discrimination by race, gender or ethnicity be a criminal offense, not just civil. If someone can go to jail for stealing my car stereo, he ought to do considerably more time for stifling my livelihood and well-being by discriminating against me.~~

~~If this means there will be many trials and lawsuits, so be it. When the pressure is put precisely on the evil you want to eradicate, then individuals and institutions will quickly learn not only what discrimination is but also what fairness is -- and fairness is a concept so confused by decades of affirmative action that many now believe it can be reached only through discrimination.~~

Ending affirmative action must involve more than bringing down an icon. It must also involve an extension of democratic principles to what might be an extreme degree in a racially homogeneous society. But in a society like ours, discrimination is the greatest and most disruptive social evil. In a multiracial democracy of individuals, you have to make it a felony.

Caption:
Drawing.



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Access No: 9300104982 ProQuest - The New York Times (R) Ondisc
Title: AFFIRMATIVE ACTION MUST GO
Authors: Shelby Steele; Shelby Steele is author of 'The Content of Our Character.'

Excerpts From a Speech By Gingrich About Race

By The New York Times

WASHINGTON, June 18 — Following are excerpts from the prepared text of a speech by Speaker Newt Gingrich tonight to the Orphan Foundation of America outlining 10 proposals to improve on race relations:

1. **LEARNING.** Create better opportunities for all children to learn by breaking the stranglehold of the teachers' unions and giving urban parents the financial opportunity to choose the public, private, or parochial school that's best for their children.

2. **SMALL BUSINESS.** Set a goal of tripling the number of minority-owned small businesses by bringing successful small-business leaders together to identify — and then eliminate — the government-imposed barriers to entrepreneurship.

3. **URBAN RENEWAL.** Create 100 Renewal Communities in impoverished areas through targeted, pro-growth tax benefits, regulatory relief, low-income scholarships, savings accounts, brownfields clean-up, and home-ownership opportunities.

4. **CIVIL RIGHTS.** Clear the existing backlog of discrimination cases at the Equal Employment Opportunity Commission by enforcing existing civil rights laws, rather than trying to create new ones by regulatory decree.

5. **EQUAL OPPORTUNITY.** Make America a country with equal opportunity for all and special privilege for none by treating all individuals as equals before the law and doing away with quotas, preferences and set-asides in Government contracts, hiring, and university admissions.

6. **RACIAL CLASSIFICATION.** Break down rigid classifications

A first step could be to add a "multiracial" category to the census and other government forms to begin to phase out the outdated, divisive, and rigid classification of Americans as "blacks" or "whites" or other single races. Ultimately, our goal is to have one classification — American.

7. **HOME OWNERSHIP.** Ease the path toward home ownership by giving local communities and housing authorities the flexibility and authority to more effectively and efficiently house low-income Americans. We must also expand faith-based charities such as Habitat for Humanity, which grow families as well as build homes.

8. **VIOLENT CRIME.** Make our cities safe and secure places to live and work through community policing, tougher sentences for violent criminals, and innovative anti-crime programs. Dramatically expand the community-based anti-drug coalition efforts and create a victory plan for the war on drugs.

9. **ECONOMIC GROWTH.** Expand economic opportunities for all Americans by promoting continued economic growth with low inflation and rising take-home pay, through tax cuts, tax simplifications, litigation reform, less regulation and overhaul of the burden of government on small business. All in all, for welfare-to-work to be successful, work needs to be available.

10. **WELFARE REFORM.** Take the next step in welfare reform by fostering and promoting innovative local job training, welfare-to-work, and entry-level employment programs to move welfare recipients into the work force.

Page

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yes

yes

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ARTICLE: The Value of the EEOC: Reexamining the Agency's Role in Employment
Discrimination Law

Michael Selmi*

II. The Structure of the EEOC

A. The Procedural Structure

The history of the EEOC has been well-documented elsewhere¹² and will be discussed only briefly here, primarily as it relates to the creation and operation of its unusual structure. The EEOC was created in 1964 as part of the

legislation now commonly known as Title VII. n13 Perhaps the most revealing aspect of the agency's creation is that its original structure was forged out of a political compromise that resulted in significantly limiting the agency's enforcement powers. In order to secure passage of the Civil Rights Act of 1964, it was necessary for Congress to ensure that the EEOC would not be too powerful in relation to the interests of employers. As a result, the EEOC initially was not authorized to file suit in federal court but could only seek to conciliate meritorious claims. n14 The compromising nature of the EEOC's formation has substantially restricted its enforcement mission insofar as it has never been clear what the goal of the EEOC ought to be--whether, for example, it was to remedy discrimination, to alleviate the potential burden on the federal courts from employment claims, or to protect employers from undue interference. n15

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-Footnotes-

n12 For a detailed history of the creation of the EEOC, see Alfred W. Blumrosen, *Modern Law: The Law Transmission System and Equal Employment Opportunity* 40-92 (1993); Richard K. Berg, *Equal Employment Opportunity Under the Civil Rights Act of 1964*, 31 *Brook. L. Rev.* 62, 62-68 (1964); Herbert Hill, *The Equal Employment Opportunity Acts of 1964 and 1972: A Critical Analysis of the Legislative History and Administration of the Law*, 2 *Indus. Rel. L.J.* 1 passim (1977); Minna J. Kotkin, *Public Remedies for Private Wrongs: Rethinking the Title VII Back Pay Remedy*, 41 *Hastings L.J.* 1301, 1314-17 (1990). For a discussion of state and local precursors to Title VII, see Arthur Earl Bonfield, *The Origin and Development of American Fair Employment Legislation*, 52 *Iowa L. Rev.* 1043 passim (1967).

n13 See 42 U.S.C. section 2000e-4 (1988) (creating the EEOC).

n14 See Blumrosen, *supra* note 12, at 48 (explaining that to overcome the filibuster, proponents of the 1991 Act agreed to limit the powers of the EEOC). At its formation, proponents of the bill sought to create an agency that would resemble the National Labor Relations Board so that the agency's determinations on the merits would be binding subject to limited judicial review and the agency would likewise be permitted to seek judicial enforcement of its orders. *Id.*

n15 At its inception, there was strong evidence that the EEOC's structure was intended, at least in part, to limit its effectiveness. See Hugh Davis Graham, *The Civil Rights Era* 129-52 (1990).

-End Footnotes-

Nevertheless, once the agency's impotence became clear, Title VII was amended to provide the EEOC with the power to sue in federal court on behalf [*6] of the victims of discrimination, and also to bring claims on its own behalf without the necessity of having a particular plaintiff. n16 This

legislative change brought primary enforcement responsibility to the EEOC, even though private attorneys have always played a simultaneous, and generally more important, enforcement role. n17 Indeed, the 1972 Amendments specifically preserved a private right of action for claimants, one that cannot be extinguished by the EEOC without the plaintiff's consent. n18 In subsequent years, the EEOC also assumed responsibility for enforcement of claims under the Age Discrimination in Employment Act (ADEA) and most recently under the Americans With Disabilities Act (ADA). n19

-Footnotes-

n16 See Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, sections 1-3, 86 Stat. 103. This latter power is encompassed by what are known as Commission charges, where the Commission issues a charge on its own authority following an investigation. See 42 U.S.C. section 2000e-5(b) (1988). Interestingly, it was the minority view at the time that enforcement of Title VII should be effected through the federal courts rather than through the agency. See H.R. Rep. No. 238, 92d Cong., 1st Sess., at 2167 (1971) (minority views). Employers likewise opposed increasing the powers of the agency, preferring instead to rely on judicial enforcement of the statute. Id. at 2175.

n17 Private attorneys typically file 95% of the cases that end up in federal court and they have also been involved in far more of the pivotal employment discrimination cases. See *infra* text accompanying notes 83 and 92.

n18 See 42 U.S.C. section 2000e-5(f)(1) (1988) (describing procedures for filing a court claim); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798-99 (1973) (discussing prerequisites to filing a claim).

n19 See 29 U.S.C. section 626 (1994) (ADEA); 42 U.S.C. section 12117 (1988 & Supp. V 1993) (ADA).

-End Footnotes-

Accordingly, Title VII, ADEA and ADA claims are all processed through the following administrative scheme, which will be described in some detail in order to reveal both its limited utility and the difficulty a plaintiff may face in negotiating the process. To seek relief on most federal claims of employment discrimination, an individual must initially file a charge of discrimination with the EEOC. n20 There is no filing fee, and to facilitate the process the EEOC uses a standard form that a claimant completes often with the agency's assistance. n21 Importantly, this initial charge, which is typically filed without the assistance of [*7] a private attorney, shapes the contours of any subsequent court action, and there has been a substantial amount of litigation over the relevance and proper interpretation of the original charge. n22

-Footnotes-

n20 This is true for all claims other than those filed pursuant to section 1981 and the Equal Pay Act. See supra text accompanying note 1. As a definitional matter, I will refer to filings with the agency as charges or claims so as to distinguish them from cases, which I will use to denote lawsuits. It should also be noted that the process for federal employees to file a charge is somewhat different in that they initially file claims with their particular agency. Throughout this Article, I will concentrate on the procedures for nonfederal employees.

n21 The form includes boxes to check to describe the applicable kind of discrimination, i.e., race, sex, or age discrimination, and there is room for a brief description of the individual's complaint.

n22 Courts have consistently held that plaintiffs may only pursue those claims that fall within the scope of the original complaint or which are likely to grow out of an investigation of that complaint. See *Jenkins v. Blue Cross Mut. Hosp., Inc.*, 538 F.2d 164 (7th Cir.) (en banc) (allowing claims that are "like or related to" original charge), cert. denied, 429 U.S. 986 (1976); *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455 (5th Cir. 1970) (allowing claims that can be "reasonably expected to grow out of EEOC investigation"). As one example of how an individual can be frustrated by the EEOC form, if an African-American woman alleges discrimination based on her race but does not also check the box marked "sex" she will likely be precluded from pursuing a sex discrimination claim even if the investigation points to sex rather than race discrimination, or a combination of the two, as the underlying basis for her treatment. See, e.g., *Leigh v. Bureau of State Lottery*, 876 F.2d 104 (6th Cir. 1989) (dismissing sex discrimination claim because plaintiff had only raised race discrimination claim in EEOC charge). Nor does the EEOC form recognize a combination gender and race claim. See, e.g., Kimberle Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139. Although there are procedures to amend a charge of discrimination much like Rule 15 of the Federal Rules of Civil Procedure, there is no procedure to amend a charge of discrimination after a lawsuit is commenced. The problem regarding the scope of the complaint will therefore arise if discovery during the federal litigation produces evidence to establish a claim that was not pled in the original charge.

-End Footnotes-

Charges of discrimination must be filed within specific, and relatively short, time deadlines. As a general matter, an individual has 180 days from the date of discrimination to file a charge, though that time is extended to 300

days in states that have their own Fair Employment agencies. n23 Since the majority of states have such agencies, most plaintiffs have 300 days to file a claim, but a peculiar twist to the procedure requires that the state have 60 days to investigate a claim, which means that a plaintiff must generally file a charge within 240 days, or 8 months, of the date of the incident. n24 Eight months is an [*8] unusually short statute of limitations. The original justification for such a short deadline was a desire to ensure that discrimination complaints were promptly resolved. n25 Yet, the reality is that discrimination claims are not resolved any more quickly than other claims. Because the EEOC has an enormous backlog of claims, it takes on average one year to complete an investigation, and many cases remain at the EEOC for two or more years. n26

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n23 42 U.S.C. section 2000e-5(e)(1) (1988 & Supp. V 1993).

n24 See EEOC v. Commercial Office Prods. Co., 486 U.S. 107 (1980) (work-sharing agreements can render claims filed between 240 and 300 days timely); Mohasco v. Silver, 447 U.S. 807 (1980) (charge must be filed 60 days prior to 300th day to ensure state has sufficient time to process charge). The state can, and often does, waive this investigation period, which then stretches the limitations period to 300 days. As a result, not only are these time frames confusing, but they have led to the creation of a rather strange process: the individual files her complaint with the EEOC and checks the box to indicate that she also wants to have the charge filed with the appropriate state agency. That charge, however, is never actually filed. Instead, the agency waives its processing of the charge and the EEOC takes note of that waiver and considers the charge on its own accord. Nevertheless, by checking the appropriate box the plaintiff has secured an additional 60 days on the statute of limitations clock.

n25 See Mohasco, 447 U.S. at 823 (time frames intended to encourage prompt processing of claims).

n26 In its most recent report, the EEOC stated that the average investigation of a claim takes 328 days and that its current backlog would take 18.8 months to clear. See EEOC Office of Program Operations, Ann. Rep. 11-12 (1994); see also Clyde Summers, Effective Remedies for Employment Rights: Preliminary Guidelines and Proposals, 141 U. Pa. L. Rev. 457, 480-81 (1992) (discussing length of investigation). There might be an additional benefit to the short time frame to the extent the complaint memorializes the alleged discriminatory incident, but too often the charges are so brief that they provide no specific information regarding the nature of the charge other than its broad categorical basis.

-----End Footnotes-----

These delays plainly conflict with the express purpose of the statute and also mean that, as a practical matter, many charges will receive no agency action. The reason for this is the time restrictions the statute imposes for the EEOC's investigation. According to the statute, the EEOC has 180 days from the filing of the complaint to investigate a claim, though it is not necessary that an investigation be completed within that time period. n27 Instead, after 180 days elapses the plaintiff has a statutory right to request a "Notice of Right to Sue" and the EEOC must issue the Notice. n28 Once a plaintiff obtains her right-to-sue notice, she can file her claim in federal or state court regardless of whether the EEOC has completed its investigation. In short, a right-to-sue notice functions as a plaintiff's jurisdictional ticket into federal or state court. This procedure illustrates the limited utility of the EEOC: although a plaintiff must file a claim with the agency, it is entirely possible that the EEOC will serve no function other than to issue a mandatory right-to-sue notice, which is akin to requiring a driver to apply for a bridge token in advance. Moreover, based on data provided by the EEOC, it appears the agency now serves the sole function of issuing a right-to-sue notice for approximately twenty-five percent of the claims [*9] that are filed. n29

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n27 42 U.S.C. section 2000e-5(e)(1) (1988 & Supp V 1993). An investigation is intended to obtain information to determine whether the individual's claim has merit, and may include written questions, collection of documents, and gathering of information from witnesses in the form of affidavits.

n28 See 29 C.F.R. section 1601.28 (1993) (claimant can request a Notice of Right to Sue after 180 days).

n29 See infra text accompanying note 46.

- - - - -End Footnotes- - - - -

If the EEOC does investigate a claim, it will ultimately render a determination on the merits as to whether sufficient evidence exists to conclude that the plaintiff was discriminated against. n30 If the EEOC issues a cause finding, the agency invites the parties to enter into conciliation procedures with an intent to resolve the claim. The defendant, however, is under no obligation to conciliate, and where conciliation is unsuccessful, the EEOC may subsequently elect to file suit on behalf of the individual claimant. n31 If the EEOC files suit, the defendant is entitled to a de novo hearing in federal court. n32 On the other hand, if the EEOC finds that a charge cannot be substantiated, it issues a "no-cause" determination, which is a letter to the plaintiff explaining that the EEOC has determined that there is no reasonable cause to believe that discrimination occurred. At the same time that the agency issues its no-cause finding, the EEOC will also issue a right-to-sue notice

informing the individual that she now has ninety days to file a federal court action. n33 A no-cause finding, therefore, has no binding authority and cannot prevent a plaintiff from proceeding de novo in federal court. n34 Instead, the no-cause finding simply determines that the EEOC will not pursue the case. n35

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n30 In the language of the EEOC, these determinations are called "cause findings" or "no-cause findings."

n31 42 U.S.C. section 2000e-5(f)(1) (1988). In the past, when conciliation failed, the Commissioners of the EEOC were required to approve litigation, which added further delays to the process and which resulted in many decisions not to pursue litigation in cases after the staff had found reasonable cause. For example, in 1992, the Commission approved suits in 70% of the cases in which suit was recommended by the staff, while in 1994 the percentage declined to 40.4%. See EEOC Office of Program Operations, *supra* note 26, at 40. The EEOC has recently altered its policy to provide more autonomy to the field offices to commence litigation. See *Daily Lab. Rep.*, Apr. 21, 1995, at A1 (describing EEOC's proposed policy changes).

n32 As will be discussed below, the EEOC renders a cause finding in only approximately 3% of the charges that are filed and successfully conciliates only about one-third of those cases. See *infra* Table 1.

n33 42 U.S.C. section 2000e-5(f)(1) (1988).

n34 See *Chandler v. Roudebush*, 425 U.S. 840, 844 (1976) ("It is well established that section 706 . . . accords private sector employees the right to de novo consideration of their Title VII claims."); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974) (noting that "the Commission cannot adjudicate claims or impose administrative sanctions"); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798-99 (1973) (reasonable cause finding is not a prerequisite to federal suit).

n35 Rather than issuing a no-cause finding, many EEOC offices inform the plaintiff, or her counsel, of its intent to do so and afford the plaintiff an opportunity to request a right-to-sue notice instead. This has the effect of eliminating any possible prejudice that may arise from the EEOC finding, and may also say something about the EEOC's confidence in its own procedures.

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As should be evident, these procedures amount to a rather strange and

vacuous process--one where thousands of claims are filed at no financial cost to the plaintiff, few are truly investigated, fewer still resolved, and none of which is binding on any of the parties. Ironically, despite their apparent vacuity, these administrative procedures have led to a tremendous amount of litigation with issues ranging from the particular time-frames for filing a claim to the scope of the charge, to the weight to be accorded a cause or no cause determination, to the time a right-to-sue notice has been received. n36 The amount of litigation over these procedures is likely unparalleled in federal administrative law. During 1993 alone, an electronic search identified a total of 107 cases involving motions to dismiss for failure to comply with EEOC procedures. n37 Given that reported cases comprise only a fraction of the cases actually decided by courts in any year, n38 these decisions likely represent only a [*11] small number of the cases in which procedural issues were litigated, and they do not include the cases that were never filed in court because of procedural defects in the original filing of the charge. Furthermore, of the cases identified, defendants prevailed on approximately seventy percent of their motions to dismiss. n39

- - - - -Footnotes- - - - -

n36 Many of these cases have ultimately been resolved by the Supreme Court. See, e.g., *Irwin v. Veterans Admin.*, 498 U.S. 89, 92-93 (1990) (receipt by attorney begins statute of limitations clock); *EEOC v. Commercial Office Prods. Co.*, 486 U.S. 107, 125 (1988) (state filing need not be timely to benefit from state deferral requirement); *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 150 (1984) (filing of right-to-sue letter without complaint does not constitute timely filing); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982) (holding that Title VII filing period is not jurisdictional); *Delaware State College v. Ricks*, 449 U.S. 250, 257-59 (1980) (defining time to file a claim in tenure case); see also Jerome M. Culp, *A New Employment Policy for the 1980s: Learning From the Victories and Defeats of Twenty Years of Title VII*, 37 Rutgers L. Rev. 895, 905 (1985) (noting that between 1979-84, the Supreme Court heard 41 employment discrimination cases, 24 of which involved procedural issues including 5 relating to issues on the statutes of limitations). In the last several years the balance of the Court's employment discrimination docket has begun to shift to evidentiary or substantive matters. See *McKennon v. Nashville Banner Pub. Co.*, 115 S. Ct. 879, 886 (1995) (afteracquired evidence rule); *Harris v. Forklift Sys., Inc.*, 114 S. Ct. 367, 370-71 (1993) (defining the requirements of sexual harassment cases); *St. Mary's Honor Ctr. v. Hicks*, 113 S. Ct. 2742, 2747 (1993) (burden of proof).

n37 The search was conducted on WESTLAW for district and appellate court cases involving motions relating to procedural matters. To ensure completeness, two different searches were run, the cases were then compiled by eliminating duplicates and a research assistant checked all the cases to identify the issues involved. Search of WESTLAW, Allfeds library (Feb. 24, 1995 & March 11, 1995).

n38 It has recently been estimated that only about 20% of employment discrimination cases are published, where published was defined as available through an electronic research service. See Peter Siegelman & John J. Donohue, III, Studying the Iceberg from Its Tip: A Comparison of Published and Unpublished Employment Discrimination Cases, 24 Law & Soc'y Rev. 1133, 1141 (1990) ("Excluding all cases without published opinions thus eliminates 4 in 5 of all cases filed."). In their study, Siegelman and Donohue also found that published opinions were not representative of the entire universe of employment discrimination cases; instead, published cases tended to involve higher stakes and to be more complicated than unpublished decisions. Id. at 1155-56. These findings make it difficult to extrapolate from the published opinions to determine how much litigation was actually generated over the EEOC procedures.

n39 This figure does not include mixed case results where, for example, the defendant prevailed on some but not all of the claims. There were approximately 14 such cases that have been excluded from the calculations. Defendants also seemed to fare somewhat better on appeal than in district court. For the district court cases, defendants prevailed in 68% of the 76 cases, while they prevailed in 13 of 16 appellate decisions, or in 81.2% of the cases. See supra note 37.

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The preceding discussion highlights two important issues. First, the EEOC's procedures appear to be socially wasteful, especially when it is understood that they are not binding on any party. Second, these procedures lead to a large amount of litigation that would be unnecessary in many instances if claims were not initially processed by the agency. n40 Nevertheless, despite these deficiencies, the institutional structure may be worth preserving if there is a net gain from the agency's work, which is the focus of the next section.

- - - - -Footnotes- - - - -

n40 Certainly eliminating the agency would not alleviate all of the litigation regarding procedural issues. For example, there would still be litigation over statute of limitations issues, but it seems likely that the volume of litigation would be substantially reduced, particularly if discrimination plaintiffs were afforded a longer statute of limitations than the current 300 day limitation.

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IV

NATIONAL LABOR RELATIONS BOARD

BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE

RE: THE NATIONAL LABOR RELATIONS BOARD

BODY:

Good morning Senator Kassebaum, Senator Kennedy and other members of the Committee. My name is William B. Gould IV. I am Chairman of the National Labor Relations Board. With me here today are Fred Feinstein, General Counsel, William R. Stewart, Chief Counsel to the Chairman; Ralph E. Deeds, Special Assistant to the Chairman; John C. Toner, Executive Secretary; Jeffrey D. Wedekind, Acting Solicitor; and Robert A. Giannasi, Chief Administrative Law Judge.

It is a pleasure to be able to speak to you today on the progress we have made at the Board in the past two-and-a half years since confirmation by the Senate on March 2, 1994. In my confirmation hearing before this Committee I pledged to: 1) uphold the law impartially in NLRB decisions and administration; 2) reduce the need for litigation and simplify and expedite NLRB procedures; and 3) bring labor and management together by fostering a more cooperative environment, both through Board procedures and substantive law. I have endeavored to honor these pledges to the best of my ability, and I am pleased to discuss with you the highlights of my term at the Board thus far. My judgment is that these pledges that I made to this Committee three years ago have been fulfilled during my tenure. It is my intent to move forward in the directions thus far staked out during my remaining two years in this office.

ADVISORY PANELS

One of our first actions after confirmation was to appoint Advisory Panels composed of 50 of America's most distinguished labor lawyers -- 25 of the top union labor lawyers and 25 top attorneys who represent employers. These panels serve pro bono and meet twice each year to provide practical advice to the Board on key issues and policies. The most recent meetings were held June 18 and 20 of this year.

Because of my work as a private practitioner, representing both management and labor, impartial arbitrator and law professor, I have always been concerned with providing decision and opinion makers with direct contact with the practical

problems involved in labor litigation and negotiations. My judgment is that we have been well informed and advised by the individuals of our Advisory Panels who confront day-to-day real life problems in the field. By the same token, these distinguished practitioners have gained insights into the problems that we face as an independent quasi-judicial agency.

At the most recent June meetings, we discussed proposals put forward in the House of Representatives for indexing the NLRB's jurisdictional standards for inflation and the Agency's efforts to reinvent and streamline its operations. A third topic was the proposal in the Congress to merge NLRB Administrative Law Judges into a government-wide ALJ corps along with Social Security judges and those of other agencies. The management and union advisory panels both agreed that this would be a mistake because the expertise of NLRB judges in labor law would be diluted and eventually lost.

With almost complete unanimity, the panels -- both union and management lawyers -- stated their skepticism about the value of indexing the Agency's jurisdictional standards to the CPI without the benefit of Congressional hearings and research on the impact of this proposal. Moreover, both labor and management lawyers expressed considerable concern about the inability of either side to have any rights or remedies under an indexing formula if it were to deprive the NLRB of jurisdiction over a substantial number of employers and their employees. Such a consensus on both sides of the bargaining table about policy issues is unusual, indeed.

The Advisory Panels have provided a valuable sounding board for the Board on various policy issues and a link to the labor law bar and our constituents in labor and industry. Other early Board proposals discussed with the panels included proposed Administrative Law Judge reforms which met with initial skepticism from both the union and management panels in 1995 but had gained wide support by the completion of a trial period in 1996.

NEW ADMINISTRATIVE LAW JUDGE PROCEDURES

We are making progress at simplifying NLRB procedures so that the parties have clear guidance, the expenses entailed by extensive litigation are minimized and case processing is expedited. On February 1, 1995, the Board announced a one-year trial period to experiment with revised Administrative Law Judge procedures designed to resolve disputes quickly, informally and early in the administrative process to avoid long and costly litigation, hearings and appeals. Favorable results from the new procedures led the Board to make them permanent effective March 1, 1996.

Settlement Judges

Under the new procedure, the Chief Administrative Law Judge, in appropriate cases, may appoint a "settlement judge" whose role is not adjudication but rather to work informally with the parties in an effort to reach a settlement -- thus avoiding the costs to the parties and to the public, and the delay required by a formal hearing and possible appeals. If a settlement is not reached informally, the case proceeds to a hearing before a judge other than the settlement judge who is not privy to the parties' discussions -- all such discussions are confidential -- that have taken place under the auspices of the

settlement judge.

Since the procedure began February 1, 1995, through the end of August 1996, settlement judges were utilized in 141 cases, and settlements were achieved in 94 of those cases, resulting in substantial savings to the Agency and the parties in trial and possible appeal costs.

Settlement judge settlements were adversely affected in FY 1996 by the government shutdowns and by budget uncertainties. Until our budget was finally approved in April 1996, we were reluctant to spend limited travel funds for on-site settlement judge conferences. Even thereafter, settlement conferences were curtailed because regional office staff was busy on backlogged investigations and trials. We did, however, with some success, continue to conduct settlement conferences by telephone. Once the Agency gets on a solid budget footing, we anticipate a return to our normal full use of settlement judges.

Even with the problems and disruptions experienced this year, our Administrative Law Judges -- both settlement and trial judges -- were responsible for more settlements of all types in the first 11 months of FY 1996 than in the comparable period of FY 1995. We believe that the increase is attributable, in part, to the settlement judge program and the environment fostered by it -- and, in part, to the increased emphasis by the Board generally on settlements.

Bench Decisions

The second element in the revised ALJ procedures is a provision permitting judges to issue bench decisions in select cases.

An ALJ now has the authority to request or respond to the parties' request for oral argument in lieu of written briefs and to issue a bench decision within 72 hours of the close of the hearing. Bench decisions are used in abbreviated, single-issue cases and ones in which the law is clear or the issue essentially factual. In the average case where written briefs are submitted and there is no bench decision, it takes four or five months from the close of the hearing until the judge's decision is rendered. Bench decisions can provide speedy and effective remedies in appropriate cases.

Since the new procedure was adopted in February 1995, 31 bench decisions have been issued. In the first 11 months of FY 1996 about four percent of all decisions have been bench decisions. As the parties -- both labor, management as well as individual employees -- and our own ALJ's have become more familiar with this process, the frequency of its use appears to be increasing. We are hopeful that greater use will be made in the future of the oral argument/bench decision procedure as more judges and the parties gain experience with it.

Time Targets

In a separate action, in September 1994, the Board began phasing in time targets for Administrative Law Judges designed to reduce the time used for issuing their decisions. The targets became fully effective in May 1995. The results are encouraging thus far. The median number of days from hearing to decision has dropped from 138 in 1993 to 128 in 1994 to 114 in 1995. The median time from when briefs are filed to decision decreased from 83 days to 71 to 64 days in the

same period. Although these medians may increase somewhat in FY 1996 due to the effects of the government shutdowns, we also find that the cases that do go to trial and require written decisions are longer and more complex than in the past. The average transcript length in cases in which judges' decisions issued in the first 11 months of FY 1996 is 611 pages; in FY 1995 that figure was 519 pages.

Number of Judges Declining

All of this has been accomplished with a diminishing number of Administrative Law Judges, which has been reduced to an historic low by retirements and other attrition. In November 1993 the Agency employed 78 judges as compared to 65 today. Due to retirements, we expect the total to be 57 in January 1997, which is less than half the number employed 15 years ago (117 in 1981). Budget permitting, we will need to replace the judges who are retiring by the end of the year to keep up with our case load in FY 1997.

BOARD "SPEED TEAM" PROCESS

The Board also has examined its own administrative decisional processes in its efforts to expedite the resolution of cases. In December 1994, the Board adopted a "speed team" case handling process which has reduced the amount of staff time devoted to cases where the Board is adopting recommended decisions of Administrative Law Judges.

In a speed team case, the issues are presented orally to a Board Member and, after discussion, a written decision is prepared within a matter of days so that the Board Member can approve the written decision while the case is still fresh in the Board Member's mind. This procedure eliminates the preparation of duplicative and unnecessary documents in cases which are essentially factual where credibility determinations already have been made -- either by an Administrative Law Judge in an unfair labor practice hearing, or by a Hearing Officer in a dispute arising out of a representation proceeding. The key to the effectiveness of the speed team procedure is direct and active involvement of the participating Board Member.

We have used the speed team case handling method in more than 430 cases (about 21 percent of total cases) since it was adopted with great success in speeding up our decisional process. In 1995, the median number of days for issuance of Board decisions in unfair labor practice cases was 59 days for the speed team cases compared to 100 days for all cases. Processing time for representation cases was cut in half using the speed team process, from 80 days to 40 days. The speed team procedure, and an active meeting schedule, have allowed the Board to move with unprecedented dispatch. From March 1994 through this date we held 65 full Board meetings -- in contrast to 24 meetings held by our predecessors during the same period of time immediately prior to our arrival in Washington, D.C. We also have held ten Advisory Panel meetings and seven oral arguments. The activity of the Board is unprecedented in scope and frequency.

All of this has enabled the Board to reduce its backlog to 379 cases. A range of 400 to 600 cases historically has been considered a normal case inventory.

During my term of office we have brought the backlog to a historic low number of cases -- the lowest backlog in the previous 22 years of Board casehandling! My

sense is that we would have an even better record which could rival the records of earlier Boards before 1974, if the shutdowns and the disruption that ensued in their wake had not slowed the processing of cases.

But, in any event, the present and historically low backlog stands in sharp contrast to the high-water mark of 1,647 cases in February 1984. **USAGE OF 10(j) INJUNCTIONS INCREASED**

Usage of 10(j) injunctions by the Board has increased as a means of quickly putting a stop to certain violations of the National Labor Relations Act by employers or unions and to provide an incentive to voluntary compliance with the Act.

In the first full year of the new Board's term, March 1994 to March 1995, 126 injunctions were authorized. This represented a substantial increase over the number of injunctions sought by our predecessors. For example, in fiscal year 1993, the prior Board authorized 42 injunctions and in FY. 1992, only 26 injunctions. This increase in the use of injunctions has sent a message both to employers and unions that the Board is prepared to take prompt and effective action against violations of the National Labor Relations Act in which the passage of time would render Board remedies ineffective. Of the cases pursued to a conclusion by the General Counsel, the Agency has had a success rate of approximately 90 percent, including both wins and settlements, on a par with or better than the experience of prior Boards.

The most publicized injunction approved by the Board and ordered by a federal district court ended the Major League Baseball strike and returned the parties to the bargaining table, thus saving the 1995 baseball season.

POSTAL BALLOT PROCEDURES IMPROVED

One of the early procedural improvements addressed by the Board was increasing the use of postal ballots in situations where conditions are such that costs would be lower and/or employee participation would be higher by using mail ballots.

The Board, through its decisions, also has encouraged greater use of mail ballots and, as a result, the Agency conducts about twice as many elections by postal ballot as it had under previous administrations. An important ingredient in this process has been the development of better postal ballot procedures. Of course, the overwhelming number of secret ballot elections are held manually in the workplace of employees as has been the historic practice. There has been no intent to change this practice but rather to employ postal ballots in situations where workers would not have the opportunity to cast their ballot and thus participate in the electoral process. We conduct representation elections by mail ballot only when it is cost effective, practical and consistent with the purpose of the Act. The Agency's use of mail ballots has been approved by the courts in several cases.

SINGLE UNIT RULE PROPOSED

In September 1995, the Board proposed a rule setting forth the factors it proposed to use in determining the appropriateness of a single location bargaining unit where the employer has more than one facility. The rule is designed to apply to all routine cases in which the issue is whether a unit of

unrepresented employees at a single location is an appropriate bargaining unit. The goal of the single unit rule is to eliminate the unnecessary delays and litigation in the traditional case-by-case litigation method.

Under the current procedure, each union election petition for a single unit in a multiple-unit employer may be litigated by the parties with delay and needless cost to all, including the taxpayer, even though the circumstances are substantially identical to ones ruled on by the Board countless times over the years in previous cases.

The proposed rule, which has not been acted on by the Board, would set forth, clearly and simply, for the public and labor bar, the factors the Board would find critical in most single location cases.

Because of the propagation of misinformation about it, the single unit rule has been met with opposition from employer groups and in the Congress. The proposed rule -- which was designed, not to change the law nor advantage either unions or employers, but to save time and money for the Agency and for the parties² -- became a hostage in the deliberations over our Agency's budget. A rider prohibiting its implementation was attached to the Agency's final appropriations bill for FY 1996.

JUDICIAL REVIEW OF BOARD DECISIONS

The Agency argued three cases before the Supreme Court during this past Term. In each case the Agency's position was upheld by the Court. In *NLRB v. Town & Country*, 116 S. Ct. 450 (1995), the Court unanimously held that paid union organizers are "employees" within the meaning of the Act and are, therefore, protected against employer retaliation in the form of discharge or discipline for protected activity.

In *Auciello Iron Works Inc. v. NLRB*, 116 S. Ct. 1754 (1996), the Court again unanimously upheld the Board's position and held that an employer may not refuse to bargain with an incumbent union on the ground that it has lost majority status where it has previously entered into a contract with such a union.

And, third, the Court in *Holly Farms Corp. v. NLRB*, 116 S. Ct. 1396 (1996), held that some employees involved in chicken processing were employees within the meaning of the Act and not excluded by virtue of the agricultural employee exemption contained in the Act. Although *Holly Farms* was a 5-4 decision -- in contrast to the unanimous holdings of the Court in both *Town & Country* and *Auciello* -- the major theme involved in each of these cases is the same. The Court, time and time again, noted the Board's expertise and its policy to defer to the Board's as expert agency.

In another case during the past Term, *Brown, et al v. Pro Football Inc.*, 116 S. Ct. 2116 (1996), involving the relationship between antitrust and labor law, the Court sounded the same theme. Here, while concluding that the federal labor law shields football from antitrust liability when the owners act unilaterally subsequent to bargaining to impasse, the Court noted that it could not resolve the ultimate issue of accommodation between the competing statutes until it hears "the detailed views of the Board, to whose 'specialized judgment' Congress 'intended to leave' many of the 'inevitable questions' concerning

multi-employer bargaining bound to arise in the future " Again, the Court stressed the central role of the Board and the Court's policy of deference to this Agency.

The language employed by the Court, coupled with its holdings, indicate that the Board's credibility with the Court has never been better. And the same is true throughout the entire federal judiciary. A similar deference has been exhibited by the United States Courts of Appeals as they have reviewed the decisions of the Board. In the first 9 months of fiscal year 1996, 70 percent of Board decisions were enforced in full and 85 percent were enforced in whole or in part. This compares quite favorably with, in the case of orders which were enforced in full, the figures of 62.7 percent and 60.8 percent in the two years immediately preceding 1996. Similarly, the number of orders enforced in whole or in part considerably surpasses all orders enforced in whole or in part during the two preceding years.

STREAMLINING OF NLRB

A variety of steps under the rubric of government "reinvention" program and ongoing Board streamlining efforts have reduced NLRB employment to the lowest level in many years, from the Agency's peak of nearly 3,000 in 1980. Since 1995, employment was reduced five percent by attrition to its current level of 1,926. Indeed, NLRB employment has fallen each year since 1980. The projected level of 1,926 for 1996 is the Agency's lowest since 1962 when case intake was 37 percent lower than currently.

Streamlining efforts include reductions in supervisory ratios, greater delegation of authority, reductions of employment in administrative and clerical activities, the elimination of unnecessary reports and paperwork, the closing of a field office and reconfiguring seven others, resulting in a space, rent and other fixed cost savings. Additional space consolidations in the field and headquarters will save the Agency more than \$1 million annually. Other cost savings include reductions in travel, subscriptions to legal research publications, telecommunications and miscellaneous expenses totaling approximately \$1 million.

CONCLUSION The genius of the National Labor Relations Act is that it provides a legal framework for industrial relations designed to keep government out of the workplace, leaving most problems to resolution by the parties who are best equipped to solve them creatively in diverse ways preferred by those most directly affected. This is the antithesis of a "made in Washington, one size shoe fits all feet" process.

Inevitably, on the significant policy issues which come before the Board, an adjudicator could make more than one judgment because of the complexity inherent in the issue posed. Always, the question is what constitutes the best judgment. The President, in selecting Board nominees, generally will take into account the philosophy -- as it relates to both policy and statutory interpretation -- of the nominee as a factor in assessing his or her suitability for the position. This process has produced substantial shifts in the decisions of the Board. As Professor Clyde W. Summers said about the National Labor Relations Act: The words of the statute and the intent of Congress provide some limitations and

guides, but there still remains a substantial area of discretion within which the Board must make choices between competing values and policies. Denying the existence of this power does not avoid its exercise, but only obstructs any useful inquiry into the appropriate standards and procedures for the exercise of that power.³

Sometimes the changes are profound. As Professor Summers said of the Eisenhower Board: "Seldom in the history of the Board has so much law been made so quickly by so few? During the first 30 months of the Dotson Board, 30 precedents were reversed. (See Attachment A.) During the first 30 months of my term in office, 7 precedents were reversed. (See Attachment B.)

Though I have expressed dissatisfaction with many existing Board and Supreme Court precedents, I have always adhered to Supreme Court precedent⁵ and expressed a preference for the stare decisis principle. This, of course, is not a view which is wooden and inflexible. Inevitably, issues arise which require the reversal of precedent fashioned at a level below the Supreme Court -- and, in appropriate circumstances, I shall continue to vote for the reversal of precedent during my term of office.⁶

I have pledged to this Committee and to the United States Senate that my national labor law philosophy is a balanced one, taking into account the competing interests of labor, management and individual employees.

One additional indication of this, as embodied in the practices of the Board during my term of office, is the relatively infrequent resort to dissents by Board Members. According to the management labor law firm Nixon, Hargrave, Devans & Doyle, of New York City, publishers of Employment Law Alert which studies the voting patterns of Board Members, there were 250 dissents under Chairman Dotson over the period of 2 years and 4 months as compared to 98 dissents filed during 2 years and 5 months during my Chairmanship. While not dispositive on the question of balance, these privately tabulated figures both suggest unprecedented consensus as well as belie any assertion that this Board is less balanced than its predecessors. Indeed, the statistics provided appear to establish, along with the judicial policy of deference alluded to above, the precise antithetical proposition.

I shall endeavor to continue to lead the Agency in the direction of impartial administration of our national labor law and promotion of the statutory policies that we have promoted so vigorously during my term of office. This is what I committed myself to three years ago in my testimony to this Committee and at the time of my confirmation a half a year afterward.

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CHAIRMAN WILLIAM B. GOULD, IV
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NATIONAL LABOR RELATIONS BOARD
BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION,
AND
RELATED AGENCIES

BODY:

Chairman Specter, Senator Harkin, and Members of the Subcommittee: Thank you for giving us this opportunity to appear before the Subcommittee in support of adequate funding for the National Labor Relations Board for the current fiscal year. We are well aware of the unusual nature of this hearing. We sincerely hope that our testimony and our responses to any questions that you may have will convince you that the NLRB is fully deserving of continued support at at least last year's level.

The NLRB is an independent agency whose sole function is to enforce the National Labor Relations Act (NLRA). The NLRA is unique in American law because, rather than imposing affirmative obligations on business or defining benefits for workers, it establishes a process by which employees, should they choose to do so, can organize themselves to affect their working conditions. Thus, the NLRB does not engage in "regulation" in the commonly understood sense of the word.

Rather, it facilitates a process by which employers and employees, if they so choose, can workout for themselves the terms and conditions of employment. By enforcing the "ground rules" for workers and management alike, the NLRB provides for the peaceful, orderly resolution of labor disputes. It does this in two ways:

It conducts elections to determine by majority vote in secret-ballot elections whether employees will be represented for collective- bargaining purposes.

It investigates charges filed by employees, employers, and unions and, absent settlement, litigates meritorious cases in internal administrative proceedings and before the federal courts, thereby remedying unfair labor practices (ULPs) committed by employers and unions.

Three recent examples serve as illustrations:

When employees at an oil company were fired from their jobs in northern Michigan for asking their employer for better working conditions, the NLRB's Milwaukee office went to

court to secure their immediate reinstatement.

When a hospital in Montana stopped bargaining with its nurses, claiming they were aft supervisors, the NLRB quickly investigated the case and persuaded the hospital to resume bargaining.

When union violence on picket lines in Wyoming got out of the control of local authorities, the NLRB went into federal court and obtained an injunction to stop the violence. These three examples are merely illustrative of what the NLRB does, day in and day out, as it has done over its 60-year life. It has done so with a dedicated staff, located in 52 offices across the country so as to be close to the site of labor disputes, using procedures that have been developed and refined over many years.

Since its inception, the NLRB's efficient and effective administration of the NLRA has promptly resolved thousands of labor disputes brought to it each year. By timely and peacefully resolving labor disputes, the NLRB contributes to the prevention of strife and discord in industry, construction, and services for the benefit of the public and the nation's economy. During fiscal 1994, the most recent year for which final statistics are available, the NLRB obtained offers of reinstatement for more than 4,100 employees and collected more than \$82 million in backpay. The amount that the NLRB has saved employers and employees in cost avoidance is immeasurable. Representatives of management and employees alike have praised the NLRB as a model of workplace dispute resolution.

The focus of NLRB casehandling is at the Regional Office level, where unfair labor practice charges and election petitions are received and initially processed. Last year, these Regional Offices received approximately 40,000 charges and petitions filed by employers, employees, and unions. Ninety percent of these cases were processed from beginning to end without any involvement by Washington. Of the more than 30,000 unfair labor practice charges filed, about two-thirds were dismissed in their entirety following initial investigation by Regional Offices. The great majority of these were dismissed within 45 days of being filed. More than half of election petitions led to the holding of secret-ballot elections within 44 days of the filing of the petition.

This is a record and a tradition of efficiency that has served the public well.

But that record, reputation, and ability to get the job done have recently been stretched to the breaking point. Current efforts to sharply reduce the Agency's funding come at a time when we have been taking numerous steps to stay on top of a growing caseload.

The NLRB has downsized substantially in recent years, from an authorized FTE of 2,945 in 1980, to 2,054 in 1995. Because of this downsizing, attrition, and inability to hire due to funding uncertainties, we currently are operating at a staffing level of 1,950 FTE.

The NLRB is required to process all cases filed with the Agency. Although intake declined in the early 1980's, it leveled off thereafter and has grown since then. The net effect of the steady FTE reduction, unaccompanied by a commensurate decline in case intake, has been that the case handling burden per FTE has risen markedly: The intake per FTE for 1995 was 23.5 percent above the figure for 1985. In addition to an increase in cases per FTE, the cases have become increasingly complex in recent years. The cases are more complex for several reasons: First, the Agency has instituted a program to discourage the filing of frivolous or clearly nonmeritorious charges. As a result, the charges that have been filed have required greater use of our resources to investigate and resolve. In addition, the increase in the rate of change of business organizations in recent years has led to more complex cases filed with the NLRB.

An increase in bankruptcy filings and similar factors also has contributed to the increased overall complexity of the caseload. Despite numerous efforts to improve efficiency, which we describe in detail below, backlogs at many stages of the casehandling pipeline have grown in recent years and are now reaching a "critical mass" that is overwhelming our staff. At the regional level as well as in the Washington enforcement divisions, we are experiencing serious backlogs. On September 30, 1995, 5,219 cases were awaiting preliminary investigation in the Regional Offices--a nine percent increase over a year earlier and a 35 percent increase over September 1993. Of the cases that were more than 45 days old on September 30, 1995, without having been resolved by dismissal, withdrawal, deferral, or issuance of complaint in the Regional Offices, 24.4 percent were considered "overage," that is, they were unresolved for no other reason than that the staff just could not get to them. A year earlier that figure was 16.5 percent, which by historical standards was itself unusually high. The most recent statistics available from the Field--the gathering of which has been impeded by the shutdown--show that as of November 30, 1995, the backlog continues to build: As of that date, situations pending preliminary investigation had risen to 5,249 and the percent of overage cases had climbed to 29.3. Since then, with more than an additional 3 weeks of shutdown, the backlog in the field has worsened.

Backlogs are not just an internal, operational concern. The costs to employers and employees can be significant. Delayed cases are harder to investigate and, as investigations become more difficult, the costs of legal representation grow. The positions of the parties often harden with the passage of time, making settlement more difficult. Backpay may have built up to a point where it becomes a stumbling block to settlement. Individuals wait longer and longer to have important rights vindicated. Festering workplace disputes are costly to all concerned. These problems caused by this lack of resources have led both employers and employees to complain about the length of time needed to investigate charges that they had filed or charges that had been filed against them.

These unacceptable backlogs are occurring in representation cases as well. This means that employees and employers alike must wait longer for resolution of the important question of whether there will be collective bargaining in their workplace.

Because it is at the end of the case handling pipeline and, as alluded to below, the "speed team" and ALJ procedures and rulemaking, and because Board Members continued to work during the shutdown, over 70 cases were decided in December. As a result, as of January 1 the Board had an inventory of 320 assigned cases, the lowest Board caseload inventory in more than 20 years. However, because of the shutdown, as of February 1 there were 360 pending cases, a more than 10 percent increase. Also, at the time of the shutdown, the Board was just beginning to turn the corner in dealing with its oldest cases of which more than 40 are still two years old. Indeed, the Board by issuing some of its oldest cases in the last month and by adopting the speed team procedure discussed below, is more current in its casehandling than at anytime in recent history. It is important that the Board not lose this opportunity to decide cases on a "real time basis."

Since taking office almost two years ago, we have devoted a major portion of our time to finding ways to improve the Agency's efficiency at all levels. These efforts come on top of steps that the Agency has taken over the years to cope with ever-diminishing staffing resources. However, it must be understood that these steps, while critical to improving our ability to stay current with the growing caseload, cannot be expected to compensate for funding reductions.

The New York Times

June 2, 1996, Sunday, Late Edition - Final

NAME: William B. Gould 4th

SECTION: Section 1; Page 32; Column 4; National Desk

LENGTH: 1068 words

HEADLINE: Labor Board Chief Takes Assertive Stance

BYLINE: By STEVEN GREENHOUSE

BODY:

During his 26 months as chairman of the National Labor Relations Board, William B. Gould 4th has made no secret of his mission: he believes that the board tilted too heavily toward management during 12 years of Republican Presidents and he wants to correct it.

With this approach, Mr. Gould has run into consistent criticism from Republicans, big business and others who insist that he has lurched the board to the left and made it anti-business. A proud, often prickly man, he has not only stood his ground in the face of these attacks but has also sometimes goaded his opponents -- an approach that has even provoked some supporters to call him impolitic, unwise and arrogant.

After winning a grueling nine-month Senate confirmation fight in which some conservatives spread false rumors that he had run up gambling debts and secretly visited Cuba, Mr. Gould issued a statement attacking "a determined campaign of cynical character assassination" waged "by right-wing ideologues."

Last year, when House Republicans threatened to cut the labor board's budget by 30 percent because they viewed it as anti-management, the board issued a record number of injunctions ordering companies to undo anti-union actions, like dismissing workers who were trying to organize a union.

With some Republicans now backing legislation to reduce the board's power, Mr. Gould has criticized a bill that Senator Bob Dole is pushing to increase employer-employee cooperation. The bill, bitterly opposed by organized labor, would let companies select committees of workers to discuss major issues with management.

Mr. Dole has tried to attach the bill to the Democrats' proposal to raise the minimum wage. Mr. Gould says it "will allow employers to act autocratically with workers" and "is really designed to promote the existence of what used to be called company unions and sham unions."

To conservative critics, such outspokenness, which is unusual for a regulatory official,

means that someone who is supposed to be an impartial judge of labor-management disputes has abandoned judiciousness.

"It doesn't sound too much like a judge talking," said Representative Jay Dickey, an Arkansas Republican who led efforts to cut the board's budget. "It sounds like he's being prejudiced in favor of one side."

Defending himself, Mr. Gould said several lawmakers had asked him to speak out on sensitive issues, and he offered another explanation for not being more discreet: "I don't think the bully is ever discouraged from a fight by someone who runs."

Many Republicans and business executives say Mr. Gould should be more neutral and circumspect in heading the five-member board, which is responsible for enforcing the National Labor Relations Act, the 61-year-old law that sets ground rules for labor-management relations. The board's principal role is to oversee workplace elections on union representation and to adjudicate disputes over labor practices.

In enacting the labor relations act, Congress expected the board to enforce the law with a slight pro-union bent when Democrats were in power and with a pro-management tilt when Republicans ruled. Daniel Yager, general counsel, of the Labor Policy Association, which represents 230 big companies, said of Mr. Gould: "Under his leadership, the board has been the most politicized in recent memory. No matter what the facts, no matter what the precedent, the employer loses."

A.F.L.-C.I.O. officials welcome Mr. Gould's stewardship of the board, and they deny that he is heavily biased toward labor. John Hiatt, the federation's general counsel said that the board had "definitely been more balanced than the Reagan and Bush board" but that it had not gone far or fast enough.

Mr. Gould, a 59-year-old native of Boston who had taught for two decades at Stanford Law School, seems perplexed that he has encountered so much controversy in pursuing his mission since being confirmed in March 1994. He heads a board that has 52 regional offices, 1,900 employees and a \$176 million budget.

"My overriding goal has been to bring the board back to the center and to establish or re-establish its credibility as an impartial arbiter for labor and management," said Mr. Gould, the board's first black chairman. "It is well-known that there was in the Reagan-Bush era a systematic attempt to reverse as much labor law doctrine as possible so as to make it difficult for unions to have a fair opportunity to test employee sentiment at the ballot box."

Angering organized labor, the Reagan board refused to order new union representation elections when management lied to workers, and it ruled that companies had no duty to bargain when they contracted out unionized jobs to non-union sites. The Reagan board also let a backlog of 1,500 cases build up, meaning it often took at least two years to win reinstatement for union supporters dismissed during organizing drives.

Mr. Gould argues that in representation elections, justice delayed is justice denied. He says that if the few leaders of a drive are dismissed and not reinstated for years, it frightens other supporters and can destroy a union's chances of winning.

Under Mr. Gould, the board has taken several important steps to speed up justice. He has set up an experiment in which administrative law judges can issue oral decisions a day or two after hearing a case, rather than waiting five months to write an opinion. He has appointed settlement judges to work with management and labor to settle cases. And he has whittled the board's backlog to 330 cases.

Most important, the board under Mr. Gould issued a record 104 injunctions last year, often ordering that discharged union supporters be reinstated immediately. Defending the injunctions, Mr. Gould said, "It's created a climate in which more parties are inclined to be more law-abiding than would otherwise be the case because they know that under this board we are serious about prompt and vigorous law enforcement."

He asserts that his critics are, by and large, professional detractors who he says have to justify their existence by sniping at whoever disagrees with them.

"Just as there seems to be an inclination on the part of some to attack the independence of the judiciary," Mr. Gould said, "there is an increasing tendency to attack the independence of administrative agencies, established for the most part by the New Deal."

GRAPHIC: Photo: William B. Gould 4th of the National Labor Relations Board.
(Stephen Crowley/The New York Times)

LANGUAGE: ENGLISH

LOAD-DATE: June 2, 1996

The Buffalo News

June 12, 1996, Wednesday, CITY EDITION

SECTION: EDITORIAL PAGE, Pg. 2B

LENGTH: 485 words

HEADLINE: A GOVERNMENT AGENCY THAT WORKS;
SO WHY THE CRITICISM JUST BECAUSE IT HELPS WORKERS?

BODY:

WANT AN EXAMPLE of a government bureaucracy doing its job better than before?

How about the National Labor Relations Board, which has reduced its backlog of 1,500 cases during the Reagan years to a more tolerable 330? It's been accomplished by speeding up the wheels of workplace justice.

NLRB Chairman William Gould has implemented experiments in which administrative law judges issue oral opinions within a day or two instead of waiting months to give a written decision.

He's appointed settlement judges to work out compromises with management and labor.

And he's issued a record number of injunctions to get fired union supporters back to work more quickly, instead of letting them languish while their cases drag on.

It's the type of efficiency congressional Republicans laud in the private sector. But when government accomplishes it on behalf of working people, as has been the case with the NLRB turnaround, it doesn't bring praise. Instead, it brings criticism and threats of less funding and less power.

With worker unease at a fever pitch and mergers and downsizings creating a labor surplus that tilts the playing field toward management, a strong NLRB is vital to safeguard worker rights.

The fact that Gould has actively taken on that task in his two years as chairman has pro-business forces outraged. But when Congress enacted the National Labor Relations Act 61 years ago, safeguarding union elections in the workplace and handling workplace disputes was what it had in mind.

How aggressively the NLRB does that often depends on whether there's a Democrat or Republican in the White House. But what Gould is doing now is not radical. It is what the NLRB should have been doing all along.

Issuing injunctions to put fired workers back to work quickly sends a signal to both heavy-handed managers and frightened employees that union organizing is a legitimate worker right and one that can't be abridged by making examples of those who lead organizing drives.

Without that type of active NLRB intervention, the legal ability to organize becomes nothing more than a paper right.

The board also recently proposed making it easier for unions to organize one outlet in a chain operation -- such as a restaurant -- without having to unionize the entire company. That drew a predictable outcry from the affected businesses and was killed, at least for now, by Congress. But it's another sign of how the board has changed since the Reagan years.

In the face of such a reinvigorated NLRB, some Republicans have proposed limiting the board's reach by exempting more small firms from its jurisdiction while also slashing its budget. That would be as irresponsible as it is unsurprising.

Workers -- and the economy their spending supports -- need a strong NLRB just as much as the country needs a strong business sector. The two don't have to be incompatible.

LANGUAGE: ENGLISH

LOAD-DATE: June 14, 1996

Race

MEMORANDUM

TO: ELENA KAGAN
FROM: TOM FREEDMAN, MARY SMITH, TANYA MARTIN, JULIE MIKUTA
RE: FEDERAL ENFORCEMENT OF CIVIL RIGHTS LAWS
DATE: AUGUST 1, 1997

SUMMARY

Attached is a brief description of the structure and legal authority of the civil rights offices across the federal government, the current status of the office and potential improvements that might be pursued as a part of the Race Initiative. The last section describes a process/timetable for potential next steps for the workgroup addressing administration of justice.

I. OVERVIEW OF FEDERAL CIVIL RIGHTS ENFORCEMENT

- Prior to the Civil Rights Act of 1957, the federal civil rights effort was limited to the enforcement of a few post-Civil War criminal statutes.
- Since 1957, Congress and the President have expanded greatly the Federal civil rights effort through the creation of additional substantive rights and additional enforcement agencies.
- The Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968 are among the initial pieces of legislation that were enacted to address barriers to equal opportunity in employment, voting, public accommodations, education and federal financial assistance.¹

A. Methods of Enforcement

Every government agency, department and commission is involved in some aspect of civil rights enforcement -- external or internal -- and in most cases, both:

- **External** - agencies are responsible for prohibiting discrimination by recipients of federal financial assistance (Title VI of the Civil Rights Act of 1964); moreover, some agencies have additional freestanding civil rights enforcement authority;
- **Internal** - Equal Employment Opportunity Commission (EEOC) regulations apply to all agencies in their own hiring activities.

¹ Attached as Appendix A is a list of the relevant civil rights laws.

While this memorandum focuses on external enforcement activities, information on internal compliance with civil rights requirements should also be gathered from agencies, as agency hiring practices and external enforcement of programs are often discussed in tandem.(see Section XIV).

B. Federal Agencies

The July 15 memorandum on the race initiative policy process, identified nine participating agencies for the workgroup on the administration of justice. All nine, along with the U.S. Commission on Civil Rights, are discussed in this memorandum. Brief descriptions are provided of civil rights activities in other federal agencies.

- **Agencies with broad overview.**

These agencies have responsibility across the government for civil rights enforcement:

- U.S. Commission on Civil Rights -- civil rights monitoring and reporting
- Justice Department -- government-wide civil rights enforcement
- EEOC -- employment

- **Agencies with principal responsibilities.**

The U.S. Commission for Civil Rights identified the following agencies, along with Justice, as having principal responsibility for civil rights enforcement:

- Department of Education -- educational opportunity
- HHS, Office for Civil Rights -- health care; welfare
- HUD --housing
- Labor -- federal contracts

- **Other agencies with civil rights enforcement activity participating in workgroup.**

- Treasury -- fair lending
- Interior - Indian civil rights
- USDA - minority farmers

- **Other agencies with civil rights enforcement activities.**

Finally, there are a number of other agencies that have active civil rights issues including the Small Business Administration (Section 8/minority businesses); Commerce (minority business development); EPA (environmental justice); Transportation (road/transit system location and maintenance); and the FCC (broadcaster preferences).

II. U.S. COMMISSION ON CIVIL RIGHTS

A. Structure

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- **Investigate complaints** alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of

fraudulent practices;

- **Study and collect information** relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice
- **Serve as a national clearinghouse** for information with respect to discrimination or denial of equal protection of the laws;
- **Submit reports, findings, and recommendations** to the President and Congress;
- **Issue public service announcements** to discourage discrimination or denial of equal protection of the laws.

B. Current Status

- In FY 1998, the Commission requested a budget of \$11 million, an increase of \$1.3 million over the 1997 level of \$8.7 million.
- In July 1997, GAO reported the Commission lacks basic management and financial controls: key documents are lost or nonexistent; accurate cost data on programs or project is unavailable; and reports take so long to complete that published data is often outdated or inaccurate.
- The Citizens' Commission on Civil Rights, which monitors civil rights enforcement, has also recently released a report critical of the U.S. Commission.

III. JUSTICE -- CIVIL RIGHTS DIVISION (CRD)

A. Structure

- Unless otherwise specified by law, the conduct of government litigation is reserved to the Department of Justice. CRD enforces a broad range of civil and criminal statutes and presidential executive orders. Although its initial focus was on voting and post-civil war criminal statutes, the Civil Rights Act of 1964 greatly expanded its authority.
- CRD can receive, investigate, and litigate complaints of discrimination in places of public accommodation, in school and colleges, in public facilities owned by State or local governments, in programs or activities receiving Federal financial assistance, and in employment.

- CRD has an office of Redress Administration (WWII internment/national origin), an office of Administrative Management, and 10 subject-matter sections:
 - Appellate;
 - Civil Rights Prosecution (criminal prosecutions e.g., hate crimes);
 - Coordination and Review (coordination of enforcement activity of all federal agencies);
 - Disability Rights (ADA);
 - Education Opportunities (school desegregation);
 - Employment Litigation;
 - Housing and Civil Enforcement;
 - Special Litigation (civil rights of institutionalized persons);
 - Voting; and
 - the Office of Special Counsel.

B. Process

The various sections of CRD have broad authority to receive, investigate, and litigate complaints of discrimination under the Constitution and civil rights laws. Alternatively, the sections can initiate litigation upon referral from the designated federal agency conducting investigations under the applicable civil rights law.

C. Current Status

- For FY 1998, CRD has requested a budget of \$67.4 million, an increase of \$6 million (8%) from FY 1997 level, to enhance prosecution of hate crimes and police misconduct, as well as for enforcement of the Americans with Disabilities Act.
- CRD started FY 1996 with 1,406 cases pending, received 366 new cases and terminated 406, ending the year with 1,366 cases pending.
- CRD started FY 1996 with 8,359 matters pending, received 4,358 new matters and terminated 4,177, ending the year with 8,720 matter pending.
- For FY 1998, Justice requested \$7.5 million for the Community Relations Service, established by the Civil Rights Act of 1964, to provide assistance to communities in preventing and resolving disputes arising from discriminatory practices.

D. Possible Improvements

- Caseload improvements -- because of the vast jurisdiction of the CRD, its overall workload is affected by nearly every expansion of civil rights protections.
- Coordination -- improve data collection/dissemination among agencies.

IV. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

A. Structure

- The EEOC was created in 1964 to investigate employment discrimination charges relating to race, color, religion, sex, or national origin.
- Since that time, the EEOC has become responsible for administering additional laws: (1) the Equal Pay Act of 1963, (2) the Age Discrimination in Employment Act of 1967, (3) the Equal Employment Act of 1972, (4) Section 501 of the Rehabilitation Act of 1973, (5) the Americans With Disabilities Act (ADA) of 1990, and (6) the Civil Rights Act of 1991.
- EEOC carries out its mission through 50 field offices that receive, investigate, and resolve charges of discrimination in the private sector, and it coordinates these activities in the public sector.
- A 5-member commission heads the EEOC. The President appoints the members, with the consent of the Senate, for rotating 5-year terms. No more than 3 members can be from the same political party.

B. Process

- Plaintiff has 180 days to file a charge of discrimination with EEOC.
- EEOC investigates whether there is cause to believe discrimination occurred.
 - However, even if EEOC investigation is not completed, 180 days after the charge is filed, a plaintiff can request a “right to sue” letter, which permits the filing of the case in federal court
 - Plaintiff has 90 days to file complaint in federal court after receiving “right to sue” letter
- If the EEOC does investigate, then it either issues a “cause” finding or a “no cause” finding.
 - “Cause” finding issued: EEOC encourages the parties to enter into conciliation procedures which either result in a settlement or if no settlement, the plaintiff is given a “right to sue” letter
 - “No cause” finding issued: potential plaintiff is given a “right to sue” letter and the EEOC’s determination of “no cause” is entitled to no deference in court

C. Current Status

- For 1998, the EEOC has requested a budget of \$246 million, an increase of \$6 million (2.65%) over the current level for 1997.
- During 1994, the EEOC issued 36,377 determinations following a full investigation, and 94.7% or 34,451 resulted in “no cause” findings in favor of the defendant. There were only 1,926 determination of “cause”, a mere 5.3% of the total determinations.

- In 1994, the EEOC filed 347 substantive lawsuits, 26% involved sex discrimination, 21% involved age discrimination, 19% concerned race discrimination. The majority, 53% involved unlawful termination, 18% concerned discriminatory hiring.
- At one time the backlog was over 100,000 cases, but recently the Chairman testified before Congress that this backlog has been reduced to 75,000.
- In 1994, the EEOC stated that the average investigation of a claim took 328 days and that its backlog would take 18.8 months to clear.

D. Possible Solutions

- More funding for staff to address the backlog.
- Give the EEOC “cease and desist” authority, that is, authority to issue injunctions in cases of egregious violations.
- Give judicial deference to an EEOC determination of “cause” or “no cause,” permitting only appellate review based on a “substantial evidence” standard of review.
- Encourage binding ADR on an accelerated schedule before EEOC does investigation.
- Criminalize job discrimination in the strongest cases, where there is profound damage and willful violations of the law with direct economic impact.

E. Solutions the EEOC Has Adopted Already

- In 1996, the EEOC adopted a national enforcement plan that sets priorities for the processing of charges and litigation on the national and local level. Priority is placed on class-action lawsuits, claims that involve allegations of company-wide discrimination, and those that are likely to develop key legal principles. The reforms mark a fundamental change for the agency because it no longer fully investigates every charge it receives.
- The EEOC beefed up its mediation strategy, using many volunteer mediators under the Administrative Dispute Resolution Act.
- The agency is also targeting high-profile cases to bring suit such as the Mitsubishi sexual harassment suit in Illinois.

V. DEPARTMENT OF EDUCATION -- OFFICE OF CIVIL RIGHTS (ED-OCR)

A. Structure

- ED-OCR is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, disability, or age in the delivery of services or

the provision of benefits in programs or activities of schools, and institutions receiving financial assistance from ED.²

- Its enforcement authorities are rooted in five statutes: Title VI of the Civil Rights Act of 1964 (race/ethnic); Title IX of the Education Amendments of 1972 (sex); section 504 of the Rehabilitation Act of 1973 (disabilities); the Age Discrimination Act of 1975 and the Americans with Disabilities Act of 1990.
- ED-OCR has field staff in each of ED's regional offices whose activities include complaint investigations, compliance reviews, corrective action plan monitoring, enforcement litigation, policy development and program reviews. The majority of ED-OCR staff and resources are devoted to complaint investigations and compliance reviews.

B. Process

- ED-OCR conducts investigations and compliance reviews to ensure that federal assistance recipients adhere to nondiscrimination requirements. If a determination is made that a violation has occurred, an attempt is made to achieve voluntary compliance by the recipient.
- If ED-OCR cannot obtain voluntary compliance, it proceeds in one of two ways: it initiates an administrative enforcement proceeding seeking to terminate Federal financial assistance, or it refers the matter to the Department of Justice to seek injunctive relief in Federal Court.

C. Current Status

- For 1998, ED-OCR has requested a budget of \$61.5 million, an increase of \$6.5 million over 1997.
- In FY 1996, OCR received 4,828 complaints and resolved 4,886; it also initiated 146 compliance actions and resolved 173. By comparison, during FY 1991, OCR received 3,809 complaints and resolved 3,497 --- and initiated 41 compliance actions and resolved 22. During this same period FTEs have decreased from 820 in 1991, to 763 in 1996.
- OCR recently announced an investigation of complaints made against the admissions process at the University of California law schools following the implementation of Proposition 209.

D. Potential Improvements

- Reduce delay -- some education civil rights groups have complained to the Department about the speed of enforcement actions and delivery of the Elementary and Secondary

²Civil rights enforcement for programs and services provided by schools of medicine, dentistry, nursing and other health-related schools remains with HHS.

School Survey data.

- Provide more proactive technical assistance/guidance to school districts/states.

VI. HEALTH AND HUMAN SERVICES -- OFFICE FOR CIVIL RIGHTS (HHS-OCR)

A. Structure

- HHS-OCR administers numerous statutes that prohibit discrimination by providers of health care and social services: (1) Title VI of the Civil Rights Act of 1964; (2) Title IX of the Education Amendments of 1972; (3) section 504 of the Rehabilitation Act of 1973; and (4) the Age Discrimination Act of 1975 which prohibit discrimination by recipients of Federal financial assistance based on race, color, national origin, sex, age and disability.
- HHS-OCR estimates that approximately 230,000 group and institutional providers of federally assisted services are subject to the nondiscrimination laws it enforces.

B. Process

- HHS-OCR relies on a compliance program that includes complaint investigations, compliance and other reviews, monitoring of corrective action plans, and voluntary compliance and other outreach activities.
- If a matter cannot be resolved voluntarily to the satisfaction of all parties, HHS-OCR may effect compliance by terminating Federal financial assistance, referring the matter to the Attorney General for enforcement proceeding, pursuing HHS administrative proceedings or invoking applicable State or local law.

C. Current Status

- The FY 1998 budget request for HHS-OCR is \$20.5 million, a \$1 million (5%) increase over the FY 1997 budget authority of \$19.5 million.
- This \$1 million increase will be used to help implement initiatives that address discriminatory issues involving immigration, inter-ethnic adoption, managed care, Medicaid waivers, nursing home care, home health care and welfare reform.
- The number of complaints received in FY 1993 (2,094) reflected an 82 percent increase over the FY 1987 level (1,148). This rise in complaints was, in part, attributable to large increases in the number of AIDS-related complaints and other §504 disability cases. These cases focus on protecting persons with AIDS against unlawful discrimination and ensuring that minorities have an equal opportunity to participate in federally assisted programs and activities designed to combat AIDS.
- In the North Carolina Law Review, Professor Sidney Watson criticizes HHS-OCR as

being “ineffective in ending the health care discrimination caused by the myriad policies that disproportionately exclude minorities.” Although numerous studies document the underutilization of health services by minorities, few studies have analyzed Title VI compliance by health-care facilities.

D. Potential Improvements

- Increase funding -- HHS-OCR is below its FY 1981 funding and FTE levels, while the number of complaints is increasing.
- Increase the availability of data on Title VI compliance by health care facilities

VII. HOUSING AND URBAN DEVELOPMENT

OFFICE OF FAIR HOUSING AND EMPLOYMENT OPPORTUNITY (FHEO)

A. Structure

- The majority of FHEO’s civil rights responsibilities lie in its authority to enforce Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988, which prohibit discrimination on the basis of race, color, religion, sex, disability, familial status or national origin in the sale or rental, provision of brokerage services, or financing of housing.
- FHEO also enforces provisions of Title VI (race/ethnic), section 504 (disability), Section 109 (housing and community development), the Americans with Disabilities Act, and related executive orders to ensure nondiscrimination in federally assisted programs and activities relating to housing and urban development
- FHEO’s fair housing duties include the administration of two programs: (1) the Fair Housing Assistance Program (FHAP) provides financial assistance to supplement the enforcement activities of State and local enforcement agencies to ensure the prompt processing of Title VIII complaints; (2) the Fair Housing Initiatives Program (FHIP) provides support to public and private organizations for the purpose of eliminating or preventing discrimination in housing and for enhancing fair housing opportunities.

B. Process

- FHEO investigates complaints received from any person who claims to have been injured by a discriminatory housing practice or believes that an injury is about to occur.
- Those Title VIII complaints that fall within the jurisdiction of a substantially equivalent State or local agency are referred to those agencies for initial processing.
- After investigation, FHEO issues a determination indicating whether reasonable cause exists to believe that discrimination has occurred.

- If reasonable cause is found, any of the parties may elect to resolve the matter in Federal court through a HUD referral to Justice. Otherwise, the matter is resolved through the HUD administrative process.
 - FHEO also conducts investigations, and compliance reviews to enforce the provisions of civil rights laws applicable to federal assistance recipients. If a violation is found, HUD may refuse to approve an application for federal funds, or terminate funds of a current recipient.
- C. Current Status**
- The FY 1989 budget request for FHEO is \$39 million, a \$9 million (30%) increase over FY 1997.
 - Of the amount requested, \$15 million is for the FHAP (state/local enforcement) and \$24 million is for the FHIP (public/private initiatives).
- D. Potential Improvements**
- Increase the number of state/local agencies qualifying as “substantially equivalent” under the FHAP program. The number decreased due to the implementation of more stringent requirements in the Fair Housing Amendments Act of 1988. In 1990, approximately 125 agencies were certified, by 1993 the number qualifying was 52.
 - In 1994, the Civil Rights Commission found that in most cases HUD did not reach a conclusion as to just cause within the 100-day benchmark set by Congress. The average case-processing time in 1993 was 151 days.

VIII. DEPARTMENT OF LABOR (DOL)
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)
OFFICE OF CIVIL RIGHTS

- A. Structure**
- The enforcement authority of OFCCP encompasses several statutes and Executive Order 11246, as amended, to ensure nondiscrimination in employment based on race, sex, religion, color, national origin, disability or veteran status by Federal contractors at 290,000 sites with a total workforce of 22 million people.
 - OFCCP is also responsible for reviewing employers policies and practices for adherence to the Family and Medical Leave Act of 1993.
 - The Office of Civil Rights that is charged with ensuring compliance with Title VI and other nondiscrimination provisions in programs receiving federal financial assistance from DOL, as well as handling internal EEOC compliance.

B. Process

The enforcement activities of OFCCP focus in primarily four areas:

- conducting compliance reviews and investigating complaints,
- negotiating compliance agreements and letters of commitment, and monitoring subsequent compliance;
- providing technical assistance to contractors; and
- recommending enforcement actions by DOL or Justice.

C. Current Status

- In FY 1998, OFCCP requested a budget of \$69 million, an increase of \$10 million over FY 1997
- In 1998, OFCCP will conduct approximately 6,000 compliance reviews, 900 complaint investigations, and 4,100 other compliance actions.
- In FY 1998, the Office of Civil Rights requested a budget of \$4 million, a decrease of \$1 million from 1997.

D. Potential Improvements

- OFCCP's FY 1998 budget includes resources for a tiered-review process, which will reduce the paperwork burden on federal contractors and increase coverage of the contractor universe.
- Increase amount of compliance assistance provided to contractors

IX. TREASURY/COMPTROLLER OF THE CURRENCY (OCC)

A. Structure/Process

- As with all federal agencies, Treasury must enforce Title VI provisions that prohibit discrimination in programs and activities receiving federal financial assistance.
- The Community Redevelopment Act (CRA) regulates banks and other financial institutions to ensure that fair-lending practices are followed.
- The Office of the Comptroller of the Currency, an independent office within Treasury, responsible for regulating commercial banks, promulgates and enforces CRA regulations. Treasury and Justice also pursue investigations against financial institutions that are violating fair-lending practices.
- Internal EEOC enforcement is part of Treasury's departmental management and administration function.

B. Current Status

- Line-item data on civil rights enforcement activities at Treasury was not provided in its FY 1998 budget.
- OCC has made enhanced CRA regulations and enforcement a priority.

X. INTERIOR - BUREAU OF INDIAN AFFAIRS (BIA)

A. Structure/Process

- The Indian Civil Rights Act of 1968 (ICRA) imposed restrictions on tribal governments similar to those found in the Bill of Rights.
- Other than *habeas corpus* actions, enforcement of ICRA takes place in tribal forums, tribal courts and Courts of Indian Offenses. Interior does not enforce or oversee enforcement of ICR. Exception: Tribes without their own courts can go to BIA courts for ICRA actions. The Office of Tribal Justice at DOJ reviews the administration of tribal justice across the federal government.
- Interior is also responsible for enforcing Title VI nondiscrimination requirements for all programs and activities that receive federal financial assistance.

B. Current Status

- BIA is working on a initiative to improve the way tribal courts provide services to tribe members.

C. Potential Improvements

- Enhance programs to strengthen tribal courts

XII. USDA - CIVIL RIGHTS ACTION TEAM

A. Structure

- Over the years, USDA has had a number of different offices responsible for Title VI and EEOC concerns at the agency.
- Title VI requires that programs and activities receiving funds from USDA be delivered free of discrimination. The Equal Credit Opportunity Act makes discrimination in USDA lending programs illegal as well.
- In December 1996, a group of black farmers demonstrated outside the White House calling for fair treatments in agricultural lending programs. The Civil Rights Action Team (CRAT) was appointed to report on civil rights issues across the agency and make recommendations for changes. Included in their report was a recommendation for a

consolidated, visible Office of Civil Rights.

B. Procedure

- Currently, USDA has a civil rights policy office, civil rights enforcement (which is handled in regional offices), small & disadvantaged business office and a National Appeals Division.
- The CRAT report points out that the process for filing Title VI complaints at USDA is fragmented --generally, complaints are filed with the agency within USDA responsible for the program/activity at issue.

C. Current Status

- The budget requests for civil rights at USDA is not separately reported. The U.S. Commission on Civil Rights expressed concern that absence of specific funding for Title VI contributed to inadequate enforcement.
- The CRAT issued its report in February 1997, which documents the absence of adequate Title VI and EEOC enforcement at the agency.

D. Possible Improvements

- Implementation of centralized office for civil rights enforcement.
- Compilation and dissemination of reliable data on civil rights enforcement within USDA.
- Revision of regulations -- according to CRAT, the civil rights enforcement regulations have not been revised since 1973.

XIII. OTHER AGENCIES

In addition to enforcing Title VI protections for their programs and activities, these other agencies are also active on a variety of civil rights matters:

- **Small Business Administration** -- provides assistance to Section 8 disadvantaged businesses, many of which are minority-owned.
- **Commerce** -- has programs to provide assistance to minority owned businesses.
- **EPA** -- pursues "environmental justice" cases. Minority communities have alleged that their communities are being used as dumping grounds for toxic substances, or are last priority for clean-ups of hazardous materials.
- **Transportation** -- complaints have been filed by communities alleging discrimination in the placement service delivery and maintenance of roads and public transit systems.

- **FCC** -- faces controversial issues around ensuring that minority broadcasters have access to wireless telephone, data-service, radio and other communication licenses.

XIV. POSSIBLE NEXT STEPS

- Initial planning meeting in early August with agency race initiative contacts and possibly one person from the agency's civil rights office. Possible participants:

<u>Agency</u>	<u>Race Initiative Contact</u>	<u>Office of Civil Rights</u>
Education	Leslie Thornton	Norma Cantu
EEOC	[Not listed by Cabinet Affairs]	
HHS	Clay Simpson	
HUD	Mercedes Marquez	
Labor	Virigina Apuzzo	
Justice	David Ogden	
Interior	David Montoya	
Treasury	Michael Froman	
USDA	Reba Evans	

- Follow-Up Meetings by mid-September:
 1. Agencies -- discuss preliminary recommendations for improvements
 2. Outreach -- meet with groups monitoring civil rights enforcement for suggestions of possible improvements, such as:
 - Citizen's Commission on Civil Rights
 - ACLU
 - American Council on Education
 - NAACP
 - National Urban League
 - National Council of La Raza
 - National Asian-Pacific American Legal Consortium
 - Urban Institute
 3. Coordination Issues -- possible separate discussion with Justice on coordination of civil rights effort across the government.
- Feedback to agencies on improvement proposals in early October.
- Progress meetings on implementation of improvement proposals/ideas in Oct-Dec.

APPENDIX A

Major congressional and presidential landmarks affecting civil rights enforcement are the:

- Equal Pay Act of 1963
- Civil Rights Act of 1964
- Voting Rights Act of 1965
- President Johnson's Executive Order 11246 in 1965
- Age Discrimination in Employment Act of 1967
- Title VIII of the Civil Rights Act of 1968
- Equal Employment Opportunity Act of 1972
- Title IX of the Education Amendments Act of 1972
- Rehabilitation Act of 1973
- Voting Rights Act Amendments of 1975
- Age Discrimination Act of 1975
- President Carter's Reorganization Plan No. 1 and equal opportunity executive orders
- Voting Rights Amendments of 1982
- Civil Rights for Institutionalized Person Act of 1986
- Housing and Community Development Act of 1987
- Civil Rights Restoration Act of 1987
- Civil Liberties Act of 1988
- Fair Housing Amendments Act of 1988
- Americans with Disabilities Act of 1990
- Civil Rights Act of 1991
- Voting Rights Language Assistance Act of 1992

Race

MEMORANDUM

TO: TOM FREEDMAN, MARY SMITH, TANYA MARTIN
FROM: JULIE MIKUTA
RE: REPORT ON THE U.S. COMMISSION ON CIVIL RIGHTS
DATE: AUGUST 4, 1997

SUMMARY

Earlier this year, the Citizens' Commission on Civil Rights (CCCCR), an organization that monitors civil rights policy, issued a report on the federal enforcement of civil rights during the Clinton administration. This memo summarizes the section of the report that evaluated the performance of the U.S. Commission on Civil Rights.

I. CITIZENS' COMMISSION ON CIVIL RIGHTS

The CCCR was founded in 1982 due to concern that civil rights enforcement activities were regressing under the Reagan administration. It is a bipartisan group whose members all have served in positions of major responsibility in the federal government. In addition to publishing reports and studies, the CCCR advises governmental and non-governmental agencies.

II. REPORT ON THE PERFORMANCE OF THE U.S. COMMISSION ON CIVIL RIGHTS

A. History

- The Commission was established by Congress under the Civil Rights Act of 1957, and re-established under the Civil Rights Act of 1983.
- During the 1970s and 1980s, the Commission was an active force in shaping America's civil rights agenda.
- Under the Reagan Administration, the Commission was effectively emasculated due to the polarizing effect of the Reagan appointees.
- Congress reauthorized the Commission under the Bush administration, with the warning that if its record did not improve, future authorizations would not be made.

B. The Structure of the Commission

- The Commission consists of 8 Commissioners, each appointed to a 6-year term, who serve part-time.

- No more than 4 of the 8 Commissioners can be affiliated with any one political party. Currently, there are 3 Democrats, 3 Independents, and 2 Republican Commissioners.
- Four of the Commissioners are appointed by the President; the President Pro Tempore of the Senate and the Speaker of the House each appoint two Commissioners. The President also appoints the Commission's Chairperson, Vice-Chairperson, and Staff Director, with majority approval of the Commission.

C. The Commission During the Clinton Administration Since 1995

Appointments

- Four Commissioners have been appointed since 1995. As of February 1996, the Commission consists of four Republican appointees and four Democratic appointees. According to the CCCR report, this division has fostered an environment of unproductive partisan policies.
- Clinton's nominations for the Staff Director position have been controversial. In reaction to his first nominee, a Commissioner filed a lawsuit which was upheld. Currently there is an "interim" Staff Director because no other nominations have been approved.

Accomplishments

- The output of the Commission has been disappointing over the past two years, due to problems with structure, goals, procedure, and partisan politics.
- The Commission has issued 5 public statements and resolutions (i.e. one urged Congress to consider abolishing federal personal and business income taxes in the District of Columbia to help poor, immigrant and minority Washingtonians). The Commission has also held 6 briefings.
- By the end of 1996, the Commission expects to receive about 5,000 complaints from individuals alleging violations of their civil rights, approximately 1,000 more than in 1995.
- The Commission has set up a complaint hotline and a web site. It published one issue of a journal in 1995, but none since.

D. Controversies Concerning the Commission

- In 1995, the Commission released a report entitled, *Funding Federal Civil Rights Enforcement*. However, a public controversy erupted because 3 of the Commissioners did not vote in the decision to release it. All of them would have voted against releasing the document without amendments. The controversy fell on Clinton's interim Staff Director, Mary Matthews.
- Since 1995, the Commission has undertaken a study of the deteriorating conditions of race and ethnic relations across America. The Commission does field investigations and holds hearings in various cities and urban areas, and then publishes a report. However, the publications do not

meet their deadlines-- in one case, the report was issued 4 years after the hearings, and in several cases, the deadline has been pushed back one year.

- The Commission has also received serious backlash from Congress and the public over its use of its subpoena power in preparation for a immigration-related hearing in Miami. Three members of a grassroots organization to curb illegal immigration complained to the press that the Commission harassed them through intimidation as the Commission sought to summon them to the hearing. The Commission withdrew the three subpoenas.
- The Commission has a statutory mandate to issue at least one report every fiscal year that monitors federal civil right enforcement efforts. Its report for FY'95 was not released until August 1996. The delay appeared to be due to inadequate coordination between the Commissioners and the Staff Director.

E. State Advisory Committees (SAC)

The Commission funds 6 regional offices that support the SACs in conducting hearings and preparing reports. Work with the SACs has resulted in a more efficient reporting process. The SACs have held forums examining the church burnings and race relations that have received praise.

F. Commission Goals for 1997

- The main project is an evaluation of the implementation and enforcement of Titles I and II of the Americans with Disabilities Act.
- Hearings are planned for these issues: the crisis of young African American males in the inner cities; whether the American education system has achieved the guarantee of religious freedom; environmental justice; and the application of the Voting Rights Act of 1965.
- The Commission also plans to use its resources to enhance the tracking of the complaints referred by the Commission to other federal agencies, and to continue to produce PSAs designed to discourage discrimination.

III. RECOMMENDATIONS

The major problems identified by the CCCR are: alleged voting irregularities (because votes are often held while Commissioners are not in D.C, there have been controversies when not all the Commissioners have voted); challenges to the Commission's subpoena power; inadequate coordination by the Commission and Staff Director; and an inability to issue timely reports.

A. The U.S. Commission's proposed solutions

- to prevent voting "irregularities, Commissioners will be able to vote via fax;
- to improve project focus, the Commission voted to commit to only projects which could be

completed in one year

B. CCCR's recommendations for the Commission

- The relationship between the Staff Director (SD) and the Commissioners needs to be improved, either by the SD acting more responsive to the Commissioners, or by implementing policies that made the SD more accountable to the Commissioners.
- The Commission and SACs should work to improve their coordination so that when civil rights crises occur, the American public looks to the Commission.
- The Commission should continue to release PSAs and to update its web site frequently.

C. CCCR's Recommendations for Congress

- According to the CCCR report, "The greatest changes for the Commission may come from Congress." It is likely that the procedure for issuing subpoenas will be made more difficult. The CCCR opposes this change, citing these reasons: issuing subpoenas is an important method for the Commission to gather facts, and so should not be restricted; and, the proposed review and approval of each subpoena by the each Commissioner would be an ineffective use of their time.
- Congress has also proposed legislation to give the Commission the ability to remove the Staff Director by majority vote. Currently only the President has this ability. The CCCR opposes this change, but supports changing the appointment process to minimize the deadlocks that have been created in the past due to the political nature of the appointments.
- The CCCR also recommends that Congress objectively review the Commission's performance.

D. CCCR's recommendations for the President

The CCCR recommends that the President indicate stronger support for the Commission by offering public backing of the Commission, and by making larger budget recommendations in the future. The President did not speak of the Commission's accomplishments or justify his recommended appropriation in 1997. The President also failed to respond to a SAC resolution for a White House Conference on Civil Rights by June 1996.

Rule

MEMORANDUM

*EK/BR -
FYI. we
sent this
on to CJ.
Tom*

TO: TOM FREEDMAN, MARY L. SMITH
FROM: DREW HANSEN
RE: IMPACTS OF SELECTED CAUSES OF DEATH ON MINORITIES
DATE: JULY 29, 1997

SUMMARY

The following data summarizes the impact of selected causes of death (AIDS, cancer, diabetes, heart disease, hypertension, and infant mortality) on members of minority groups.

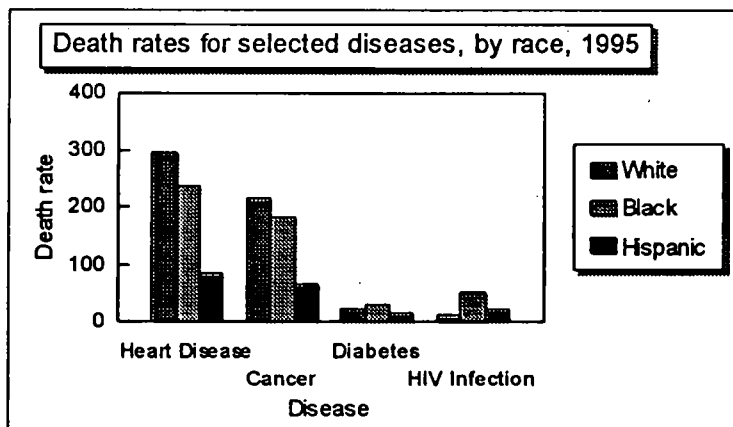
1. TOTALS, SELECTED DISEASES

Deaths and death rates for selected diseases, by race, 1995

Cause of death	White		Black		Hispanic Origin	
	Number	Rate	Number	Rate	Number	Rate
Cancer	468897	<i>232</i> 215	60603	182.9	17419	64.7
Diabetes	47475	<i>21.8</i> 21.8	10402	31.4	4194	15.6
Heart Disease	649089	297.6	78643	237.3	22403	83.3
HIV Infection	25509	11.7	17139	51.7	6110	22.7

*look.
CDL*

Source: CDC, Monthly Vital Statistics Report, Vol. 45, No. 11(S) 2, June 12, 1997



2. AIDS

AIDS cases and annual rates per 100,000 population, by race/ethnicity and age group, reported in 1996, United States

Race/Ethnicity	Adults/Adolescents		Children <13		Total	
	No.	Rate	No.	Rate	No.	Rate
White, not Hispanic	26229	16.2	98	0.3	26327	13.5
Black, not Hispanic	28346	115.3	429	5.7	28775	89.7
Hispanic	12966	55.8	145	1.7	13111	41.3
Asian/Pacific Islander	561	7.5	1	0	562	5.9
Amer. Indian/Alaska Native	207	14.1	3	0.6	210	10.7

Source: U.S. Dept of Health and Human Services, "HIV/AIDS Surveillance Report," Vol. 8 No. 2, 1996.

3. CANCER

5 Year Relative Cancer Survival Rates, by Site: White and Black Patients 1986 to 1992

Site	White	Black
Thyroid	95.5	90.3
Testis	95.4	85.8
Prostate	88.6	73.2
Melanomas of Skin	87.6	72.2
Corpus and Uterus, NOS	85.5	55.9
Breast	85	69.8
Bladder	82.4	59.5
Hodgkin's Disease	81.5	71.9
Cervix	71.4	56.4
Larynx	68.3	52.3
Colon	62.9	53.4
Rectum and Rectosigmoid Junction	60.5	52.8
Kidney and Renal Pelvis	59.6	54.6
Oral Cavity and Pharynx	55.2	33.4
Non-Hodgkins Lymphomas	52.1	43.8
Ovary	45.6	40
Leukemias	42.6	34
Brain and CNS	28.8	31.8
Multiple Myeloma	28.4	29.8
Stomach	19.3	20.3
Lung and Bronchus	14	11.2
Esophagus	11.7	7.9
Liver and IBD	6.5	5.3
Pancreas	3.5	5.1

Source: National Cancer Institute, Data from SEER program, 1986-1991.

4. DIABETES

Diabetes Prevalence and Death Rate, by Race (1993)

Race/Ethnicity	Prevalence	Death Rate	Death Rate/Whites
<i>White</i>	6.2%		
<i>Black</i>	9.0%		
*men	4.1%	26.3	115.6%
*women	4.9%	26.9	169.0%
<i>Amer. Indian/Alaska natives</i>	9.2%		
*men	4.2%		
*women	5.0%		
<i>Asian/Pac. Islander</i>	5.8%		
*men	3.4%		
*women	2.4%		
<i>Hispanic</i>	7.2%		
*men	3.7%		
*women	3.5%		

Source: American Heart Association. "White" rate is from U.S. General Accounting Office, Diabetes: Status of the Disease Among American Indians, Blacks, and Hispanics," 1992.

5. HYPERTENSION

Persons Reporting High Blood Pressure, 1990

Race/Ethnicity	Percent, 18yrs +
White	15.9%
Black	21.3%
Hispanic	10.1%
Non-Hispanic	16.8%

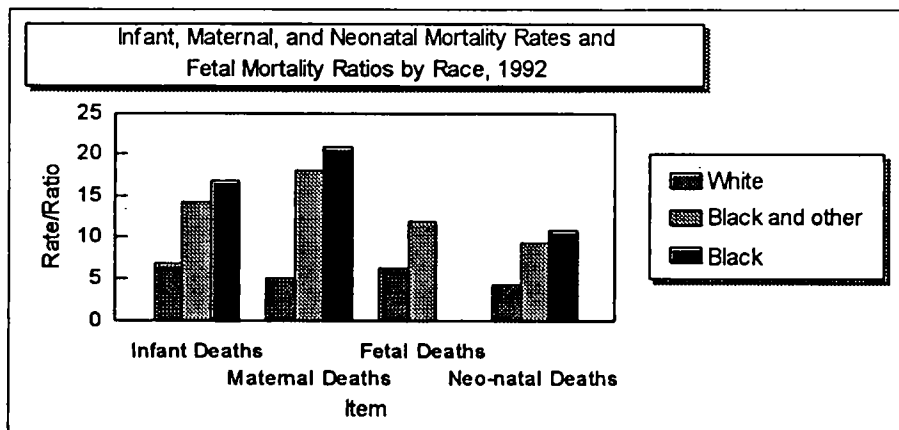
Source: Statistical Record of Health and Medicine, 1995

6. INFANT MORTALITY

Infant, Maternal, and Neonatal Mortality Rates and Fetal Mortality Ratios by Race, 1992

Item	Total	White	Black and other	Black
Infant Deaths	8.5	6.9	14.4	16.8
Maternal Deaths	7.8	5	18.2	20.8
Fetal Deaths	7.4	6.3	11.7	NA
Neo-natal Deaths	5.4	4.3	9.2	10.8

Source: Statistical Abstract of the United States, 1996.



Did you
get a
copy?

yes
I have one

Race Initiative Policy - Rural Issues

Tom F -

Please review carefully. We have to plug USDA into our process, and see if we can glean some good ideas from what they've done. (We also have to find out what's happening on this legislation.) Reading this made me think that one of the things we should be working towards is an EO addressing discrimination and civil rights enforcement in agencies generally. Elena

July 23, 1997

MEMORANDUM FOR ERSKINE BOWLES

FROM: John Hilley
Andy Blocker

SUBJECT: Meeting with the Representative Eva Clayton (D-NC) on Black Farmers

BACKGROUND:

As you know, Representative Clayton has been the lead member of the Congressional Black Caucus on the issue of discrimination at the Department of Agriculture (USDA). She has written letters to both the President and Secretary Glickman on this issue (see attached). In her correspondence, she has been laudatory of the Administration's efforts to deal with all forms of discrimination at USDA.

Last week, Secretary Glickman testified before the House Committee on Agriculture concerning this issue (testimony attached). In his testimony, Secretary Glickman gave the committee an update on the progress USDA has made in the 5 months since the release of its civil rights reports. As a result of Secretary Glickman's hands-on involvement, the Administration has a good story to tell in some areas (see talking points & civil rights progress report). However, there is concern that many at USDA are resisting the changes sought by the Secretary.

ISSUES:

In her July 22nd letter to you (see attached), Representative Clayton expresses her concern that USDA is not moving fast enough to deal with discrimination against minority farmers, specifically in the area of introducing legislation to deal with discriminatory practices. According to Representative Clayton, the Secretary assured her that his staff would help her draft legislation that would be acceptable to the Administration. However, USDA was nonresponsive to her requests for drafting assistance and was only able to get an idea of what would be objectionable to the Department when she met with Secretary Glickman on July 9th.

With limited guidance from the department, Representative Clayton introduced her legislation—H.R. 2185, the USDA Accountability and Equity Act of 1997 on July 16th. She based the legislation on the 13 recommendations of the USDA's Civil Rights Action Team and will want the Administration to support this legislation. At the hearing last week, Secretary Glickman promised Representative Clayton that he would have an analysis of her bill done by the end of this week. USDA has agreed to forward its analysis to the White House once it is completed.

In addition, Representative Clayton will reiterate her call for the President to speak publicly about this issue. Note: In the President's July 4th response to Representative Clayton (see attached), the President stated that he "will be looking for opportunities to make public pronouncements concerning black farmers, and will continue to support the work of Secretary Glickman." She believes that a public statement will not only bolster the Secretary in his efforts on this matter, but that it will give minority farmers more assurance that the Administration at the highest level is concerned and working to address their concerns.

TALKING POINTS:

- The President directed Secretary Glickman to do everything within his power to resolve the concerns of Black Farmers.
- In the context of our race initiative, the President will be looking for opportunities to make public pronouncements concerning black farmers.
- Concerning your legislation, I know that you based many of your provisions on recommendations made by USDA's Civil Rights Action Team. Secretary Glickman currently has his staff working vigorously to analyze your bill. We hope that we can fully support your bill.
- USDA organized a Civil Rights Implementation team which has already made 92 specific recommendations. Over 50% of these will be implemented by September, 1997.
- Secretary Glickman met with Mary Berry of the U.S. Civil Rights Commission to elicit her support in monitoring USDA's progress.
- Secretary Glickman met with the CBC on April 16, 1997 to discuss the USDA Civil Rights plan.
- Secretary Glickman has issued two directives to USDA Field offices which 1) freezes foreclosures when allegations of discrimination are made and 2) continue loan processing for new loans to Black farmers even when a discrimination complaint is pending.
- A new system and additional teams have been set up to deal with the backlog of discrimination complaints.
- USDA has settled three (3) major complaints against USDA including one by the President of the National Black Farmers Association. These settlements and debt write-offs total over \$1.5 million dollars. More lawsuits will be settled in the near future.
- The President and I will monitor USDA's progress on a regular basis. The President and I will also support the Secretary in his effort to resolve these issues in a timely manner.

ATTACHMENTS:

Letter from Representative Eva Clayton to Erskine Bowles—July 22, 1997

Testimony of USDA Secretary Glickman before the House Agriculture Committee—July 17, 1997

Response from the President to Representative Eva Clayton—July 4, 1997

Letter from Representative Eva Clayton to the President—May 19, 1997

Civil Rights Progress at the Department of Agriculture—May 20, 1997

USDA Secretary Glickman Memorandum for the President—May 20, 1997

CBS THIS MORNING Segment on the Department of Agriculture—July 17, 1997

EVA M. CLAYTON
1ST DISTRICT, NORTH CAROLINA

COMMITTEES:
AGRICULTURE

SUBCOMMITTEES:
RISK MANAGEMENT AND SPECIALTY CROPS
RESOURCE CONSERVATION, RESEARCH AND FORESTRY

SMALL BUSINESS

SUBCOMMITTEE:
PROCUREMENT, EXPORTS, AND BUSINESS
OPPORTUNITIES

Congress of the United States
House of Representatives
Washington, DC 20515-3301

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WASHINGTON, DC 20515
(202) 225-3101

DISTRICT OFFICES:
134 N. MAIN STREET
WARRENTON, NC 27589
(919) 257-4800

400 WEST 5TH STREET
GREENVILLE, NC 27834
(919) 758-8800
1-800-274-8672

July 22, 1997

The Honorable Erskine Bowles
Chief of Staff
Office of the Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Erskine:

I write to seek a meeting with you to discuss the issue of race discrimination in lending practices by the U.S. Department of Agriculture. You may recall that I raised this issue with the President when the Congressional Black Caucus met with him recently. The President expressed great interest in this matter.

It has now been more than five months since USDA issued its comprehensive Report about this situation. As you know, the Subcommittee on Department Operations, Nutrition, and Foreign Agriculture, held a limited hearing on this subject on March 19, 1997. At that hearing, a Report from the General Accounting Office was examined. More recently, on July 17, 1997, a Full Committee hearing was held. Secretary Glickman testified, and the CRAT Report was a central focus of the hearing. The necessity of rekindling the President's interest and commanding his attention to this matter is made more urgent by the fact that widespread unfair and unequal treatment of socially disadvantaged and minority farmers has been well documented for more than three decades. We can no longer allow this matter to languish.

The GAO Report, an Inspector General's Report and the exhaustive Civil Rights Action Team Report are just the latest in a series of government initiatives examining this problem. The issue was first raised in 1965, when the U.S. Commission on Civil Rights established that USDA discriminated both in internal employee actions and external program delivery activities. An ensuing USDA Employee Focus Group in 1970 reported that USDA was callous in their institutional attitude and demeanor regarding civil rights and equal opportunity.

In 1982, the U.S. Commission on Civil Rights examined this issue a second time and published a report entitled, "The Decline of Black Farming in America." The Commission concluded that there were widespread prejudicial practices in loan approval, loan

| servicing and farm management assistance as administered by the Farmers Home Administration. However, as no improvement was forthcoming, this matter was investigated again in 1990 by the House Governmental Operations Committee, chaired by our colleague, Representative John Conyers. Ironically, the same conclusion was reached in 1990 as had been reached in 1982 --- that "FmHA has been a catalyst in the decline of minority farming". That conclusion is found in the Conyers Report, entitled, The Minority Farmer: A Disappearing Resource; Has The Farmers Home Administration Been The Primary Catalyst?,

| Then, in January 1997, the General Accounting Office published a Report entitled, "Farm Programs: Efforts to Achieve Equitable Treatment of Minority Farmers." While much of the Report was inconclusive due to its limited scope, GAO did find instances of discrimination. GAO also found that the disapproval rate for loans was 6% higher for minority farmers than the rate for nonminority farmers.

| The very next month, two related reports were released: the Office of Inspector General Evaluation Report for the Secretary on Civil Rights Issues and the Civil Rights Action Team Report. The authors of these hard-hitting reports came to the identical conclusion as those who had looked at this issue 32 years previously--- there are significant problems with discrimination within the Department of Agriculture.

| In addition, in November of last year, FSA Administrator Grant Buntrock stated in a public speech that "[w]e recognize . . . there have been instances of discrimination in responding to requests for our services in the past, and we deplore it."

| While we all deplore the instances of past discrimination, it is now time to do something about it. In light of the CRAT Report and recent actions taken by Secretary Glickman on this critical issue, I now repeat the call for the President to speak out and take some bold actions.

| One of the actions the President may consider is to endorse a Bill that I have recently introduced in response to USDA's history. My Bill, H.R. 2185, is detailed below for your use.

A Summary of The
USDA Accountability and Equity Act of 1997

Introduction

On February 28, 1997, a Report was issued entitled, "Civil Rights at the United States Department of Agriculture." Referred to as the "CRAT Report," it was done by the Civil Rights Implementation Team at USDA, and it documents decades of discrimination against minorities and women within the Department. Ninety-two recommendations for change were made in the Report, thirteen of which require legislative action. This Bill seeks to implement most of those legislative recommendations within the CRAT Report, by (1) changing the structure of county committees; (2) changing the status of county committee employees from nonfederal to federal; (3) making sure that socially disadvantaged farmers can obtain credit and other assistance to maintain their farms; and (4) making sure that USDA has sufficient funds to carry out its loan, technical assistance and outreach programs.

The Bill

The Bill is entitled the "USDA Accountability and Equity Act of 1997." It consists of three titles. Title I - Program Accountability, makes changes to the structure of the county committees as well as to the status of county committee employees. County committees are retained, and the tenure of county committee employees is preserved and protected. Title II - Program Equity, makes provisions for those producers who are of marginal financial standing to continue to participate in USDA loan and other programs. These provisions recognize the financial hardship created by past USDA practices.

And, Title III - Funding of Farm Ownership and Operating Loans, provides funding for the full authorization of farm ownership and farm operating loans in the amounts of \$85 million and \$500 million, respectively. Details of each title follow.

Title I

This Title consists of two sections. Section 101 deals with the conversion of county committees and seeks to ensure fair representation of all producers on the county committees. The number of county committee members is set at no fewer than five and no more than seven. Three to five of the members shall be elected by the producers in each county, and two members shall be appointed by the Secretary in consultation with underrepresented groups. Civil service laws are made applicable to all persons employed by county committees, and the county executive director is given the sole authority for making loan determinations. Section 102 converts all current, nonfederal Farm Service Agency county committee employees to Federal civil service status. Those with service of three years or more are given career civil service appointments. Those with less than three years are given conditional civil service appointments. Temporary county committee employees are given temporary Federal civil service appointments, at the discretion of the Secretary. The Federal civil service appointments take place six months after the enactment of the Bill.

Title II

This Title consists of nine sections. Section 201 provides for exceptions, under very strict circumstances, to the prohibition that delinquent borrowers may not obtain a direct loan from USDA. These changes are necessary to compensate for socially disadvantaged farmers who face difficulty accessing credit because of certain credit reforms within USDA that were put in place in 1996. Section 202 appropriates \$10 million to facilitate lease or buy back opportunities for those who could not exercise these options due to insufficient program funding. Section 203 makes clear that debt forgiveness should not be treated as income for tax purposes. Section 204 allows applicants with poor or no credit history to be eligible for direct single family housing loans. Section 205 increases by \$100 million the Environmental Quality Incentives Program

(EQIP), and targets one-third of the funds to the socially disadvantaged. Section 206 appropriates the full authorization of \$15 million under the program which provides facility upgrade funds for 1890 land grant colleges, while Section 207 establishes a bi-partisan, five to twenty-five member advisory committee, appointed by the Secretary, to determine whether 1890 land grant colleges are receiving funding equal to other similar institutions. Section 208 appropriates the full authorization of \$10 million for the Outreach and Technical Assistance for Socially Disadvantaged Producers Program. And, Section 209 appropriates the full authorization of \$8 million for the Extension Indian Reservation Program.

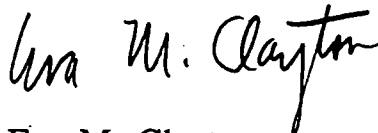
Title III

This Title consist of one section. Section 301 appropriates the full authorization of \$85 million and \$500 million, respectively, for farm ownership and operating loans. Often USDA is the lender of last resort, especially for socially disadvantaged farmers, and this section ensures that sufficient funds are available for the performance of this function.

Additional information and material, including a copy of the Bill, is available by contacting my Office. Your staff may feel free to speak with my Administrative Assistant, Johnny Barnes at (202) 225-3101.

Thank you for your consideration and cooperation. I trust I will hear from you very soon.

Sincerely,



Eva M. Clayton
Member of Congress

EMC:jb

TESTIMONY OF
SECRETARY DAN GLICKMAN
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE

JULY 17, 1997

INTRODUCTION

Mr. Chairman, members of the Committee, thank you for the opportunity to be here. I have with me Deputy Secretary Rich Rominger, and Pearlle Reed, the former head of our Civil Rights Action Team (CRAT), now our Acting Assistant Secretary for Administration. We are all pleased to appear before this committee on the important topic of civil rights at the U.S. Department of Agriculture. Abraham Lincoln called us 'the people's department.' We at USDA are working hard to restore the full luster of that name.

I'd like to in particular thank those on this committee and elsewhere who've shown a deep *personal* commitment to and involvement in the civil rights struggles of USDA. The support of Congress, and in particular this committee, will be crucial to the progress we make.

It was a little over 2 years ago when I appeared before this committee to first talk about my plans for USDA. We talked about wheat and cattle, crop insurance and conservation, Kansas and California. We did *not* focus on civil rights. Quite honestly, if there was one ambush awaiting me in this job, this is it.

Today, I spend as much if not *more* of my time dealing with civil rights matters as I do any specific farm program. The reason's simple enough: We have a long history of both *discrimination* and *perceptions* of unfairness that go back *literally* to the middle of the 19th century.

For those who look back on the progress made in the 1960s, of the historic civil rights laws passed in that time, and think we got the job done, I can say, just from my experiences at USDA, we do not yet *fully* practice what we preach. I've talked to people who've lost their farm ... *good people* ... who lost their family land ... not because of a bad crop, not because of a flood, but because of the color of their skin. I've talked to employees ... *dedicated public servants* ... who've been humiliated, abused and then punished for speaking up.

I want to close this chapter of USDA's history. My goal is to get USDA out from under the past and have it emerge in the 21st century as *the* federal civil rights leader. The American farmer and the American people deserve nothing less.

I appear before you today, *proud* of the progress we have made in calling attention to the problem, of starting to focus ourselves on *solutions* and getting key changes quickly in place. But I also appear before you today having undergone a *reality check* as to the *massive* amounts of

time, resources, people power and leadership -- both at USDA and in the Congress -- that it's going to take to get the job done *right*.

I also want to emphasize that the overwhelming majority of our employees are committed to treating their co-workers and customers with dignity and respect. The institutional and personnel problems which continue to afflict the department should not demean the majority of our committed and capable staff. By and large, USDA employees are dedicated, fair-minded, overworked and underpaid.

SCOPE

Like discrimination in many of America's public and private institutions, civil rights problems at USDA are *not* going to disappear overnight. If there were easy solutions, I assure you: We would not be sitting here today. But the fact is, there is no silver bullet. We're going to have to get through this the old-fashioned way -- with our sleeves rolled up and a whole lot of people doing a whole lot of work.

Our efforts are already well underway. As most of you know, it's been 5 months since the release of USDA's civil rights reports. Just to give you a general idea of the scope of the efforts underway at USDA, we've had 12 civil rights listening sessions across the country to hear from farmers, ranchers, employees, rural residents and community leaders. Our report listed 92 specific recommendations to improve the civil rights climate at USDA. To carry them out, we've organized 33 implementation teams involving approximately 300 people. Together, they've logged tens of thousands of hours of work, and we still have a long way to go.

I'd like to briefly give you an overview of where we are today.

PROGRESS TO DATE

Where progress could be made on my authority, we have moved quickly:

-- I've made it a *condition* of employment that every employee treat every co-worker and customer fairly and equitably, with dignity and respect. No exceptions. No excuses.

-- We have a new foreclosure policy: Now, when a written civil rights complaint is lodged, the foreclosure is frozen -- wherever it is in the process -- until an independent review occurs and a judgement is made as to whether or not discrimination occurred.

-- We have a zero-tolerance policy for reprisals against employees who file civil rights complaints. From now on, a 3-person panel made up of one union or employee representative, one manager or personnel staff, and one mediator will investigate alleged reprisals and make *binding* recommendations.

-- I've also ordered that loan processing continue on accounts where a discrimination complaint is pending. Standing up for your rights should *not* disqualify someone from seeking a farm loan.

If it's the loan processor facing the allegations, then another FSA loan officer will be assigned to work with the applicant. If their loan can't be approved, they get a meeting and a written letter of explanation. That last part helps clear up the problems *and* the perceptions.

-- Without question, part of the problem *is* economic. Smaller farmers of all ethnic backgrounds are having an increasingly difficult time coping with the massive changes that are occurring in the structure of agriculture. Yesterday, I announced the formation of a National Commission on the Small Farm. It will be headed by a former member of this committee, Harold Volkmer, of Missouri. His commission will talk to folks across the country and pull together the thread of rural and economic conditions that affect America's small farms, and weave a national strategy to make our small farms as powerful a force in agriculture's future, as they have been in our past. I've asked for their report by Sept. 30. I look forward to sharing it with all of you and taking bold steps in that area, as well.

-- Under the economic rubric, we will also propose legislation to modify certain provisions of the '96 Farm Bill to provide more flexibility in terms of assisting farmers who rely on USDA for farm operating credit. In my book, the '96 Farm Bill went too far in restricting credit, particularly to those farmers who received a debt forgiveness and were denied an opportunity to work their way back to qualifying for assistance. That's even harsher than *commercial* credit standards and needs to be corrected.

-- USDA will also soon have an Office of Outreach which may be the most *visible* evidence that USDA is *serious* about reaching out to customers whom we've neglected in the past. *All* our potential customers should get the information they need to use our programs and services.

-- We also expect to soon fill the newly created position of Associate General Counsel for Civil Rights. This person will head a staff of attorneys who will be dedicated exclusively to the performance of civil rights functions.

These are just the highlights of what we've done. You should all have a more complete accounting in the package of material that my staff has handed over to this committee.

BACKLOG UPDATE

I mentioned earlier a reality check. Nowhere has it been more abrupt than in our efforts to resolve the backlog of nearly 2,300 civil rights complaints -- 1,500 from employees, and nearly 800 in our farm and rural development and other programs. Some of them go back *years*. This shows the rift between civil rights and civil realities. I don't have to explain to anyone on this committee what's likely to happen to a small farmer who's denied a timely loan. Or, the employee who's filed a complaint against her boss, and then has to wait year after year for closure.

I am not proud of the history of USDA in the past 15 years in resolving these complaints. Our organizational structure and institutional commitment to resolving program and personnel

complaints have left a lot to be desired. Quite frankly, neither past administrations, nor past Congresses, devoted very much time to this issue.

Since the CRAT report, we've focused huge amounts of time and resources on resolving these complaints. We've settled 215 cases of alleged discrimination against employees, and closed 89 cases on the program side. Of that 89, 4 cases involved what I would characterize as *significant* settlements -- adding up to more than \$2 million.

USDA stands ready to resolve -- quickly and fairly -- *legitimate* civil rights complaints. And, I stress the word 'legitimate' because we still have an obligation to taxpayers to ensure that charges are warranted. We cannot simply settle for settlement's sake. We must investigate each charge.

This is where we've hit the proverbial brick wall. A good part of the reason for the backlog is the fact that in 1983, USDA's civil rights investigation unit was dismantled. We're just now in the process of hiring back those positions. Currently, we're using contract investigators to help us sort through the backlog. We expect that a permanent staff will help us break up the logjam, but this will remain a lengthy, arduous process that is likely to take a year to wrap up responsibly.

Once we *get* back to ground zero, we're working on ways to move the process along at a quick but *fair* clip that allows all parties to move on with their lives.

BUILDING ACCOUNTABILITY

See, we don't just want to fix what's wrong. We want to build an institution that consistently does what's *right*. That requires building more accountability into the system. In this area, in particular, we're going to need to work very closely with this committee.

We need to send a *strong* signal throughout our ranks that USDA is *serious* about *institutionalizing* civil rights -- up and down our ranks. I've given Mr. Reed the authority to rate agency heads on their civil rights performance. It will no longer be a second-tier consideration.

We're also working to ensure that our civil rights objectives are incorporated into our performance management system, so managers *know* what's expected of them, and understand that they will be rated based on how well they live up to those expectations.

Finally, there is the question of the USDA structure which serves agriculture outside of Washington. As an 18-year member of this body from the great agricultural state of Kansas, I am under *no* delusions as to the political degree of difficulty of any legislative proposal to convert county employees to federal employees. While this change was suggested in our civil rights report, its origin is almost entirely based on general management concerns.

Our county field structure is far from resembling a Fortune 500 corporation. But as we downsize and streamline and all the rest, I think a brief comparison is worthwhile. Right now, we're

operating under 2 personnel systems. A system of county-based employees and federal employees whose salaries are all paid by the federal government. In the same county office, we find both federal and non-federal employees all doing USDA work -- side by side -- but they don't have the same boss.

This is something you'll be hard-pressed to find in the private sector because it is (that *dreaded* management consulting word): *Inefficient*.

Now, what does that mean? We have a county committee. They are our grass-roots connection and bring to the table *hands-on* farmers' knowledge of how federal policies actually work. These men and women are like the *Board of Directors*. They care about *the big picture ... getting* their rural communities and farmers the federal resources they need ... *seeing* federal conservation policies, rural development efforts and farm programs work in *their county*. Their role in substantive policy and program matters would *not* be affected by this shift.

This proposal will not get in their way. It will simply take the *next logical step*. It will recognize all the changes that are occurring, it will close the accountability gap on civil rights, and it will create a more *efficient* field structure where everyone does what they do best. County committees will be free to focus more fully on the big picture, and nuts-and-bolts personnel management will be carried out according to *one* national standard. This will help create a more *positive, consistent* work environment for our field staff and a *higher* standard of service for *all* our customers. Done right, it will also eventually save us the thousands of hours and millions of dollars we're putting out right now on the *damages* side of civil rights enforcement.

I understand that the nature of a bureaucracy is to *resist* change. I understand, too, that for decades this has been an untouchable issue and probably rightly so for the times. But today I am utterly convinced that we can do this the *right* way, and I am equally convinced that this is simply *the right thing to do*.

This is an idea that's time has come.

CONCLUSION

You know, our employees out on the front lines of this effort liken their work to 'trying to turn an elephant around using a pin.' We are dealing with a large federal bureaucracy ... one that is scattered across every county of this nation. We're also dealing with civil rights which involves laws and policies, but also people's hearts and minds. Some things change faster than others.

It's hard not to draw the comparison to President Clinton's One America Initiative. On the one hand, racial healing is such a vast and squishy issue that few people have any real *concrete* ideas where to *even begin*. On the other hand, discrimination runs so completely counter to everything we stand for as a nation, that the alternative -- to do nothing -- would be unthinkable.

Today, President Clinton is talking to the NAACP and the National Association of Black Journalists about our options as a nation. I am here talking to all of you.

I have every confidence that these actions -- if embraced by this Congress -- *will* be extraordinarily positive for the Department of Agriculture.

USDA is special in its advocacy for America's farmers and ranchers. These changes will make us even more effective. We can't change how every person treats every other person. But *we can* demand a basic respect for the human rights and dignity of our customers and employees. If we do, we will strengthen 'the people's department,' and dramatically improve USDA's ability to serve agriculture and our nation.

Thank you.

###

EVA M. CLAYTON
1ST DISTRICT, NORTH CAROLINA

COMMITTEES:
AGRICULTURE

SUBCOMMITTEES:
RISK MANAGEMENT AND SPECIALTY CROPS
RESOURCE CONSERVATION, RESEARCH AND FORESTRY

SMALL BUSINESS

SUBCOMMITTEE:
PROCUREMENT, EXPORTS, AND BUSINESS
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May 19, 1996

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Clinton:

I want to bring to your attention a high priority matter for the Black Community --- the recent and important activity surrounding the longstanding problem of discrimination against Black farmers within the United States Department of Agriculture. Indeed, widespread unfair and unequal treatment of socially disadvantaged and minority farmers has been well documented for more than three decades.

A GAO Report, an Inspector General's Report and an exhaustive Civil Rights Action Team Report are just the latest in a series of government initiatives examining this problem. I have taken the liberty of enclosing copies of each of those reports for your use and information.

The issue was first raised in 1965, when the U.S. Commission on Civil Rights established that USDA discriminated both in internal employee actions and external program delivery activities. An ensuing USDA Employee Focus Group in 1970 reported that USDA was callous in their institutional attitude and demeanor regarding civil rights and equal opportunity. In 1982, the U.S. Commission on Civil Rights examined this issue a second time and published a report entitled, "The Decline of Black Farming in America." The Commission concluded that there were widespread prejudicial practices in loan approval, loan servicing and farm management assistance as administered by the Farmers Home Administration.

However, as no improvement was forthcoming, this matter was investigated again in 1990 by the House Governmental Operations Committee, chaired by my colleague, Representative John Conyers. Ironically, the same conclusion was reached in 1990 as had been reached in 1982 --- that "FmHA has been a catalyst in the decline of minority farming". That conclusion is found in the Conyers Report, entitled, The Minority Farmer: A Disappearing Resource; Has The Farmers Home Administration Been The Primary Catalyst?,

Then, in January 1997, the General Accounting Office published a Report entitled, "Farm Programs: Efforts to Achieve Equitable Treatment of Minority Farmers." While much of the Report was inconclusive due to its limited scope, GAO did find instances of discrimination. GAO also found that the disapproval rate for loans was 6% higher for minority farmers than the rate for nonminority farmers.

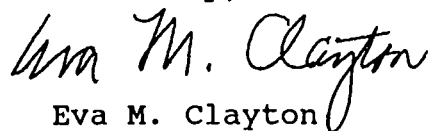
The very next month, two related reports were released: the Office of Inspector General Evaluation Report for the Secretary on Civil Rights Issues and the Civil Rights Action Team Report. The authors of these hard-hitting reports came to the identical conclusion as those who had looked at this issue 32 years previously--- there are significant problems with discrimination within the Department of Agriculture.

In addition, in November of last year, FSA Administrator Grant Buntrock stated in a public speech that "[w]e recognize . . . there have been instances of discrimination in responding to requests for our services in the past, and we deplore it."

Throughout his tenure, Secretary Glickman has continued to display a firm intent to promote change at USDA. As you know, however, Mr. President, change, the kind of which is needed in this situation, is very difficult and very demanding. It is my hope, and the hope of many of my colleagues in the Congress as well as the hope of many Black Americans across the United States, that you will provide Secretary Glickman the kind of support he will need if true change within USDA is to be realized. To this end, we believe it is important that, at your earliest convenience, you make some public pronouncements and commitments about this matter. In that way, you will demonstrate that rooting out discrimination within USDA is a national priority, and you will give the current effort the kind of boost that is required to begin to bring to a close a chapter in our Nation's history that should have been closed long ago.

I am happy to provide further information and to brief you on this matter should that be desired. Thank you for your consideration and cooperation.

Sincerely,


Eva M. Clayton

cc: Congresswoman Maxine Waters
Chair, Congressional Black Caucus

THE WHITE HOUSE

WASHINGTON

July 4, 1997

Dear Eva:

Thank you for writing regarding the civil rights issues facing the United States Department of Agriculture (USDA).

Secretary Glickman has made civil rights one of his top priorities at USDA. I am in full support of the Secretary's actions and want to assure you that I will continue to push for fair and equitable treatment of all Americans by the USDA and other government agencies.

Secretary Glickman has informed me of the long-standing problems with discrimination at the USDA and regularly provides me reports regarding implementation of the recommendations of the Civil Rights Action Team, which conducted a thorough audit of the issues of discrimination and unequal treatment. The Secretary has also met with leaders of the Association of Black Farmers and members of the Congressional Black Caucus to hear first-hand the concerns with discrimination in loan and other credit programs at the Department. In addition, the USDA has established a Civil Rights Implementation Team that is assiduously addressing each of the ninety-two recommendations in the Civil Rights Action Team report released last February.

Although much work remains to be done, I am pleased that the USDA continues to make progress in resolving discrimination problems and has recently reported several key accomplishments including: the settlement of four bias suits by African-American farmers since January 1, 1997, for a total settlement of \$1.2 million, plus debt write-downs; and the halting of all loan foreclosures when discrimination has been alleged until completion of an independent review. The USDA is also taking a much more aggressive and systematic approach to handling the backlog of program discrimination complaints, sending a message throughout its employee ranks that discrimination and reprisal will not be tolerated.

Over the next several months, the USDA will be increasing outreach to minority agricultural producers, expanding locally elected farmer county committees to include under-represented groups and providing more opportunities for participation in loan and conservation programs.

The Honorable Eva M. Clayton
Page Two

As you know, we recently began a year-long initiative on race. Our effort will focus on how we can use policies and people to help unite America while maintaining a respect for each other's differences. It will be a balance of dialogue, study and action, and will focus on the future of our nation in terms of demographics and the complexity of race issues. In the upcoming year, I will be looking for opportunities to make public pronouncements concerning black farmers, and will continue to support the work of Secretary Glickman and his implementation team.

I appreciate your assistance on this issue, and look forward to working with you toward a solution. I feel confident that through a careful balance of dialogue and action, we will be able to move forward on this issue.

Sincerely,

Bill Clinton

CIVIL RIGHTS PROGRESS AT THE DEPARTMENT OF AGRICULTURE

CIVIL RIGHTS ACTION TEAM (CRAT)

- In December, 1996, the Secretary commissioned the CRAT to review civil rights issues at the Department of Agriculture. It conducted 12 listening sessions around the country and produced a report with 92 recommendations, delivered to the Secretary February 28, 1997.

CIVIL RIGHTS IMPLEMENTATION TEAM (CRIT)

- 300 employees in 33 sub-teams will have implemented one-half of the 92 CRAT recommendations by the end of this month; by the end of September, most of the rest will be in place.

FARM CREDIT

- During the week of April 21, 1997, the Secretary issued two directives strengthening previous policy to prevent foreclosures of USDA loans:
 1. If the borrower has a pending discrimination complaint, an independent review team will examine the case before foreclosure actions proceed.
 2. If an applicant has a pending discrimination case and the loan officer is the official against whom the applicant alleges discrimination, the loan will be reassigned to another official. If USDA cannot approve the loan, the applicant will be told in writing and in person.
- Senior USDA officials met with representatives of the National Black Farmers Association, lenders, and others last week to facilitate the availability of credit in Virginia for planting season.
- The pending supplemental appropriations bill contains funding that will enable USDA to make \$110 million in guaranteed loans this year; without these resources, the Department will soon exhaust its FY97 appropriation for credit assistance.

SETTLEMENTS

- As of May 20, 1997, USDA has settled 3 cases in which the former-Farmers Home Administration was found to have discriminated. The settlements amount to payments of \$1,195,000 and debt write-offs of \$442,000.

COMPLAINT BACKLOG

- In April, USDA assigned 12 teams to begin working the backlog of 2000 discrimination complaints. Their goal is to resolve the cases by dismissal, mediation, settlement, or assignment for completion of investigation by June 1. By August 1, USDA will have a new system to streamline the complaint system.

LEGISLATION

- 13 of the CRAT recommendations will require legislation which several CRIT teams are working to draft.

May 20, 1997



THE SECRETARY OF AGRICULTURE
WASHINGTON, D.C.
20250-0100

May 20, 1997

MEMORANDUM FOR THE PRESIDENT

From: Secretary Dan Glickman

Subject: Progress on Civil Rights at the Department of Agriculture

Since my January 27, 1997 memorandum to Chief of Staff Bowles, the Department of Agriculture (USDA) has established a Civil Rights Implementation Team (CRIT) to implement the 92 recommendations in the Civil Rights Action Team (CRAT) Report I commissioned last December and which I received February 28, 1997.

Under the acting assistant secretary for administration, who served as the CRAT leader, the CRIT, composed of 300 employees in 33 sub-teams, will have implemented approximately one-half of the CRAT recommendations and by the end of this September, most of the rest will be in place.

I am attaching to this memorandum the full CRAT report as well as the most recent weekly CRIT progress report. The department has been involved in a number of related events. Below, I have summarized some of the most significant:

U.S. COMMISSION ON CIVIL RIGHTS AUDIT

On April 4, I met with Mary Francis Berry, Chairwoman of the Commission on Civil Rights. Ms. Berry shared her continuing concerns about whether USDA has sufficient resources dedicated to civil rights in program delivery and outreach, that a culture exists within the department that is unreceptive to diversity and change, and about the lack of good legal assistance in the area of civil rights from the office of the general counsel. I explained to her what we are doing to address these issues. She and I agreed that the commission will continue to monitor these issues and will conduct a civil rights audit after October 1998.

CONGRESSIONAL BLACK CAUCUS HEARING

On April 16, I met with members of the Congressional Black Caucus (CBC) to

discuss the CRAT recommendations and implementation. The CBC raised several specific issues including: the backlog of program and employee complaints, providing legal assistance on civil rights, ensuring accountability for those who discriminate, and departmental policy on foreclosures and making farm operating loans when the borrower has alleged discrimination.

On April 23, the CBC held a hearing focused on these issues of discrimination that CBC Chairwoman Maxine Waters chaired. She was joined by Representatives Bennie Thompson, Sanford Bishop, William Clay, Elijah Cummings, Danny Davis, Jesse Jackson, Jr., Eddie Bernice Johnson, Cynthia McKinney, Donald Payne, Robert Scott, Albert Wynn, Sheila Jackson-Lee, John Conyers, Eva Clayton, Donna Christian-Green, Eleanor Holmes Norton, Juanita Millender-McDonald and William Jefferson. House Minority Leader Dick Gephardt made a surprise appearance.

Farmers at the hearing questioned whether USDA is working quickly enough on CRAT implementation, stated that the USDA loan program was unresponsive to black farmers, and that they had received racist threats. The farmers also stated their contention that USDA is at the center of a conspiracy to take their land. They were concerned about a continued decline in the number of black farmers and about the lack of loans for this spring's crops.

BLACK FARMERS RALLY AT USDA

Prior to the April 23 CBC hearing, several hundred black farmers rallied outside of USDA headquarters that featured Representatives Maxine Waters and Bennie Thompson, and John Boyd, President of the National Association of Black Farmers. Speakers were concerned about the declining numbers of black farmers and one speaker stated if the current trend continues, there would be no black farms by the year 2000. Farmers charged that USDA was not doing enough, fast enough, to satisfy them. They stated that discrimination and lack of access to capital were key reasons for the declining numbers. They also charged that USDA was not making money available to them in time to plant their crops this spring.

CREDIT

USDA's credit programs continue to be near the center of many of the civil rights concerns with which I am dealing.

Virginia's Senator Robb and Lieutenant Governor Donald S. Beyer, Jr., asked me by telephone for emergency aid for black farmers who need loans this growing season. USDA has now freed up this money so it is available to the farmers. USDA is securing guaranteed loans from banks to provide immediate aid to the

farmers. Last week, senior USDA credit officials met with representatives of Virginia banks, black farmers, and others to facilitate providing operating credit this planting season. Also, the pending supplemental appropriations bill includes funds to provide an additional \$110 million in guaranteed loans this fiscal year.

I issued two directives the week of April 21 freezing foreclosures at all stages of processing until all charges of discrimination are investigated by an independent review team. This is a more stringent civil rights protection measure than USDA has had in the past and a step further than the policy I announced last December. In the second directive, I changed other loan processing actions to make sure loan processing continues when a discrimination complaint is pending. Further, if a loan applicant alleges discrimination and his or her application is being process by the USDA employee against whom the charge is made, another loan officer must process the application. If USDA cannot approve a loan, the applicant must be advised, in a meeting and in writing, to explain why the loan application was denied.

COMPLAINT BACKLOG

In early April, the department began dealing with the backlog of at least 2,000 discrimination complaints. The new civil rights division has 12 sub-teams working to eliminate the backlog of 550 program discrimination and 1,450 equal employment opportunity complaints. Cases that can be dismissed will be; cases with incomplete investigations will be mediated, settled or assigned for completion of investigation; and cases that have possible cause will be settled or decided. My goal is to resolve those cases that can be resolved by the first week of June.

However, the backlog issue may be worse than I had originally thought. Files are disorganized and, in some cases, have not yet been located. Officials have as yet been unable to reconcile some records. But in many cases, because employees and customers have filed more than one case, if the department handles one case, 5 or 6 cases may be settled.

The new civil rights division officials are working to streamline the basic complaint process. When the new process is in place, all civil rights information will be merged into a centralized data base. This will help the department respond and resolve any future civil rights complaints in a more timely manner. The goal is to have the new system in place by August 1.

SETTLEMENTS

The department has settled three major complaints from farmers who were discriminated against by the former Farmers Home Administration, including the

case of the president of the National Black Farmers Association. These settlements total \$1,195,000 in payments and \$442,000 in debt write-offs. The settlements underscore USDA's commitment to quickly and fairly resolve legitimate civil rights complaints. I hope there will be more settlements in the future.

In summary, I have made the civil rights issues at USDA my top priority. We have many dedicated employees who are working diligently to address the long-standing and entrenched problems here at USDA. In addition to addressing the root causes of these problems and instituting long-last organizational change, I have stressed diversity and commitment to civil rights in my recommendations to fill the openings in top leadership positions.

I appreciate your continued interest and ask for your continued support.

attachments:

Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team, February, 1997.

Civil Rights at the United States Department of Agriculture: Civil Rights Implementation Team Progress Report Number 4, May 16, 1997.

cc:

Erskine Bowles, Chief of Staff to the President
Sylvia Mathews, Assistant to the President and Deputy Chief of Staff
Rahm Emanuel, Senior Advisor to the President
Kitty Higgins, Cabinet Secretary
Maria Echaveste, Director of Public Liaison

Mr. President - The challenges confronting USDA on this issue are great, but the opportunities are even greater to us and the Administration if we can continue to make substantial progress on our commitments. To date, employees at USDA and our customers trust that we are acting in good faith.
Dan

Strange Bedfellow

Not Just Talk

A five-point program for better race relations.

By Jacob Weisberg

T

o the growing legion of Clinton cynics, the president's race-relations initiative, unveiled last weekend, is an exercise in cheap talk. Liberal and conservative pundits disagree about affirmative action and welfare reform, but concur that a series of town meetings, an advisory panel, and an eloquent report are sorry substitutes for decisive action.

If they were talking about Social Security reform, the critics might have a point. There, endless calls for more study postpone necessary but unpopular changes in policy. But when it comes to race, the power of words should not be so lightly dismissed. If President Clinton can use his rhetorical gifts to change attitudes on both sides of the divide, he will be accomplishing something of great significance. It's also all he can really hope to do right now. The public's current skepticism about activist government stymies new initiatives. Having screwed up his first term by misjudging the public demand for reform in the far less difficult area of health care, the president would be foolish to present a costly multipoint program on race.

But if we had the money—and the will—what would we do about race relations? A few years of peace, prosperity, and balanced budgets—and a deeper awareness of just how bad our race problem is—may create a climate where such a program could succeed. When that moment arrives, Clinton, or his successor, should have a five-point plan ready.

De facto segregation exists throughout society. But the essence of the problem is the condition of the worst-off blacks in the urban ghetto. White fears of the urban underclass are distorted into broader stereotypes about blacks as a whole, which poison relations between the races at all levels. Next week, *Dateline NBC* will air a report on the south Chicago suburb of Matteson, which is tipping from an upper-middle-class white suburb into an upper-middle-class black one. Matteson ought to be an integrationist's paradise, but whites are fleeing because of their concerns about crime and gangs, declining schools, and falling home prices. In reality, schools, safety, even the property values haven't declined. But fear that these things will happen is not purely irrational. If the whites all leave, decline may become a self-fulfilling prophecy. Thus subtle racism and a rational urge to self-preservation are bound up together. Unmaking the underclass would answer white fears while giving lower-class blacks a chance they are now largely denied: that of assimilating into the mainstream of an integrated society.

Perhaps the most important difference between people who live in the ghetto and those who live outside it is that most of the former aren't employed. Breaking down the underclass will require finding new ways to draw unemployed ghetto residents into the culture of work. The jury will remain out for some time on the effects of the welfare cutoff signed by Clinton last year. But even with the jobs provisions included in that bill, it's evident that there still aren't sufficient jobs in the inner cities, especially when you consider the prospects of unemployed men, who aren't eligible for welfare. In his latest book, *When Work Disappears*, William Julius Wilson argues that there is a "spatial mismatch" between workers in the cities and jobs in the suburbs. Wilson's answer is a transportation program to get blacks to where the jobs are, and a big WPA-style jobs program (the details of which he borrows from the journalist Mickey Kaus). These sub-minimum-wage jobs—doing basic neglected work like repairing roads and bridges—would constitute the missing bottom rung on an economic ladder.

The second step is to address the extreme isolation of the inner-city poor. This means a housing strategy that shifts more decisively in the direction it has been inching under Clinton. Instead of trying to tame inner-city housing projects with different kinds of architecture, lower density, and income mixing, the Department of Housing and Urban Development should redefine its purpose: to help its tenants *escape* the ghetto. It should take a sledgehammer to every high-rise under its control and instead provide

EK, Jose, Tom, PJW -
Here's our blueprint.
We couldn't have written
it better ourselves.
-BR

vouchers. But these vouchers can't be the kind conservatives prefer, which are sharply limited in value so as to forestall real integration while directing tenants toward private-sector slums. Vouchers need to be worth enough to afford real avenues of escape. They should also steer beneficiaries away from other beneficiaries, to keep pockets of concentrated poverty from re-emerging farther from the city's core. An easy way to do this would be to enforce strict limits on the percentage of voucher tenants allowed in any one building.

A less obvious factor fostering residential segregation is the boundary between city and suburb. When whites flee the central cities, they take with them most of the tax revenue, and leave behind a downward spiral of city services. As David Rusk, a former mayor of Albuquerque, argues in his book, *Cities Without Suburbs*, metro-wide governments where the suburbs and the city are joined tend to be more racially integrated, and better off in various other ways as well. Washington can't erase jurisdictional frontiers, but it can encourage metropolitan government via tax incentives and cheerleading. Such a policy would displease many black politicians, since it stands to diminish black political representation in the short run. But this is a trade-off well worth making.

All of these measures together will not cause the ghettos to disappear. Providing escape routes from the inner city may make the ghettos worse by depriving them of their most competent residents. What's needed, alongside an evacuation plan, is a realistic program to stabilize conditions for those left behind. The goal shouldn't be to make the desert bloom. It should be to create zones where people can raise children in safety even if they must travel elsewhere to work. To accomplish this, a strategy would need to focus on crime and schools.

Of course, neither law enforcement nor education is principally a federal responsibility. But in both cases, the feds can help. On crime, Clinton has had basically the right idea with his community-policing initiative. Cops walking the street create a sense of order and provide good role models for young boys. This program should be expanded, perhaps with incentives for police to live in the neighborhoods they patrol full time. Schools are a harder nut, but not an uncrackable one. There are a few good schools, even in Harlem, which have succeeded by doing end runs around the unionized bureaucracy of the central system. The federal government should do more to spur the creation of such institutions, by providing resources, and by helping to equalize the shameful disparity in funding between rich and poor districts generally.

Some of these concepts have demonstrated their success at an experimental level and are ripe for expansion. Others are just promising ideas that ought to be tried. All, unfortunately, are expensive and sure to be controversial. They can't simply be foisted on a reluctant public. To lay the groundwork for useful action on race relations, we need exactly what President Clinton is proposing as a starting point: honest talk, and lots of it.

The White House trumpets the president's initiative on race (www.whitehouse.gov/Initiatives/index2.html), offering the full text of last weekend's announcement (www.whitehouse.gov/Initiatives/announcement.html). William Julius Wilson talks about "Joblessness and the Urban Poor" (www.realaudio.com/content/npr/ne6022.html) on a 1996 NPR *Talk of the Nation*, and answers questions about the state of the inner city in a *NewsHour* online forum (www1.pbs.org/newshour/forum/november96/wilson_11-29.html). The Woodrow Wilson Center plugs *Cities Without Suburbs* (wwics.si.edu/OUTREACH/PUBS/WCP1995.HTM#CAT78), and the November/December 1996 issue of the *New Jersey Reporter* looks at race (of special note is an Ed Rollins piece [epn.org/njr/novdec96/contents.html]). Go here to get a sense of what HUD is currently doing (www.hud.gov/). As for a few race-relations-related pieces in Slate: Eric Liu explores "The Unbearable Being of Whiteness" (www.slate.com/Features/white/white.asp), a "Committee of Correspondence" discusses affirmative action (www.slate.com/CoC/96-10-07/COC.ASP), and Mickey Kaus debates welfare reform with Peter Edelman (www.slate.com/Code/DDDD/DDD.asp?file=Welfare&iMsg=0).

face



Perhaps the most important difference between people who live in the ghetto and those who live outside it is that most of the former aren't employed. Breaking down the underclass will require finding new ways to draw unemployed ghetto residents into the culture of work. The jury will remain out for some time on the effects of the welfare cutoff signed by Clinton last year. But even with the jobs provisions included in that bill, it's evident that there still aren't sufficient jobs in the inner cities, especially when you consider the prospects of unemployed men, who aren't eligible for welfare. In his latest book, *When Work Disappears*, William Julius Wilson argues that there is a "spatial mismatch" between workers in the cities and jobs in the suburbs. Wilson's answer is a transportation program to get blacks to where the jobs are, and a big WPA-style jobs program (the details of which he borrows from the journalist Mickey Kaus). These sub-minimum-wage jobs--doing basic neglected work like repairing roads and bridges--would constitute the missing bottom rung on an economic ladder.

The second step is to address the extreme isolation of the inner-city poor. This means a housing strategy that shifts more decisively in the direction it has been inching under Clinton. Instead of trying to tame inner-city housing projects with different kinds of architecture, lower density, and income mixing, the Department of Housing and Urban Development should redefine its purpose: to help its tenants *escape* the ghetto. It should take a sledgehammer to every high-rise under its control and instead provide vouchers. But these vouchers can't be the kind conservatives prefer, which are sharply limited in value so as to forestall real integration while directing tenants toward private-sector slums. Vouchers need to be worth enough to afford real avenues of escape. They should also steer beneficiaries away from other beneficiaries, to keep pockets of concentrated poverty from re-emerging farther from the city's core. An easy way to do this would be to enforce strict limits on the percentage of voucher tenants allowed in any one building.

State: Strange Beurrenow June 21, 1997
http://www.state.com/StrangeBeurrenow/97-06-21/StrangeBeurrenow.htm



A less obvious factor fostering residential segregation is the boundary between city and suburb. When whites flee the central cities, they take with them most of the tax revenue, and leave behind a downward spiral of city services. As David Rusk, a former mayor of Albuquerque, argues in his book, *Cities Without Suburbs*, metro-wide governments where the suburbs and the city are joined tend to be more racially integrated, and better off in various other ways as well. Washington can't erase jurisdictional frontiers, but it can encourage metropolitan government via tax incentives and cheerleading. Such a policy would displease many black politicians, since it stands to diminish black political representation in the short run. But this is a trade-off well worth making.

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Illustrations by Robert Neubecker.

Previous Strange Bedfellow columns



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Race

strange bedfellow

FYI:
EK,
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Not Just Talk

A five-point program for better race relations.

By Jacob Weisberg
(1,181 words; posted Saturday, June 21)



To the growing legion of Clinton cynics, the president's race-relations initiative, unveiled last weekend, is an exercise in cheap talk. Liberal and conservative pundits disagree about affirmative action and welfare reform, but concur that a series of town meetings, an advisory panel, and an eloquent report are sorry substitutes for decisive action.

If they were talking about Social Security reform, the critics might have a point. There, endless calls for more study postpone necessary but unpopular changes in policy. But when it comes to race, the power of words should not be so lightly dismissed. If President Clinton can use his rhetorical gifts to change attitudes on both sides of the divide, he will be accomplishing something of great significance. It's also all he can really hope to do right now. The public's current skepticism about activist government stymies new initiatives. Having screwed up his first term by misjudging the public demand for reform in the far less difficult area of health care, the president would be foolish to present a costly multipoint program on race.

Washington Post 7-08-97

Rale

Lawmakers Urge Clinton to Address Discrimination in Federal Workplace

By Michael A. Fletcher
Washington Post Staff Writer

Expressing alarm at the huge number of discrimination complaints filed by federal workers, several members of Congress yesterday called on President Clinton to make a concerted effort to root out racism in the federal workplace.

Rep. Albert R. Wynn (D-Md.) said eliminating discrimination within the federal work force should be a priority as the president embarks on a year-long effort to bridge America's racial divide.

"It seems to me if we are serious about dealing with the problems of race in America, we ought to start in our own back yard: with the federal work force," Wynn said during a Capitol Hill news conference.

Wynn, whose congressional district includes about 72,000 federal employees, was joined by D.C. Del. Eleanor Holmes Norton (D) and Rep. Elijah E. Cummings (D-Md.) in calling on Clinton to hold Cabinet secretaries and other federal agency

heads responsible for the racial climate in their agencies.

There were 30,682 discrimination complaints from federal workers pending at the end of fiscal 1995, more than a 20 percent increase over the previous year. In addition, 12 class-action employee lawsuits are either on file or about to be filed against the federal government, according to Wynn.

The lawmakers said the president should push for a large increase in the budget of the Equal Employment Opportunity Commission, which investigates workplace discrimination and has a 100,000-case backlog.

They also promised to seek hearings into the problem and to push legislation to streamline the cumbersome complaint process for federal workers who believe they are victims of discrimination. Often, federal workers must file complaints with their agency, go through an informal resolution process and then face an agency investigation before their case can go to the EEOC.

Parts of the process that allow agencies to investigate claims against themselves are like "having the fox guarding the henhouse," said Oscar Eason Jr., president of Blacks In Government, which represents black employees at all levels of government.

For generations the federal government has been considered one of the most desirable workplaces for minorities, especially African Americans. Last fall, an Office of Personnel Management report found that minorities represented 28.7 percent of the 1.9 million executive branch workers, while they made up 25.5 percent of the civilian labor force. Blacks made up 17 percent of the federal work force, while they were 10.8 percent of civilian labor force.

But the federal government's reputation as a good workplace for minorities masks a number of troubling trends. Among them are that blacks and other minorities tend to be grouped in the lowest-paying jobs. Also, Hispanics as a group are underrepresented in federal jobs,



BY RAY LUSTIG—THE WASHINGTON POST

REP. ALBERT R. WYNN

"startin' our own back yard"

and African Americans are fired from federal jobs at a rate more than three times greater than that of whites.

"I intend to do all I can do to explore this issue and find real solutions to the problems that all Americans of color encounter in the federal work force," said Cummings, the ranking Democrat on the House Government Reform and Oversight civil service subcommittee.