MARCH 1999

TRENDLETTER

POLITICAL REPORT

by David C. Ruffin and Mary K. Garber

The Gun Wars

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While the jury found 15 manufacturers negligent, it did not assign responsibility for specific deaths. Attorneys for the companies have said they will appeal the negligence verdict as a "tortured compromise," based on the judge's insistence that the jury reach a verdict even after the jurors had repeatedly reported that they were deadlocked.

Despite all this, many expect the verdict to have profound consequences for what may come to be known as the "Gun Wars." Taking their lead from the success of 46 states in the recently concluded "Tobacco Wars," five major American cities with high crime rates—Atlanta, New Orleans, Miami, Chicago, and Bridgeport (Connecticut)—have all filed lawsuits against gun manufacturers seeking to recover some of the enormous costs of gun-related violence borne by these cities. The outcome of the tobacco product liability cases was a $206 billion settlement in which the companies must reimburse states for the costs states incurred in treating victims of tobacco-related illnesses.

In 1998, there were 36,000 firearm-related deaths in America, according to the National Center for Health Statistics. The cities' lawsuits against the gun manufacturers generally charge them with producing a product that is inherently dangerous while failing to include safety features, such as trigger locks, load indicators, and other devices that can prevent misuse or abuse. Further, the cities claim that the marketing and sales practices of the manufacturers are designed to thwart municipal gun control measures, for example by flooding the market in adjacent areas where gun laws are lax knowing that the overflow purchases will certainly make their way into illicit sales or use in the stricter jurisdictions. The City of Chicago case goes after the gun manufacturers under its public nuisance statute. Chicago's suit contends that gun manufacturers, distributors, and dealers promote the illegal supply of weapons to the city's residents, inform buyers of ways to avoid compliance with firearms laws, and sell guns suited principally for criminal purposes, all of this knowingly.

The cities are seeking hundreds of millions of dollars to repay them for the public costs of violence committed with guns, including increased costs for police, health care, and emergency services. The City of Chicago alone is seeking $443 million.

But several of the cities are facing a formidable stumbling block—opposition from their state legislatures, the result of an intensive lobbying campaign by the National Rifle Association. Even as Atlanta was filing suit on February 4 against 15 gun manufacturers and two firearms trade associations, the Georgia state legislature was in the midst of passing a bill to prohibit its cities and counties from filing such suits, reserving that right for the state alone. On February 9, the state's recently elected Democratic governor, Roy Barnes, who is a member of the National Rifle Association, signed the bill. Atlanta Mayor Bill Campbell announced that the city would proceed with its suit regardless and

let the courts decide whether the state could legitimately take such an action. The day after Georgia passed its ban on municipal litigation against the gun industry, the governor of Louisiana, Mike Foster, announced that he would like to see his state enact a similar measure. New Orleans mayor Marc Morial called Foster's announcement "a sad sellout to the money and power of the gun lobby."

Henry Flipper—Honor Restored

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Born into slavery at Thomasville, Georgia, in 1856, Henry Flipper was educated at the American Missionary Association school and later Atlanta University. In 1873, he became the fifth African American accepted into the U.S. Military Academy at West Point. Four years later, despite being shunned by the other cadets, he became West Point's first black graduate.

The Army assigned him to Fort Sill, Oklahoma, where he served with the 10th Cavalry, one of the four regiments of the renowned "Buffalo Soldiers." These regiments were made up of black troops who were normally led only by white officers. As a second lieutenant, Flipper served as post engineer, constructing roads and installing telegraph lines. He fought in two battles against Indian raiding parties at Eagle Springs, Texas. For his service under fire, he was made acting assistant quartermaster, post quartermaster, and acting commissary of subsistence at Fort Davis, Texas.

In 1881, Flipper's fortunes changed. Colonel William R. Shafter, his new commanding officer, relieved him as quartermaster and expressed his intent to remove him as commissary. Shortly thereafter, Flipper discovered that more than $2,500 in post funds were missing from his quarters. Fearing a systematic plan to discredit him, Flipper tried to conceal the loss until he could find the money or replace it. But the loss was discovered by Shafter, who charged him with embezzlement.

Although a court martial acquitted Flipper of that charge, he was convicted of "conduct unbecoming an officer and a gentleman" for the cover-up. President Chester A. Arthur declined to overturn that conviction on appeal, even though an Army review found that the lieutenant had been singled out for his race. Flipper was dismissed from the Army in June 1882.

After his dismissal, Flipper distinguished himself as an outstanding civil and mining engineer and surveyor for land and mining companies in Mexico. He become an expert on Mexican land laws and was appointed a special agent of the U.S. Court of Private Land Claims. His offer to serve again in the U.S. Army when the Spanish-American War broke out in 1898 was turned down, and Congress failed to act on legislation to restore his rank. In 1919, at the age of 63, Flipper took a position as a Spanish language translator and interpreter for a senate committee in Washington, and he later accepted an appointment as assistant to the secretary of the interior.

Flipper retired in 1931 to Atlanta, where he spent the last nine years of his life living with his brother, Joseph S. Flipper, a bishop of the African Methodist Episcopal Church. Henry Flipper continued to try to clear his name until his death in 1940 at age 84.

Flipper's quest was taken up in the 1970s by Ray MacColl, a Georgia schoolteacher, who worked with Flipper's niece, Irsle King, to research his military records. In 1976, as a result of the pair's efforts, the Army granted Flipper an honorable discharge. Two years later his remains were removed from Atlanta and buried at Thomasville, Georgia, with full military honors.

Flipper's presidential pardon was obtained after four years of pro bono legal work carried out by a team from the Washington law firm of Arnold & Porter, led by attorney Darryl W. Jackson. The matter had been presented to Jackson by a colleague in the firm, Jeffrey H. Smith, himself a 1966 graduate of West Point.

Today, a bust of Flipper occupies a place of honor at West Point, and each year the academy presents the Henry O. Flipper Award to the graduate who best exemplifies "the highest qualities of leadership, self-discipline, and perseverance in the face of unusual difficulties while a cadet."

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Congressman Archer's comment stems in part from the large number of new initiatives in the President's budget. In addition to proposals for using the budget surplus to "save Social Security," the budget summary highlights four tax credit programs, six education and training initiatives, three child care programs, nine efforts to expand access to health care and health insurance coverage, four environmental programs, six community empowerment efforts, four research and development initiatives, two crime programs, and increased defense spending. Some of these programs are already in place but have been marked for increases in funding; others are new but involve fairly small amounts of money, at least by federal budget standards.

Budget Overview

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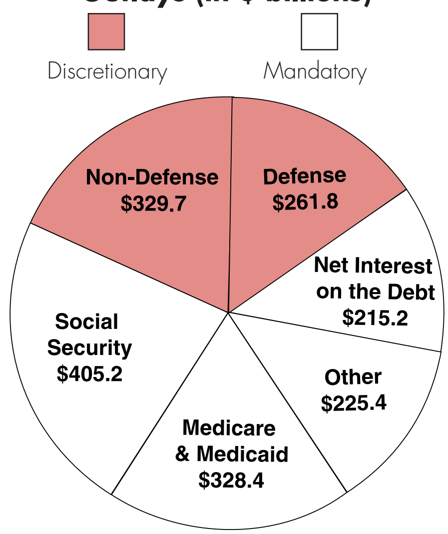
Proposed FY 2000 Budget Outlays (in $ billions)



Approximately two-thirds of projected FY 2000 outlays would be spent on mandatory programs, including Social Security payments and interest on the national debt. The remaining one-third ($581.2 billion) would be categorized as discretionary, with about 45 percent of that amount going to the Department of Defense. The other agencies with large projected outlays are Transportation ($43.3 billion), Health and Human Services ($41.6 billion), Housing and Urban Development ($34.4 billion), and Education ($31.8 billion).

Investments in People

African Americans could especially benefit from several of the President's proposals. One of the proposals in the health area would provide tax credits and other supports to small businesses that decide to offer health insurance coverage to their workers through collaboration with other firms. Another initiative would provide $1 billion over five years to support comprehensive health care delivery systems, such as public hospitals, that have traditionally served uninsured Americans. Both of these plans are likely to benefit African Americans who are disproportionately unemployed or work for employers who do not provide health insurance. Increased funding for HIV/AIDS treatment through the Ryan White program and for the care of childhood asthma sufferers through the Medicaid program could also help black communities, where the incidence of both diseases is higher than in other communities.

The President's education agenda focuses on access and accountability. Next year, the administration plans to spend $7 billion on Pell grants for post-secondary education. The President's proposal would raise the maximum grant by $125 to $3,250 per year. This would help nearly four million students from low- and moderate-income families. The administration proposes to improve elementary and secondary education through three new or expanded initiatives to help schools recruit, hire, and train new teachers ($1.4 billion), support after-school and summer programs ($600 million), and provide new resources for "performance accountability" ($200 million). The last program would consist of a pool of funds that states could use to assist their lowest performing schools.

The Clinton budget would also increase funding for a number of programs in the Education and Labor Departments focused on both in-school and out-of-school

disadvantaged youth. They include expansions in YouthBuild, which provides young adults with skills in building and rehabilitating housing, and TRIO programs, which help students prepare for college. The budget also allows $240 million for GEAR-UP, which supports partnerships between colleges and middle and junior high schools in low-income communities. The Youth Opportunity Grant initiative, which prepares young people for education and employment, is slated for $250 million. This initiative would work in conjunction with the Empowerment Zone and Enterprise Communities program to provide skills training for youths living in economically depressed areas. Twelve to 18 sites would be funded by Youth Opportunity Grants, and 381,000 students would be assisted in the GEAR-UP effort.

Unfortunately, because the funding in these education and training programs is limited, their overall impact is expected to be small given the magnitude of the problems in our inner cities. If they work as demonstration or pilot programs that pave the way for larger federal- and state-funded efforts or for public-private partnerships, their impact could be greater.

Investment in Liveable Communities

President Clinton also proposes funding for a number of "place-based" programs concentrated in central cities and low-income communities. The President is requesting $150 million per year for 10 years to fund new Urban Empowerment Zones and $50 million to fund a competitive grant program that would help to reclaim abandoned housing.

A brand new initiative that is included in the FY 2000 budget is the New Markets Initiative, designed to stimulate economic development. This effort, headed by the Small Business Administration (SBA) in cooperation with the Department of Housing and Urban Development (HUD), has four components that would make funds available to targeted communities. The first component is a tax credit of up to 25 percent that would apply to any investment in financial institutions, such as community development banks and venture funds, that provide equity capital to local businesses. The initiative also includes support for three different investment ventures—America's Private Investment Companies (APICs), New Markets Venture Capital (NMVC) firms, and Small Business Investment Companies (SBICs).

The APICs would be for-profit venture capital funds that are capitalized at $100 million each to make investments in low- and moderate-income areas. Loan guarantees for $200 million (twice the capitalization) would be made available through SBA and HUD on a competitive basis to approximately five organizations. The program is expected to generate $1.5 billion per year in new capital.

The NMVC program provides a combination of venture capital financing and technical assistance to small businesses operating in low- and moderate-income areas, defined as those where at least 20 percent of the population is below the poverty line or where median family income is less than 80 percent of that in the surrounding area. Communities already eligible for economic development assistance, such as Empowerment Zones, would be included. NMVCs, organized as for-profit entities, must raise at least $5 million in investment capital and obtain commitments for at least $1.5 million in technical assistance. SBA would provide a two-for-one match in capital funding and one-for-one in technical assistance funds. SBA anticipates supporting 10 to 20 NMVC firms, which would in turn provide investments of $50,000 to $300,000 to smaller businesses.

To complement these new initiatives, SBA is also proposing to provide incentives for the existing Small Business Investment Companies (SBICs) to invest in businesses that either locate in low- and moderate-income communities or hire at least 35 percent of their workforce from such communities. SBICs that make these investments will be eligible for a new form of debenture financing that has an SBA guarantee.

SBA will be holding workshops in Chicago, Kansas City, New York, Atlanta, Dallas, and San Francisco to encourage the formation of SBICs with a focus on capital-short communities. For further information call 1-877-734-4782, or register through the internet at the following web address: registration@newmarketworkshop.com.

The Clinton administration asserts that the New Markets Initiative will stimulate $15 billion of new private capital investment in targeted areas and claims that it will stimulate minority business development, but experts are divided on the accuracy of the latter claim. Since the initiative's focus is on companies that locate in low- and moderate-income communities, minority firms that find it economically advantageous to locate outside low-income communities will not have access to this new pool of capital. The SBIC-LMI initiative which extends eligibility to firms outside low-income communities if they hire community residents, may tilt more toward minority firms, since research shows that regardless of their location, these firms are more likely to have such workforces. ■

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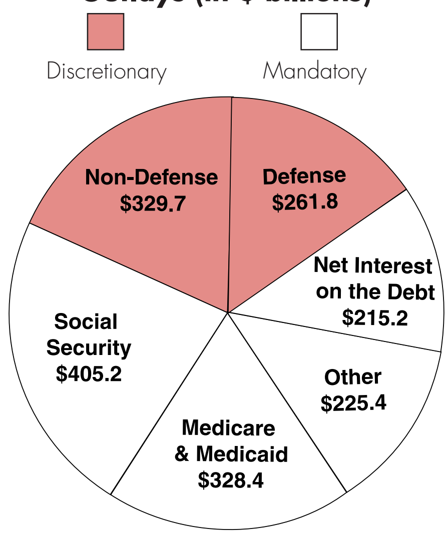

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Congressman Archer's comment stems in part from the large number of new initiatives in the President's budget. In addition to proposals for using the budget surplus to "save Social Security," the budget summary highlights four tax credit programs, six education and training initiatives, three child care programs, nine efforts to expand access to health care and health insurance coverage, four environmental programs, six community empowerment efforts, four research and development initiatives, two crime programs, and increased defense spending. Some of these programs are already in place but have been marked for increases in funding; others are new but involve fairly small amounts of money, at least by federal budget standards.

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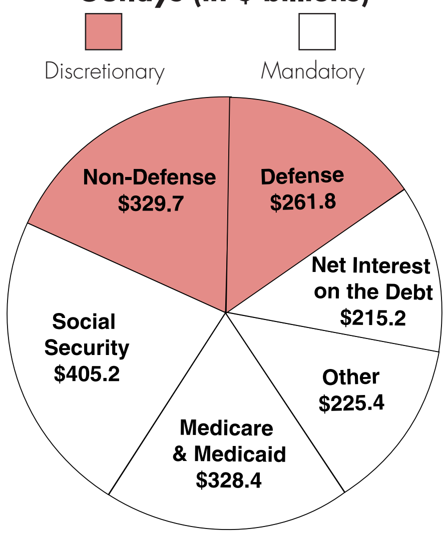

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African Americans could especially benefit from several of the President's proposals. One of the proposals in the health area would provide tax credits and other supports to small businesses that decide to offer health insurance coverage to their workers through collaboration with other firms. Another initiative would provide $1 billion over five years to support comprehensive health care delivery systems, such as public hospitals, that have traditionally served uninsured Americans. Both of these plans are likely to benefit African Americans who are disproportionately unemployed or work for employers who do not provide health insurance. Increased funding for HIV/AIDS treatment through the Ryan White program and for the care of childhood asthma sufferers through the Medicaid program could also help black communities, where the incidence of both diseases is higher than in other communities.

The President's education agenda focuses on access and accountability. Next year, the administration plans to spend $7 billion on Pell grants for post-secondary education. The President's proposal would raise the maximum grant by $125 to $3,250 per year. This would help nearly four million students from low- and moderate-income families. The administration proposes to improve elementary and secondary education through three new or expanded initiatives to help schools recruit, hire, and train new teachers ($1.4 billion), support after-school and summer programs ($600 million), and provide new resources for "performance accountability" ($200 million). The last program would consist of a pool of funds that states could use to assist their lowest performing schools.

The Clinton budget would also increase funding for a number of programs in the Education and Labor Departments focused on both in-school and out-of-school

disadvantaged youth. They include expansions in YouthBuild, which provides young adults with skills in building and rehabilitating housing, and TRIO programs, which help students prepare for college. The budget also allows $240 million for GEAR-UP, which supports partnerships between colleges and middle and junior high schools in low-income communities. The Youth Opportunity Grant initiative, which prepares young people for education and employment, is slated for $250 million. This initiative would work in conjunction with the Empowerment Zone and Enterprise Communities program to provide skills training for youths living in economically depressed areas. Twelve to 18 sites would be funded by Youth Opportunity Grants, and 381,000 students would be assisted in the GEAR-UP effort.

Unfortunately, because the funding in these education and training programs is limited, their overall impact is expected to be small given the magnitude of the problems in our inner cities. If they work as demonstration or pilot programs that pave the way for larger federal- and state-funded efforts or for public-private partnerships, their impact could be greater.

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President Clinton also proposes funding for a number of "place-based" programs concentrated in central cities and low-income communities. The President is requesting $150 million per year for 10 years to fund new Urban Empowerment Zones and $50 million to fund a competitive grant program that would help to reclaim abandoned housing.

A brand new initiative that is included in the FY 2000 budget is the New Markets Initiative, designed to stimulate economic development. This effort, headed by the Small Business Administration (SBA) in cooperation with the Department of Housing and Urban Development (HUD), has four components that would make funds available to targeted communities. The first component is a tax credit of up to 25 percent that would apply to any investment in financial institutions, such as community development banks and venture funds, that provide equity capital to local businesses. The initiative also includes support for three different investment ventures—America's Private Investment Companies (APICs), New Markets Venture Capital (NMVC) firms, and Small Business Investment Companies (SBICs).

The APICs would be for-profit venture capital funds that are capitalized at $100 million each to make investments in low- and moderate-income areas. Loan guarantees for $200 million (twice the capitalization) would be made available through SBA and HUD on a competitive basis to approximately five organizations. The program is expected to generate $1.5 billion per year in new capital.

The NMVC program provides a combination of venture capital financing and technical assistance to small businesses operating in low- and moderate-income areas, defined as those where at least 20 percent of the population is below the poverty line or where median family income is less than 80 percent of that in the surrounding area. Communities already eligible for economic development assistance, such as Empowerment Zones, would be included. NMVCs, organized as for-profit entities, must raise at least $5 million in investment capital and obtain commitments for at least $1.5 million in technical assistance. SBA would provide a two-for-one match in capital funding and one-for-one in technical assistance funds. SBA anticipates supporting 10 to 20 NMVC firms, which would in turn provide investments of $50,000 to $300,000 to smaller businesses.

To complement these new initiatives, SBA is also proposing to provide incentives for the existing Small Business Investment Companies (SBICs) to invest in businesses that either locate in low- and moderate-income communities or hire at least 35 percent of their workforce from such communities. SBICs that make these investments will be eligible for a new form of debenture financing that has an SBA guarantee.

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The Clinton administration asserts that the New Markets Initiative will stimulate $15 billion of new private capital investment in targeted areas and claims that it will stimulate minority business development, but experts are divided on the accuracy of the latter claim. Since the initiative's focus is on companies that locate in low- and moderate-income communities, minority firms that find it economically advantageous to locate outside low-income communities will not have access to this new pool of capital. The SBIC-LMI initiative which extends eligibility to firms outside low-income communities if they hire community residents, may tilt more toward minority firms, since research shows that regardless of their location, these firms are more likely to have such workforces. ■

MARCH 1999

TRENDLETTER

POLITICAL REPORT

by David C. Ruffin and Mary K. Garber

The Gun Wars

On February 11, in federal district court in Brooklyn, New York, a jury for the first time found that gun manufacturers bear responsibility for acts of violence carried out with their products. The jury found 15 manufacturers guilty of negligence in the marketing and distribution of guns. However, the long verdict in the *Hamilton* v. *Accu-Tek* civil suit—which took 45 minutes to read—was mixed, giving some comfort to all sides and leaving the issue somewhat muddy. It found that only 8 of the 15 gun makers had any responsibility for the deaths represented in the case, and only one plaintiff of seven gun-shot victims was awarded any money—a half million dollars. The jury cleared another 10 gun manufacturers of negligence, concluding that they had taken reasonable measures to prevent their products from falling into the hands of criminals.

While the jury found 15 manufacturers negligent, it did not assign responsibility for specific deaths. Attorneys for the companies have said they will appeal the negligence verdict as a "tortured compromise," based on the judge's insistence that the jury reach a verdict even after the jurors had repeatedly reported that they were deadlocked.

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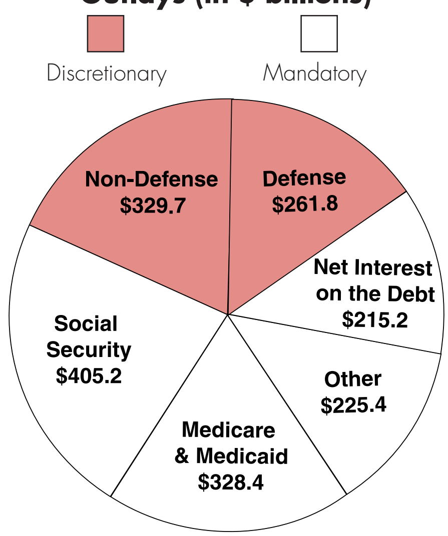

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