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David Satcher, Top Choice for Surgeon General

The post of Surgeon General has been vacant for three years. That's a long time to go without a health ombudsman for the nation. In September, President Clinton named Dr. David Satcher, the director of the Centers for Disease Control and Prevention (CDC), to be the 16th surgeon general of the United States and assistant secretary of Health. And that's good! This is a nominee who deserves universal acclaim. I feel comfortable making this assertion since I am a member of the CDC Advisory Committee that has have worked closely with Dr. Satcher since his arrival at that post.

Dr. Satcher has the strong endorsement of a broad spectrum of leaders in the health field. His outstanding record speaks for itself. A physician for 27 years, he has already proven himself a health policy maker of the first rank. As the head of the CDC for the last four years, Dr. Satcher has enhanced the agency's worldwide reputation and prestige. Under his leadership, child immunization increased by 50 percent, and vaccine-preventable childhood diseases have fallen to the lowest level in U.S. history.

Since 1993, the CDC has played a key role in responding to outbreaks of illnesses caused by foodborne bacteria—salmonella in Oregon caused by contaminated alfalfa sprouts, e. coli from lettuce, and a multi-state outbreak of cyclospora infections associated with the consumption of imported berries. As a further defense against such outbreaks, he established a new early-warning and rapid response system to prevent, detect, and contain foodborne illnesses in the future. In addition, 1.2 million Americans have benefitted from the CDC's breast and cervical cancer screening programs now operating in all 50 states.

Dr. Satcher holds both a medical degree and a doctoral degree in cytogenetics from Case Western Reserve University in Cleveland. He has not only distinguished himself as a physician, but has been an outstanding health educator as president of Meharry Medical College in Nashville for 11 years and as a professor at UCLA, the Morehouse School of Medicine in Atlanta, and other institutions.

There is no question that David Satcher has the training and experience to perform exceedingly well at the positions for which he has been nominated. But he also brings some personal qualities that will be added values to his role as the nation's health advocate. Consider his background. He grew up poor in rural Alabama, and decided to become a doctor as a child after a bad case of whooping cough nearly killed him. Surely he will be sensitive to the needs of children, the poor, and the underserved.

Another story about Dr. Satcher goes back to the time when he was a medical student in the 1960s. A hospital affiliated with Case Western Reserve University Medical School reserved one floor for poor patients who were primarily from nearby black neighborhoods. The patients received care in exchange for their permission to allow medical students to participate in their treatment, but they received the lowest level of care available at the hospital. David Satcher, at great risk to his future career, refused to serve a rotation on that floor because he did not want to take part in a system that treated poor people of color with, as he said, no more dignity than guinea pigs or laboratory rats. That's the kind of person we need as surgeon general. ■



PRESIDENT

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Lawsuits Rock Corporate Discrimination

While Some Charge That Affirmative Action Is No Longer Necessary, the Legal Process Is Discovering Discrimination in More and More Firms

by Frank McCoy

Although major civil rights legislation outlawed segregation in the 1960s, systemic and even overt discrimination remain as serious and widespread problems. In recent years, even while affirmative action and voluntary corporate diversity programs have been under attack, African Americans, other minorities, and women have waged and won high-stakes battles in the federal courts against companies that have discriminated against them.

According to the Administrative Office of the U.S. Courts, during the past four years the number of employment discrimination cases before federal courts has more than doubled. The suits have included cases against some of the nation's largest and best known corporations. At the same time, the number of housing discrimination suits rose 27 percent.

There are three principal reasons for this increase in discrimination suits. First, new laws have been enacted that offer relief to victims of bias. For example, the Civil Rights Act of 1991 allows victims of workplace discrimination to sue employers for discrimination that extends beyond hiring practices to include terms and conditions of employment, such as unfair promotion procedures and racial harassment. The 1990 Americans with Disabilities Act prohibits discrimination against employees who are physically or mentally challenged.

Second, a new generation of workers is more willing than their predecessors to take action when they encounter discriminatory employment practices and racial abuse. Finally, there has been an expansion of the pool of private attorneys willing to take on discrimination suits.

As a result of this more aggressive approach to addressing discrimination, a number of companies, many among the Fortune 500, have been required by the courts to create a less biased workplace, to abolish exclusionary business practices, and, in a number of cases, to make multimillion-dollar settlements.

In 1991, the Administrative Office of the U.S. Courts reported that federal courts handled more than 10,771 disability, race, age, and sex discrimination lawsuits. Since then, the number of suits has grown by more than 20 percent annually. In 1996, more than 23,000 such suits were filed.

During the past several years, a wide variety of discrimination suits have been settled. Some accused employers of ignoring racially hostile workplaces; others focused on the effects of institutional racism on prospective homeowners. A third type of suit—a product of our modern age—has been filed against companies in which racist electronic mail created an uncomfortable and threatening environment for minority and women workers. Examples of pending or settled cases of racial discrimination are presented below.

Texaco. Last March, the most prominent of these corporate bias suits concluded with a federal judge approving a record settlement of $176.1 million against Texaco, Inc. The case, which uncovered discriminatory hiring and promotion practices at Texaco, hinged on tape recordings that revealed executives making demeaning remarks about their black employees and planning to destroy incriminating documents.

Under the ruling, every African American employee who was in a salaried position at Texaco or its subsidiaries at any time from March 23, 1991, through November 15, 1996, will receive part of the settlement. More than 1,300 notices have been sent out. Claimants will receive awards ranging from $60,000 to $80,000. The U.S. Equal Employment Opportunity Commission (EEOC) was also part of the settlement and will monitor its implementation.

Pennzoil and Coastal. In a related case, which is still pending, 11 African American workers lodged a federal suit against Pennzoil Company, and 10 employees sued another oil company, Coastal Corp. Both suits charged the companies with racial discrimination.

The plaintiffs are seeking $400 million from Coastal and $300 million from Pennzoil in the suits, which were filed in Houston's U.S. district court. The employees charged that both companies engaged in race discrimination, resulting in a lack of opportunities for advancement, promotion, and equitable salaries for black workers.

Albank. Recently Albank, a savings and loan company based in Albany, New York, agreed to provide $55 million in discounted home mortgages as part of a settlement agreement with the U.S. Department of Justice (DOJ) for redlining, that is, deliberately refusing to approve loans for housing in minority neighborhoods. The $3.5 billion company refused to grant mortgages in minority areas in the Connecticut cities of Hartford, Waterbury, Bridgeport, New Haven, New Britain, Stamford, and Norwalk as well as in areas of Westchester County, New York. Albank continues to claim that it did not discriminate. However, DOJ and the New York State Banking Department disagreed, saying that Albank violated the Fair Housing Act and the Equal Credit Opportunity Act.

Mr. McCoy is Business Editor for *Our World News*, www.ourworldnews.com.

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Discrimination

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Allstate Insurance. The nation's biggest insurers have also had to resolve charges of bias. The Allstate Insurance Company settled a case in which it was accused of discrimination in the writing of homeowner insurance policies. Three years ago, Washington, D.C.'s National Fair Housing Alliance (NFHA) filed a complaint with the U.S. Department of Housing and Urban Development (HUD) charging that Allstate redlined urban areas, deliberately refusing to write policies for blacks and Hispanics. Blacks and Hispanics also were allegedly quoted higher prices for insurance and had to overcome restrictions that white insurance shoppers did not face.

Allstate settled the complaint but did not admit to any discriminatory behavior. The company also agreed to broaden its minority outreach program and to hire NFHA—for a three-year contract worth $500,000—to test its agents to ensure that they don't discriminate.

Nationwide Insurance. Another housing-related judgment was made against Nationwide Insurance Company, which agreed to invest $13 million in inner-city neighborhoods as part of a DOJ settlement. The DOJ said that Nationwide systematically refused to sell homeowners insurance in—or redlined—low-income non-white and non–English-speaking communities. In addition to the settlement, Nationwide agreed to devise a new method of underwriting and marketing insurance in those areas. The settlement was called the most comprehensive ever made by an insurance company under the U.S. Fair Housing Act.

Lew Lieberman. In some instances, a firm charged with one form of bias is discovered to be discriminating in other ways as well. Lew Lieberman & Company, a Garden City, New Jersey, securities brokerage firm, was accused of sexual harassment of white women. In a subsequent action, the EEOC filed a lawsuit against Lieberman, charging it with a "pattern and practice of racial harassment." The EEOC requested unspecified compensation for the women's financial losses, pain, humiliation, and suffering, as well as punitive damages and legal fees.

Several female African American employees also have sued the firm and its executives for underpaying and underpromoting them, as well as for subjecting them to racist jokes. The women also said they were retaliated against when they complained of racial harassment. The firm's CEO has denied the charges.

R.R. Donnelley & Sons. One of the nation's largest printing companies, R.R. Donnelley & Sons Co., has been named in a $500 million class action. African American employees there have charged the company with discriminating against them in 1993 when arranging transfers to other jobs after one of the firm's plants closed.

Walt Disney. Four African American employees at the Walt Disney Company in Orlando, Florida, filed a lawsuit in U.S. District Court in Los Angeles, alleging that the company denied them opportunities for raises, promotions, and bonuses that were typically given to white employees.

The class-action lawsuit read, in part, "Disney's retaliation policy is well known and feared by its African American employees. Disney uses this pattern of retaliation to intimidate its employees and deter them from asserting civil rights claims based on Disney's practices, including those relating to promotion, hiring, and work assignments." The plaintiffs have sought unspecified punitive and compensatory damages.

Circuit City. Last March, U.S. District Judge James Spencer ordered electronics retailer Circuit City to revamp the way it manages workers. Plaintiffs had charged that black employees were not promoted even though they were performing as well as whites. The judgment came after a jury decided that the company had discriminated against black employees, and granted a $290,000 award. Judge Spencer also retained jurisdiction over the case for five years, ordered the company to create a program that promotes black employees, and required reports to be filed on its progress. More than 800 of the 3,500 employees working in the firm's Richmond, Virginia, headquarters are African American.

Publix Super Markets. Publix Super Markets has settled one lawsuit for racial discrimination and another for gender bias, for a total of $85.5 million. The black plaintiffs in the case charged that they were denied jobs, promotions, and equal pay. The 160,000 women, who were part of a class-action suit, said that Publix passed them over for promotion.

Publix has denied any wrongdoing, saying that in the past seven years it has tripled the number of black managers to nearly 400. As part of the women's settlement, Publix agreed to allow the EEOC to monitor all hiring and promotions for up to seven years. Publix agreed to ensure that every time it made promotions, women and minorities would receive a portion of the new positions. The company must also agree to allow employees the opportunity to change their job categories after six months, rather than being locked into their positions. Workers in 535 stores in Alabama, Florida, Georgia, and South Carolina were covered by the settlement.

UPS. The United Parcel Service (UPS) may have garnered substantial support during its recent strike, but not all of its African American employees are happy. Last April 16, black workers sued the nation's largest package-delivery company, charging that they had received more difficult assignments than whites and had been passed over for promotion. They also charged that racist graffiti were found on walls at UPS's San Bernadino, California, facilities. One lawyer for the workers said that similar problems occurred at 10 other UPS sites. Supervisors at a number of UPS plants have also been charged with using racist language or unfairly denying promotions to African American workers.

Discrimination is widespread, unfair, illegal, and harmful. And in recent years, many African American workers, other minorities, and women have decided that they are not going to put up with it. By their willingness to sue, they have also sent a message to CEOs and stockholders: companies that don't prohibit overt and institutional racism will be subject to losses of money and reputation. ■

Can Black Doctors Survive?

Managed Care, Cuts in Training, and Attacks on Affirmative Action Threaten to Further Reduce the Ranks of Black Physicians

By Jennifer C. Friday

The United States has always had a shortage of African American physicians, but dramatic new changes taking place in the U.S. healthcare system may be contributing to a further decline in their numbers and status. The domination of the healthcare delivery system by managed care plans, a reduction in the number of new physician training slots, and attacks on affirmative action are all taking their toll on the pool of black physicians.

The health status of many African American communities is already precarious. AIDS and other infectious diseases are still on the upswing, and homicide remains a leading cause of death among black youth. Developments that threaten black doctors threaten these communities further as these physicians are critical to providing them with the healthcare they so desperately need.

The Vanishing Black Medical School

From the end of slavery to the present day, the pool of black doctors has never come close to reflecting the proportion of African Americans in the U.S. population. In 1890, there were 14 black medical schools in the United States, and African Americans made up 0.6 percent of all the physicians in the country. By 1914, there were only two black schools training physicians, Howard University in Washington, D.C., and Meharry Medical College in Nashville, Tennessee. These institutions were left with the responsibility of educating and training the entire corps of African American physicians at a time when most health facilities available to black Americans were segregated. As late as the 1960s, these two schools trained virtually all the black physicians in the United States. A significant portion of the nation's black doctors still receive their training from these black schools, which were later joined by the Charles Drew School of Medicine and Morehouse Medical College.

Despite the increased involvement of majority institutions since the 1960s in their education and training, the proportion of black physicians in the United States has changed very little. In the 1930s, they made up only 2.7 percent of the nation's doctors. Despite the affirmative action programs instituted by medical schools in the 1960s and 1970s, they comprised only 3.1 percent of all the nation's physicians in 1980 and are currently 3.6 percent of the total. With African Americans making up roughly 12 percent of the U.S. population, this 3.6 percent represents less than a third of the number of black physicians needed to achieve parity.

Indeed, although it has yet to be achieved, a 12 percent parity goal was advocated as far back as 1970 by the American Association of Medical Colleges. The importance of parity continues to be articulated today. A study published in the July/August 1997 issue of *Health Affairs* estimates that within a managed care framework, an appropriate ratio of black physicians to the overall population would be 218 per 100,000. The ratio presently stands at 69 per 100,000. If parity is ever to be reached, large changes must occur in the numbers of minorities accepted to and completing academic medical training programs.

Attacks on Affirmative Action

Even the small growth in the black physician population resulting from medical school affirmative action programs is now in jeopardy, as powerful opposition groups are launching successful attacks on these programs. Recent events in California may be the bellwether of a national trend. Last year, the Board of Regents of the University of California system nullified its affirmative action policies throughout its nine-campus system. The action taken by the regents was reinforced by the passage of a statewide California ballot initiative in November 1996, Proposition 209, which outlawed the use of race as a factor in college admissions, public employment, or contract awards by state and local governments. One immediate result is that for the first time in many years, the current first-year class at the University of California at San Diego does not contain a single black person, a disturbing confirmation of the potential impact on the supply of black doctors.

In Texas, the elimination of the state university system's affirmative action program came about in response to a lawsuit, *Hopwood* v. *State of Texas.* In *Hopwood*, the Federal 5th Circuit Court of Appeals ruled that the University of Texas Law School had violated the constitutional rights of applicants when it denied their admission through a policy that admitted some black and Hispanic applicants with lower combined college grades and Law School Admissions Test scores. Since the court ruled that race may no longer be considered as a factor in admissions to higher education within its jurisdiction, the case affects all components of the Texas university system including its medical schools. These precedents—political and judicial—may well be extended nationwide.

Exacerbating the attacks on affirmative action is a movement to reduce the number of physician training slots. Even though there certainly is no excess of black physicians, the consensus among leaders in the health

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Dr. Friday is a senior fellow in the Health Policy Program at the Joint Center.

Black Doctors

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industry is that there is a glut of physicians in the United States. In an effort to restrict the numbers of persons entering the medical profession, the federal government has recently begun giving academic health centers incentives to reduce the total number of physicians they train. With black physicians already underrepresented in the medical field, this will restrict the opportunities available to black students to become doctors.

Barriers to Inclusion in Managed Care Plans

Managed care, which has transformed healthcare delivery, probably represents the future of healthcare in this country. But while federal, state, and local governments have been expeditious in moving their Medicaid populations into health maintenance organizations (HMO's) and other managed care programs, minority physicians have not been incorporated into these plans as quickly.

A number of barriers have blocked or delayed the entry of black doctors into managed care plans. One factor working against them is the fact that 75 percent of black doctors are in solo practice. Physicians of any race in solo practice have a harder time getting into managed care plans because these plans prefer to contract with groups. Moreover, since it is easier to disqualify an individual than a group, black physicians who do get into managed care plans are more apt than others to lose their contracts.

Because they disproportionately serve poor, uninsured, usually sicker patients and Medicaid recipients, black physicians are not as well compensated as white doctors. Many of their patients are unable to pay for the services they receive. Medicaid patients are important to the financial survival of black physicians, accounting for 24.6 percent of their revenues, yet even Medicaid pays an average of only 47 percent of what private insurers pay.

Serving a poorer clientele puts black doctors' futures at risk in other ways too. Because they serve poorer and sicker patients, the cost of maintaining their practices is higher, which also is likely to deter managed care companies from offering them contracts. Ironically, managed care plans are adding more and more Medicaid patients to their own rolls, further reducing the percentage of paying patients that these black physicians serve and seriously affecting their financial viability.

Another barrier to these doctors' inclusion in managed care plans is the requirement that participating physicians be board-certified, that is, that they have passed an examination given by a medical specialty board. However, many black physicians have never sought board certification, which is not a requirement for private practice. Another limitation for black physicians concerns the continuing medical education that many HMOs require. These physicians are less apt than others to be able to bear the financial costs and time commitment such education requires.

Black doctors may not be asked to join managed care plans for more subtle reasons as well. Because they are not a part of the social network of most white physicians, they may simply be overlooked as candidates for HMO membership by their white peers.

Serving Black Patients

Increasing the supply of black physicians is critical to improving healthcare in black communities. Black doctors' understanding of the cultural, social, and economic issues present in black communities is essential to providing appropriate, high-quality services to this population. A good physician/patient relationship is one that facilitates health education and communication unencumbered by cultural barriers.

Another reason the health status of African Americans is so dependent on the availability of black physicians is that these doctors are much more likely than their white colleagues to locate their practices in areas with large minority populations, areas that are usually medically underserved as well. Following their roots, black physicians tend to practice in the communities where they grew up or in similar communities. Irrespective of where they practice, the average black physician serves a population that is still made up largely of persons of his (or her) own race. Fully 46 percent of the patients of black doctors are black; in fact, nearly six times as many black patients are cared for by black physicians as by non-black physicians.

Developments that reduce the number of physicians available to minority groups will increase the likelihood that minorities will continue to have less access to healthcare than others and continue to have poorer health. For those who live in low-income communities, the chance of seeing a primary care doctor close to their neighborhood will be slimmer than ever.

Prognosis for Black Doctors

The future of black doctors is not encouraging. While the medical profession today supports racial and ethnic diversity in theory, its commitment to actual programs to promote diversity is much less evident. It has done little to counter the attacks on affirmative action, despite the fact that so much needs to be done to expand training programs for minority doctors. Its response to the absence of black doctors from managed care plans is also unclear.

Nevertheless, a few efforts are underway that may help brighten the future of African American physicians. Recently, a coalition made up of the National Medical Association, the American Medical Association, and four other medical organizations submitted a recommendation to federal officials to fund medical training in under served areas and to increase the number of minority medical students. Also in the works are efforts by black physicians to start their own managed care plans.

African American physicians play a critical role in disease prevention and health promotion in black communities. Insuring the future of black physicians into the next millennium requires a concerted effort by physicians, professional organizations, and minority communities, as well as by health policymakers and legislators. It is an effort that cannot wait; the health of millions is at stake. ■

Legislating an End to Affirmative Action

Congressional Republicans Are Pushing to Reverse Hard-Won Equal Employment Opportunity Gains

by David C. Ruffin

People who don't like Proposition 209 will hate H.R.1909. In spite of its misnomer, "The Civil Rights Act of 1997," H.R.1909 and its Senate companion S.950 would essentially repeal federal affirmative action policy. Introduced on June 17 by Rep. Charles T. Canady (R–Fla.), chair of the House Constitution Subcommittee, H.R. 1909 would "provide for equal protection of the law and prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in federal actions… ." If enacted, the effect of the legislation would be to ban the U.S. government from considering race and gender in employment or the granting of contracts. The bill would not affect state universities or graduate schools. On June 23, S.950 was introduced under the sponsorship of Senators Mitch McConnell (R–Ky.) and Orrin Hatch (R–Utah).

The legislation is similar to a proposal considered in the 104th Congress that died in committee despite its sponsorship by Majority Leader and GOP presidential candidate Bob Dole. Last year, GOP leaders in both the House and the Senate were reluctant to back an anti-affirmative action bill in a presidential election year, fearing that pushing such a measure would send yet another negative signal to minorities, many of whom perceive the GOP to be hostile to their interests. This year, the wing of the Republican Party that opposes civil rights enforcement seems to be gaining momentum, at least in the House.

Canady's position is that individuals and companies should be judged on merit rather than on categories such as race. Supporters of his bill assert that affirmative action programs are well-intentioned but counterproductive. Canady called his bill an "incremental approach" to ending "preferences." He and the bill's 94 cosponsors argue that preference programs violate the rights of citizens who are not in a preferred group.

Discrimination Is Still Rampant

Democrats on the Constitution Subcommittee argue that affirmative action programs are only modest efforts to reverse widespread and longstanding discrimination. They assert that white men are by far the most economically advantaged group in America. Opponents of the measure also argue that its sponsors fail to acknowledge that race-based discrimination is still a serious problem. One of the most vocal opponents of H.R. 1909 is Rep. Bobby Scott (D–Va), ranking Democrat on the subcommittee.

"Discrimination is still rampant and government still has a moral obligation to remedy this discrimination", says Scott. He cites a recent study conducted by the Fair Housing Council, which found that minorities are discriminated against 40 percent of the times they attempt to rent apartments. A similar study conducted by employment testers of the Fair Employment Council and the Urban Institute has revealed that African American and Latino job applicants suffer blatant and easily identifiable discrimination one out of every five times they apply for a job. In addition, women still make only 70 cents for every dollar made by men in the same professions. "It is unbelievable that our response to such discrimination is repealing the major tool for remedying discrimination without even discussing other remedies," Scott says.

Members of the Congressional Black Caucus are apalled that H.R. 1909 has been introduced in the midst of public revelations of employment discrimination at Texaco, Circuit City, Mitsubishi, and the U.S. Department of Agriculture. Scott and other opponents fear that the legislation would go beyond the 1995 U.S. Supreme Court ruling in *Adarand Constructors* v. *Peña*. In that decision, the Supreme Court struck down a federal highway construction contract set-aside program because it classified companies bidding for highway contracts on the basis of race. The Court ruled that the program was unconstitutional unless the government could prove it was "narrowly tailored" to "further compelling governmental interests."

Under this "strict scrutiny" standard, the Court no longer accepts the need to remedy discrimination against minorities by the society at large or the need to correct racial imbalances as adequate justifications for preferential set-asides. Nevertheless, the Supreme Court did not declare affirmative action unconstitutional. H.R.1909 goes further than the Court. It removes the government's authority to take corrective action to eliminate the lingering effects of racial discrimination against minority groups.

In addition to noting its potential damage, opponents of the legislation say it is another example of the GOP playing the race card. "Too many politicians make affirmative action the target of a particularly ugly brand of resentment politics," says Carole Shields, president of the People for the American Way Action Fund, a group that promotes First Amendment rights.

On July 9, when it was approved by the Subcommittee on the Constitution by voice vote, all amendments offered by Democrats were defeated along party lines. House supporters of the bill are working hard to push it through the congressional process.

Mr. Ruffin is the editor of FOCUS.

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Congressman Scott Blasts H.R. 1909

Following is an excerpt of Representative Bobby Scott's statement on H.R.1909 during the subcommittee markup on July 9, 1997.

"Once again, this subcommittee is meeting to consider yet another attack on the modest bundle of rights available to victims of dicimination. We heard from a bipartisan group of witnesses at the hearing that one, discrimination is still a major problem in America and two, the federal government has an obligation to remedy this discrimination.

"H.R. 1909 will not only prevent the federal government from taking affirmative steps to remedy still widespread and persistent discrimination in employment, contracting, and education, but also will create a civil cause of action against the federal government or any of its agents that take affirmative steps to remedy discrimination.

"This bill so extremely ensures that discrimination will go unremedied that it is deserving of a title that more appropriately reflects its ultimate results. My suggestions include the "The Bigotry Protection Act" or "The Racial Status Quo Extension Act," and one that I will offer an amendment for, "The Equal Opportunity Repeal Act."

"Whether intended or unintended, H.R. 1909 will have the practical effect of resegregating America. This country has an ugly history of racial separatism that I would hope most members of this House would not be too anxious to revisit.

"The repeal of affirmative action programs in both Texas and California gives us a peek at what this country will be like without affirmative action. So, we must ask the opponents of affirmative action if they have achieved their goals when only ten African Americans are in this year's admitted class at the University of Texas Law School, down from 65 last year. Are we surprised at reports that none of these 10 applicants has expressed an interest in coming to the resegregated University of Texas? Did they get what they wanted because the UCLA law school suffered an 80 percent drop in African Americans included in their admitted class, the lowest number since at least 1970?

"It in fact is beyond reason how the proponents of this bill could even have the audacity to make their basic claim that although white males now receive 95 percent of federal contracting dollars, this level of supremacy is not satisfactory and they will not be happy until they get an even larger piece of the pie, especially considering that minorities and women, composing over 66 percent of the population, are only getting 5 percent of the contracts.

"H.R. 1909 overturns the Supreme Court's decision in *Adarand* v. *Peña*. Justice Sandra Day O'Connor writing for the majority in Adarand states: 'The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it… . When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this court has set in previous cases.' H.R. 1909, in contrast, represents the official disqualification of the government's ability to act in response to the discrimination to which Justice O'Connor referred." ■

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TRENDLETTER

POLITICAL REPORT

by David C. Ruffin

Court to Rule on Another Affirmative Action Case

The U.S. Supreme Court has agreed to hear a New Jersey "reverse discrimination" suit this term that could threaten affirmative action programs all over the country. The suit, *Taxman* v. *Piscataway Board of Education*, was initiated by the Bush administration in 1991.

It involves a 1989 decision by the board to downsize its high school labor force by laying off one teacher in the secretarial studies area of the Business Education Department. Two teachers in the department had been hired on the same day and thus had equal seniority. One of the teachers, Sharon Taxman, was white; the other, Debra Williams, African American.

The school superintendent reviewed their qualifications and experience and told the Board that they were so nearly equal that they should be considered tied in all areas, even though Williams had a master's degree and Taxman did not. In previous tie situations, the Board had tossed a coin to make the decision. This time, the Board decided to retain Debra Williams and lay off Sharon Taxman based on its affirmative action policy.

Taxman filed a complaint with the EEOC charging discrimination because the layoff decision was based on race. EEOC found in her favor, and the Justice Department filed suit on her behalf against the School Board. She later hired a lawyer and joined the suit. When the Clinton Administration attempted to change sides in the suit, the federal court interpreted the request as a withdrawal from the case, leaving Taxman as the sole plaintiff. So far, the School Board has lost two rounds, first in the district court and then in the U.S. Court of Appeals for the Third Circuit.

In an interesting twist, part of the Board of Education's difficulty in defending its action relates to its history of diversity and fair employment practices. The appeals court found that to use race as the basis for such a decision required that the action was a remedy for past discrimination. The court determined that no such history existed in the Piscataway case.

Taxman was re-hired after a two-year layoff. All that is at stake now, either for her or for the Board of Education, is the payment of back pay. For the future of affirmative action across the nation, much more is at issue. It is generally feared among civil rights advocates that the Supreme Court's recent rulings in discrimination cases mean that it will not rule in favor of the Board of Education.

Civil rights groups are concerned that the Piscataway case may give the conservative 5-4 majority on the Supreme Court the opportunity to deliver a death blow to affirmative action. If the Court upholds the Court of Appeals' interpretation of the Civil Rights Act, the result could be catastrophic for affirmative action. The decision would apply to just about all employers, both public and private, and go far beyond the issue of layoffs, condemning all forms of affirmative action in employment not specifically mandated to correct past wrongs. As a decision of the Supreme Court, it would apply to the entire country.

The recent trend of Supreme Court decisions suggests that the present Court majority is likely to decide the issues against the Piscataway Township Board of Education. In a series of 5-4 decisions involving public contracting, the Court has struck down affirmative action programs, raising doubts about whether older decisions under the 1964 Civil Rights Act are still the law. The Court has also strongly disapproved of the majority-black congressional districts in Georgia, Louisiana, Texas, and North Carolina that were created in compliance with the 1965 Voting Rights Act.

In the area of education, the Supreme Court in the last couple of years has refused to interfere with

lower court rulings that banned scholarships set aside for African American students at the University of Maryland and that found the University of Texas Law School's affirmative action admissions policy to be unconstitutional. In 1996, the Court refused to approve layoffs made by a Michigan school system in order to maintain a proportion of black teachers that more closely reflected the proportion of black students in the district.

The present Supreme Court is handing down decisions much different from those in past years. Twenty years ago, the Court ruled that Kaiser Aluminum could set aside 50 percent of the slots in a special in-house training program for black workers at a Louisiana plant without violating the Civil Rights Act. Ten years ago, the Supreme Court upheld a hiring preference for women in Santa Clara County, California, under the Civil Rights Act. The concern is that this Court could rule that the 1964 Civil Rights Act prohibits nearly all forms of affirmative action in employment.

Blacks' High Lifetime Chance of Imprisonment

According to the U.S. Department of Justice Bureau of Justice Statistics (BJS), one of every 20 Americans will be incarcerated during his or her lifetime. The chance of imprisonment is much higher for African Americans than for any other racial group. Drug suspects are more frequently charged for crimes than other suspects. And the recidivism rate for convicted felons remains high. Other BJS statistics include:

- Based on current rates of first incarceration, an estimated 28 percent of black males will enter state or federal prison during their lifetimes, compared with 16 percent of Hispanic males and 4.4 percent of white males.

- America's inmate population is aging. In 1991, 68 percent of the U.S. prison population were under age 35, down from 73 percent in 1986. With respect to the crimes for which inmates were incarcerated:
  - fewer than half were sentenced for a violent crime
  - a fourth were sentenced for a property crime
  - about a fifth were sentenced for a drug crime
- In 1991, an estimated 58 percent of inmates in federal prisons and 21 percent of state prison inmates were serving a sentence for a drug offense.
- Of the 108,580 persons released from prisons in 11 states in 1983, an estimated 62.5 percent were rearrested for a felony or drug misdemeanor within three years, 46.8 percent were reconvicted, and 41.4 percent returned to prison or jail.
- Drug suspects were more likely than other suspects to have charges filed against them. About 80 percent of the suspects in drug matters had proceedings brought against them in a federal court. ■

Affirmative Action Is Still Needed

Opponents of affirmative action claim that discrimination is not as common today as in the past. They suggest that our society is now nearly "colorblind" and that opportunities for employment and advancement are equal for all. The facts belie these claims. According to 1996 data from the Equal Employment Opportunity Commission, African Americans, who make up 12.6 percent of the U.S. population, continue to lag far behind whites in high-paying positions. Blacks make up just 5.8 percent of all officials and managers and 5.9 percent of all professionals. By contrast, blacks are overrepresented in low-paying, low-skill, blue-collar occupations such as laborer (19.2 percent) and service worker (23.9 percent). These statistics demonstrate that the competition for employment in this country does not take place on a level playing field and that aggressive remedies for ongoing discrimination are still required.

	White Collar					Blue Collar		
	Officials / Managers	Professionals	Technicians	Sales Workers	Office / Clerical Workers	Craft Workers	Laborers	Service Workers
White Total	87.6%	84.2%	78.7%	76.6%	74.9%	80.6%	58.2%	57.3%
White Male	59.2	42.3	44.4	33.6	12.3	72.0	38.6	23.0
White Female	28.5	41.9	34.5	43.0	62.5	8.7	19.6	34.3
Black Total	5.8	5.9	10.6	12.6	14.1	9.2	19.2	23.9
Black Male	3.2	2.1	4.3	4.5	2.6	7.6	12.5	10.0
Black Female	2.6	3.8	6.2	8.1	11.5	1.6	6.7	13.9

SOURCE: Equal Employment Opportunity Commission.

ECONOMIC REPORT

by Cecilia Conrad and Malinda Lindquist

What's Behind the Decline in Welfare Participation

According to the White House Council of Economic Advisers (CEA), the number of welfare beneficiaries fell by 20 percent during the first four years of the Clinton administration, the largest percentage decline in over 50 years. The CEA attributes the decrease in the welfare rolls both to the robust economy and to state welfare reform initiatives permitted by waivers granted by the Clinton administration.

Clearly, the number one factor contributing to the decline in welfare caseloads is low unemployment. The CEA estimates that low unemployment explains 40 percent of the decrease in caseload. As the unemployment rate decreases, more welfare recipients are able to find work and leave the welfare rolls and fewer new participants need to join the program. This explanation is supported by earlier statistics from the economic expansion of the late 1970s, when the percentage of the population receiving welfare benefits fell from 5.2 percent to 4.6 percent. Since 1993, the unemployment rate has fallen from 6.9 percent to 4.8 percent. This economic prosperity has contributed to the decline in the number of welfare recipients from more than 1.4 million in 1993 to just under 1.1 million in May 1997.

Nonetheless, not all of the reductions in the welfare caseload can be explained by the performance of the U.S. economy. The number of welfare recipients is also affected by the program's eligibility requirements and by the relative generosity or meagerness of its benefits. Again, statistics from an earlier decade bear this out. During the 1981-82 recession, unemployment rates rose from 7.6 percent to 9.7 percent and the number of persons living in poor, female-headed households (the population most likely to be eligible for welfare) increased, but the number of welfare recipients decreased. This anomaly largely resulted from the budget cuts and policy shifts in the 1981 Omnibus Budget Reconciliation Act (OBRA) promulgated by President **RONALD REAGAN**. OBRA tightened eligibility requirements for the Aid to Families with Dependent Children (AFDC) program and forced a large number of families off the program despite the growth of poverty.

The CEA report argues that policy changes in the AFDC program implemented by the states and sanctioned by the Department of Health and Human Services (HHS) also account for the decline in the number of beneficiaries. Although AFDC was administered by the states, the federal government determined minimum eligibility requirements and imposed other limits on the state operation of the program. However, since 1962, the Secretary of the Department of Health, Education, and Welfare (now HHS) has had the authority to waive some of these requirements for states that propose experimental programmatic changes designed to further the goals of AFDC. The Clinton administration has issued more of these waivers than any previous administration. Thirty-six states have received waivers to expand work and training requirements for recipients and to impose sanctions on those who fail to comply. Thirty-one states have received waivers to permit limits on the duration of welfare benefits. States have also received waivers to increase the amount of earnings an individual may receive and remain eligible for benefits, as well as authorization to limit benefits to families who have additional children while on AFDC. The CEA estimates that these waivers explain up to one-third of the decline in participation in the welfare program since 1993.

A review of the CEA's methodology by the Urban Institute suggests that may be an overestimate. The Urban Institute study, "Explaining the Recent Decline in Welfare Caseloads: Is the Council of Economic Advisers Right?," authored by **ALBERTO MARTINI** and **MICHAEL WISEMAN**, cites two major flaws in the CEA analysis. The CEA study counts a waiver as in effect from the date of federal approval. However, in many cases there was a considerable lag between the date of approval and the actual implementation of the innovations authorized by the waiver. For example, Texas received a major statewide waiver on March 22, 1996, but the program was not scheduled for implementation until fall 1996. Time limits on assistance were not implemented until 1997. The CEA argues that waivers alter the behavior of recipients (actual or potential) before implementation, but there is little evidence to support this theory.

Martini and Wiseman also question the interpretation of the CEA's results. The CEA contends that federal waivers were responsible for reducing the number of welfare participants. The Urban Institute review contends, to the contrary, that the data suggest that states with declining welfare caseloads were more likely to request waivers. According to Martini and Wiseman, an unanticipated drop in welfare recipients releases financial resources, which can then be used to

experiment with welfare reform, and thus creates a demand for federal waivers. Therefore, it is not clear whether federal waivers contributed to the reduction in welfare participation or whether the use of federal waivers resulted from the reduction in welfare participation.

For the Clinton administration, the CEA's findings are evidence that welfare reform is working. In remarks at a job training facility in St. Louis, Missouri, President **BILL CLINTON** proclaimed, "…the debate is over...We know now that welfare reform works." However, even if one accepts the CEA's interpretation of its statistics, the debate is only over if the sole measure of success is the number of welfare recipients. A reduction in caseloads should not be the only goal of welfare reform. Constructive welfare reform, as described by the Joint Center publication "Making Welfare Work," will not only help welfare recipients find employment in the short run, but will build capacity for self-support over the long run. While the robust economy presents opportunities to move more recipients from welfare to work, the real test of welfare reform will be what happens to the former recipients in the next economic recession.

Running in Place in 1996

According to data recently released by the U.S. Census Bureau, while certain portions of the African American population made significant economic progress in 1996, the remainder saw little improvement in their economic position. The biggest winners were black households located in the West, whose annual income swelled more than 25 percent from $23,416 in 1995 to $30,176 in 1996. Income also increased by nearly 8 percent among black households located in small metropolitan areas (where the population is under 1 million); their incomes rose $2,273 to $22,957 in 1996. Finally, the median household income of all black working women rose by 4.3 percent while that of year-round, full-time black male workers increased 6.3 percent.

The gap between the incomes of blacks and whites continued to close, albeit only slightly. In 1996, the income of black households was 66.2 percent of that of their white counterparts, up slightly from 65.7 percent the previous year. And while there was only a slight fluctuation in the overall median income of black households between 1995 ($22,393) and 1996 ($23,482), for the second straight year black household income remained above its 1989 high ($22,881) for the previous business cycle. The median income of black families (as distinct from households) also remained above its pre-recessionary level, although it dropped slightly from $26,737 in 1995 to $26,522 in 1996.

Unfortunately, the gap between the wealthiest and poorest black households continued to widen in 1996. The richest fifth of black households received a larger share of the black population's aggregate income than it did in 1995, while both the poorest segment and the middle-income group received slightly smaller shares. The richest fifth's share of aggregate income grew between these years from 49.6 to 50.7 percent, the poorest fifth declined from 3.2 to 3.1 percent, and the middle 60 percent declined from 47.2 to 46.2 percent.

A standard measure of income inequality is the Gini ratio. In a world of complete equality the Gini ratio would equal zero. As income equality grows, the Gini ratio increases from zero to one. In 1996, the Gini ratio rose among black households to .479, a higher value than in 1989 when it was .461 and the second highest value ever reported.

In 1996, income levels and poverty rates for black individuals improved modestly. Overall the poverty rate for blacks decreased slightly from 29.3 percent in 1995 to 28.4 percent in 1996, but over a quarter of all black persons continued to live below the poverty threshold (which for a family of three ranges from $12,273 to $12,641 depending on the number of children and adults present). While black female-headed households remained five times as likely as black married couple families to live in poverty, the percent of married couples living in poverty actually rose while the percent of female-headed households in poverty fell. The percent of poor married couple families increased 0.6 of a percentage point from 8.5 percent to 9.1 percent, while the percent of poor female-headed households decreased 1.4 percentage points, from 45.1 percent to 43.7 percent.

Although blacks made modest economic strides within the past year, they continue to have appreciably lower median incomes and significantly higher rates of poverty than their white and Asian American counterparts. Record-breaking unemployment rates, stable inflation, and steady economic growth in 1996 pushed those blacks with the highest incomes further ahead, but most African Americans were running in place. ■