Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. resume	Re: Joan F. Kessler (partial) (1 page)	07/1994	b(6)
002. resume	Re: Pamela Dean Walker (partial) (1 page)	03/1993	b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 20039

FOLDER TITLE:

Judicial Candidates

2013-0534-S
ry1594

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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March 14, 1994

VIA FEDERAL EXPRESS

Ms. Barbara Zalenko
Assistant to the First Lady
Old Executive Office Building
Room 100
Washington, D.C. 20500

Dear Ms. Zalenko:

Martha Saenz and I worked together in the Clinton primary and general election campaigns in Montgomery County, Maryland, and Martha suggested that you would be the appropriate person to contact to ask that my application for a federal judgeship be brought to the personal attention of the First Lady (copy enclosed).

Hillary Rodham and I first became acquainted nearly 22 years ago when we worked in the same office at the Watergate on the McGovern campaign's voter registration drive. She introduced me to Bill Clinton at the time, and I stayed in contact with her when I contributed to Bill Clinton's early campaigns for Congress and State Attorney General. We renewed our ties at various fund-raising receptions during the Clinton campaign in 1991-92.

I am sure the First Lady would want to know that I am seriously interested in the vacant judgeship on the United States Court of Appeals for the Federal Circuit. The First Lady would know that my philosophy is fully consistent with the President's and hers, and that I would be a credit to the Clinton Administration if I were selected as a federal judge. I would appreciate your passing the enclosed packet on to the First Lady.

Very truly yours,

Joseph D. Gebhardt

Joseph D. Gebhardt

JDG/vsh
Enclosures (as noted)

Zalenko.309

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March 14, 1994

VIA FEDERAL EXPRESS

First Lady Hillary Rodham Clinton
Old Executive Office Building
Room 100
Washington, D.C. 20500

Dear Mrs. Clinton:

I hope you are aware by now that I have applied for the vacant judgeship on the United States Court of Appeals for the Federal Circuit. This important judgeship is something I really want to do. Materials pertinent to my application are enclosed for your reference.

I am very proud to have been an early supporter, working for and contributing to the Clinton campaign. The inauguration celebrations were one of the great joys of my life. I am strongly in the President's and your corner, especially in difficult times. As I see it, it was a tough fight for an outstanding Democratic candidate like Bill Clinton to win the White House, it will be tough to keep it, and that's why his key supporters must never waiver. I came to be a strong supporter of President Clinton because initially you impressed me 22 years ago when we worked together at the Watergate in the McGovern campaign and at that time you introduced me to Bill Clinton, who likewise impressed me. A year or so later, you and I both worked on the Nixon impeachment in different capacities. And when you went to Arkansas, I contributed to the early Clinton campaigns for Congress and State Attorney General. I think you knew I would always be there when Bill Clinton made his run for President.

My involvement in the Clinton campaign was both at the national level as a member of the Washington Steering Committee (fund-raising) and at the local level as a leader in the Montgomery County, Maryland campaign after the primary. I saw you and the President at various campaign fund-raisers and rallies in 1991 and 1992. Having been dismayed with our Clinton campaign in the Maryland primary, I asked Michael Novelli for a leadership role and he appointed me as chief strategist for the Montgomery County campaign for the pre-convention and general election periods. The result of our carefully planned, broad-based general election campaign was a 55%, 80,000 vote win in Montgomery County, helping to make Maryland the second most supportive state for Clinton/Gore (behind only Arkansas).

If selected for the federal judiciary, I would bring my best efforts to the job, and I would strive always to be a credit to the Clinton Administration. As you know, my philosophy is consistent with the President's and yours. My professional expertise is in employment law and civil rights, and federal employee appeals arising from the U.S. Merit Systems Protection Board (MSPB) are almost one-half of the Federal Circuit's caseload. (Last year, federal employee appeals were 42% of the Court's caseload.) As a Federal Circuit Judge, I believe I could make a significant contribution to the development of employment law, which is on the cutting edge of public policy and the law.

I hope you will actively support me. Please contact me if you have any questions, and I am available to meet with you to discuss this further if that is your wish.

And, please convey my best regards to the President.

Very truly yours,

Joe Gebhardt

Joseph D. Gebhardt

JDG/vsh
Enclosures (as noted)

PAUL S. SARBANES
MARYLAND

United States Senate

WASHINGTON, DC 20510-2002

January 26, 1994

Joseph D. Gebhardt, Esquire
Alexander, Gebhardt, Aponte & Marks
Lee Plaza, Suite 805
8601 Georgia Avenue
Silver Spring, MD 20910

Dear Joe:

Thank you for getting in touch with me about your interest in being considered for the position of Judge on the U.S. Court of Appeals for the Federal Circuit.

You have an impressive record as a lawyer and political activist. Your areas of specialty and experience in the Federal Circuit would bring significant strengths to this Court.

As you know, Senators do not play the same role with respect to nominations to Courts with national jurisdiction such as the Court of Appeals for the Federal Circuit that they do with respect to District Court Judges. However, in order to be helpful in this regard, I have written to the White House to recommend consideration of your qualifications for this Court.

I hope this will prove helpful to you and appreciate your interest in this important judicial position.

With best regards,

Sincerely,

Paul

Paul S. Sarbanes
United States Senator

PSS/fmk

RECEIVED
JAN 28 1994
ALEXANDER, GEBHARDT,
APONTE & MARKS

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-4396

March 7, 1994

Honorable Victoria L. Radd
Associate Counsel to the President
The White House
Room 128 - Old Executive Office Building
Washington, D.C. 20500

Dear Ms. Radd:

I understand that Joseph D. Gebhardt, Esquire, of the District of Columbia Bar, may be under consideration for appointment as a Judge on the United States Court of Appeals for the Federal Circuit. He would, in my opinion, be a superb addition to that Bench.

I have known Mr. Gebhardt for many years politically and have long admired the leadership role he has taken in causes important to the community, particularly on behalf of the disadvantaged. His outstanding reputation as a practitioner of Federal Employment Law is also well known to me.

Recently as a Federal Judge I have had occasion to observe Mr. Gebhardt's professional demeanor and it is of surpassing quality. His knowledge of employment law is encyclopedic, his mastery of courtroom presentation of the highest order.

A considerable percentage of the case load of the Federal Circuit, I understand, deals with employment law. I am not aware that there is anyone currently on that Court whose background in this area could match Mr. Gebhardt's. Certainly someone with his skills would add greatly to the stature of that Court.

I should thus like very much to endorse his possible appointment to this important office.

Sincerely yours,

Peter J. Messitte

PJM:ras

MAURICE A. SISLEN, M.D.
GILBERT M. EISNER, M.D.
RICHARD M. KAUFMAN, M.D.
JAMES N. RAMEY, M.D.
MORTON A. KAVALIER, M.D.
CAROLE E. HORN, M.D.
1145 - 19TH STREET, N.W. SUITE 605
WASHINGTON, D.C. 20036

TELEPHONE
296-0670

March 11, 1994

President and Mrs. Bill Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President and Mrs. Clinton:

I am writing to support the application of Joseph D. Gebhardt for the vacant judgeship on the United States Court of Appeals for the Federal Circuit. I have known Joe for 20 years, working with him in Montgomery County politics. We most recently worked together on your campaign for President, as we were both on the Montgomery County Clinton Steering Committee. Joe is well known in Maryland politics as an intellectual, good government type. He has been the conscience of many political campaigns that we have worked on together. He has uniquely been a moral leader and a politically sensitive person at the same time.

As you know, my contribution to your campaign was involved with fund-raising and obtaining the medical community's support, and Joe was effective in working with me in those areas. He was the organizer and I was the moderator of the Clinton campaign's town meeting on national health care policy in Montgomery County during the general election. This town meeting, attended by 75-100 people in Silver Spring, was not only stimulating, but also instrumental in gaining public support for your campaign (we won the County with 55% of the vote).

Joe Gebhardt has a steadfast commitment to public service and is respected in the political community for his political sophistication and intellectual leadership. He has excellent legal credentials and is very well respected by my friends and patients in the legal community. He has judicial temperament (which is why he did not become a doctor). I think he would make an excellent Federal Judge and an excellent Clinton Administration appointee.

Sincerely,

Dr. James N. Ramey

James N. Ramey, M.D.
5624 Bent Branch Road
Bethesda, Maryland 20816

cc: Victoria L. Radd, Esquire
Joel I. Klein, Esquire
Eleanor Dean Acheson, Esquire

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RESUME OF JOSEPH D. GEBHARDT

EMPLOYMENT:

Partner, **Alexander, Gebhardt, Aponte & Marks,** Silver Spring, Maryland and Washington, D.C., 1991 - present. Heads the firm's Employment and Labor Law practice, advocating cases in federal and state courts and before the Merit Systems Protection Board, Equal Employment Opportunity Commission and state and local human rights commissions; supervises the work of five attorneys. Is also member of the firm's Litigation Group where his practice concentrates on employment law, civil rights, state and local government law, banking law, and appellate and general civil litigation in federal and state courts. From fall 1992 through the end of 1993, served as head of the firm's Litigation Group, which grew from three to fifteen attorneys during that time. Has the highest lawyer's rating (*av*) from Martindale-Hubbell, Inc. Current or recent clients include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, a state administrative agency, a county government, a major national bank, corporations, non-profit organizations, and individuals, particularly federal government and private sector employees who bring employment cases. This multicultural, minority-owned firm, with 32 lawyers, is the successor to **Gartrell, Alexander & Gebhardt**.

Managing Attorney, **Gebhardt & Associates, P.C.**, Washington, D.C., 1990-91. Founded and was lead attorney for this firm specializing in employment law and general civil litigation. Supervised three attorneys and one law clerk. Litigated and negotiated a number of successful cases representing federal government employees against their agencies. The firm also participated in a joint venture with **Gartrell & Alexander** in studying the minority-female-disabled contracting program for Montgomery County, Maryland. (Gebhardt & Associates, P.C. merged with Gartrell & Alexander in early 1991.)

Partner, **Dobrovir & Gebhardt**, Washington, D.C., 1980-90. Practice concentrated on civil, administrative and appellate litigation in public interest law, civil and constitutional rights, federal employment and discrimination law, environmental and consumer rights, freedom of information and privacy, defamation and negligence, native claims, and voting rights. Was an associate with this firm (which also went by the names of Dobrovir/Oakes/Gebhardt/Scull and Dobrovir, Oakes & Gebhardt), 1973-80.

Staff Attorney, **Center on Corporate Responsibility**, 1973. Worked for Terry Lenzner on litigation and investigations.

Staff Counsel, **Democratic National Committee**, 1972. Worked for Anne Wexler on voter registration and election day law.

Counsel, **Center for Political Reform**, 1971-72. Worked for Ken Bode on litigation and legislative drafting.

EMPLOYMENT CONTINUED:
Summer Intern, **U.S. Department of Housing and Urban Development**, Chicago Regional Office, 1970. Worked for Frank Fisher and Elmer Binford.

Summer Intern, Commission on Party Structure and Delegate Selection, **Democratic National Committee**, 1969. Worked for Ken Bode and Eli Segal.

BAR ADMISSIONS:
Admitted to practice law: **District of Columbia**, 1972; **Maryland**, 1981; also U.S. District Court, District of Columbia, 1972; U.S. Supreme Court, 1977; U.S. Court of Appeals for the District of Columbia, 1977; U.S. Court of Appeals, Third Circuit, 1978; U.S. Court of Appeals, Federal Circuit, 1982; U.S. Court of Appeals, Ninth Circuit, 1984; U.S. District Court, Maryland, 1985.

EDUCATION:
Harvard Law School, J.D., 1971; **Cornell College**, Iowa, B.A., *magna cum laude,* 1968 (*Phi Beta Kappa*); Public high schools, Arlington Heights, Illinois; Parochial elementary schools, Mt. Prospect, Illinois, and Bogota, New Jersey.

OFFICE:
Interstate Commission on the Potomac River Basin - Chairman, 1982-83; Vice Chairman, 1981-82; Federal Commissioner appointed by the President, 1978-83.

RELEVANT PUBLICATION:
BLUEPRINT FOR CIVIL SERVICE REFORM, a Fund for Constitutional Government report, 1976, with W. Dobrovir, T. Devine.

BAR ASSOCIATIONS:
American Bar Association; Federal Bar Association; Metropolitan Washington Employment Lawyers Association.

OTHER SERVICE:
Member, National Association for the Advancement of Colored People, Montgomery County, Maryland Branch, 1986-present; Vice President, Potomac Soccer Association, 1993-; Chairman, Advisory Council, Center for the Study of Race and Ethnic Relations, George Mason University, 1988-90; Youth soccer coach, Potomac Soccer Association and Montgomery Soccer Inc., 1985-92; Member, two county government study commissions in Montgomery County, Maryland; President, Glen Mar Park Community Association, 1977-79.

PERSONAL:
Born New York City, July 14, 1946. Married to Susan Karpel Gebhardt; two children, Daniel 20 and Sara 17.

Supplemental Page

PARTY OFFICES/SERVICE:
Executive Committee Member and Deputy Campaign Manager, Clinton/Gore Campaign, Montgomery County, Maryland, 1992; Member, both Washington Steering Committee and Montgomery County Steering Committee, Clinton for President, 1991-92; Elected Member, Montgomery County Democratic Central Committee and Maryland State Democratic Central Committee, 1986-90; Campaign Manager, Democratic County Council Candidates, Montgomery County, 1982; Legal Staff, Carter/Mondale National Campaign, 1980; Democratic Nominee, Maryland State Senate, 1978; Member, National Democratic Commission on Presidential Nomination and Party Structure, 1976-78; Elected Delegate, 1976 Democratic National Convention (from Maryland); Member, Rules Committee of 1976 Democratic National Convention; Elected Delegate, 1974 Democratic Mid-Term Conference (from Maryland).

OTHER PUBLICATIONS:
THE OFFENSES OF RICHARD M. NIXON: A GUIDE TO HIS IMPEACHABLE CRIMES (Dell Manor paperback 1974, Quadrangle/New York Times Book Co. 1973) with W. Dobrovir, S. Buffone, A. Oakes; The Law and Politics of Democratic Party Reform (Harvard Law School Bulletin, 1973); The Machinery Broke Down; Errors, Confusion Mark Voting Process (AFL-CIO's Viewpoint, 1972).

HONORS:
Who's Who in American Politics, 1975-; Outstanding Young Man of America, 1978; Who's Who in American Colleges and Universities, 1968.

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THINKPIECE ON A FEDERAL CIRCUIT JUDGESHIP

JOSEPH D. GEBHARDT

March 11, 1994

I have applied to the White House for consideration for the vacant judgeship on the United States Court of Appeals for the Federal Circuit. (See the enclosed letter of interest, resume, and supporting materials.) Not only do I see such a judgeship as an honor and privilege, but it would be the kind of engaging challenge that would enable me to make a significant contribution to public service and to the development of the law at this stage of my career and well into the future.

I believe I could make an important difference as a Judge on the Federal Circuit, principally because of my extensive background before this Court and its lower tribunal, the U.S. Merit Systems Protection Board (MSPB), where I have been active in federal employment law and policy for the past two decades. To my knowledge, none of the sitting Judges on the Court have a strong background in employment law issues from their previous experience in practice, yet almost one-half of the Court's caseload consists of federal employee appeals from the MSPB.

I have argued several cases to the Federal Circuit, and I regularly attend its Judicial Conferences. The employment issues in my cases before the Court have involved reduction-in-force, attorney fees, and within-grade increases; two of these cases were successful while another prompted a stirring dissent which the government agency voluntarily chose to comply with in the future. See Wilburn v. Department of Transportation, 757 F.2d 260 (Fed. Cir. 1985); Berry v. U.S. Postal Service, No. 92-3541 (Fed. Cir. August 9, 1993) (Copies of both enclosed); and Marques v. Department of Health and Human Services.

I have also presented cases to the District of Columbia Circuit involving reduction-in-force and equal employment opportunity issues; with the former case prevailing. See Horne v. Merit Systems Protection Board, 684 F.2d 155 (D.C. Cir. 1982). In addition, I assisted in preparing *amicus curiae* briefs to the Supreme Court which contributed to favorable decisions for a dismissed school teacher, see Givhan v. Western Line Consolidated School District, 439 U.S. 410, 99 S. Ct. 693, 58 L. Ed. 2d 619 (1979), and for homeowners in Hawaii who wished to purchase the land on which their homes are built. See Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321, 81 L. Ed. 2d 186 (1984).

My work has also included representing federal employees and unions in every type of employment and retirement issue decided by the MSPB, the body whose appeals are decided by the Federal Circuit. Employee removals based on misconduct and unacceptable performance, reductions-in-force, discrimination issues, suspensions, downgrades, the rights of Federal Administrative Law Judges, denials of within-grade increases, disability retirement, and law enforcement officer retirement are among the cases I have presented to the MSPB. I have argued nearly every type of discrimination case, including sex, race, national origin, age, handicapped and religion, to the U.S. Equal Employment Opportunity Commission (EEOC), many other federal agencies, as well as to the U.S. District Courts.

My keen, long-standing interest in federal personnel policy and the rights of federal employees began in 1976, prior to President Carter's election, when I proposed comprehensive civil service reform for the federal government in a foundation study, Blueprint for Civil Service Reform. I then worked with the Carter Administration on civil service reform, testified before Congress, and helped with the enactment of the Civil Service Reform Act of 1978. Since the mid-1970's, I have been proud to be one of the nation's capital's leading civil service and discrimination lawyers.

At my present firm, which I joined three years ago, I have enjoyed learning new areas of the law with which I was previously unfamiliar, including banking and financial institution law and the constitutionality of minority preference programs in contracting. It has been invigorating to work for new types of clients such as NationsBank, the Federal Deposit Insurance Corporation (FDIC), the Resolution Trust Corporation (RTC), and the Washington Suburban Sanitary Commission (WSSC) in these new areas of the law. I am convinced that I would thoroughly enjoy the new challenges associated with the Federal Circuit's other subject matters besides my specialty, federal employment law.

I have substantive experience with native claims (specifically Native Hawaiian rights) and some familiarity with government contracts and other types of claims, as well as a strong interest in international law. While my practice has not focused on patent and trademark law, I frequently deal with scientific, medical, and technical subjects which have to be properly analyzed and succinctly advocated before a court or administrative agency. For example, I currently represent a senior, Hispanic federal employee at the Department of Transportation whose work involves oil pipeline safety and hazardous materials, in addition to an employee of the Department of Health and Human Services who is experiencing several work-related illnesses where medical proof is necessary for obtaining workmen's compensation benefits. I have also successfully represented the 31-member Chemists Committee at the Food and Drug Administration (FDA) and a senior level FDA pharmacologist, an engineer at the National Aeronautical and Space Administration (NASA) whose disabling Multiple Sclerosis required reasonable accommodations in the work place, and a high ranking government nutritionist in a race discrimination complaint against the Department of Agriculture. In all of these cases, I have had to master the scientific, medical, or technical subject matter so that my clients would have the benefit of proper interpretation of federal personnel or discrimination laws and of persuasive advocacy for their causes.

Excerpt Pertaining to the
U.S. Court of Appeals for the Federal Circuit

"Appeals Filed, Terminated and Pending during the One Year Period ending September 30, 1993"

Published by the

Administrative Office of the U.S. Courts

For Fiscal Year 1993 -- October 1, 1992 to September 30, 1993:

Federal Circuit Appeals from	No.	%
Boards of Contract Appeals	91	5%
Court of International Trade	61	4%
Court of Federal Claims	221	13%
Court of Veterans Appeals	138	8%
District Courts	338	20%
International Trade Commission	8	
Merit Systems Protection Board	713	42%
Office of Personnel Management	1	
Patent and Trademark	105	6%
Writs of Mandamus	32	2%
TOTAL	1,708	100%

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[The following contains excerpts from the firm resume of ALEXANDER, GEBHARDT, APONTE & MARKS]

History, Origins and Philosophy

ALEXANDER, GEBHARDT, APONTE & MARKS (AGAM) is the largest minority-owned law firm in the Mid-Atlantic region and one of the largest multicultural, multiethnic firms in the country. The founding and enduring philosophy of the firm has been to forge a unique partnership representing diverse viewpoints and in-depth knowledge to provide quality counsel and legal services to a broad range of clients.

With "*Excellence on Demand*" as its motto, ALEXANDER, GEBHARDT, APONTE & MARKS takes pride in its ability to provide the highest quality services at the lowest possible cost. We have consistently sought to exceed expectations and we believe that we are doing that. The firm was recently inducted into Martindale-Hubbell's® *Bar Register of Preeminent Lawyers.*

The firm was founded in 1987 with two partners and a staff of one. Today, in its U. S. offices alone, the firm numbers 35 lawyers and a support staff of 24, including paralegals and clerical assistants.

Headquartered adjacent to the nation's capital, the firm has offices in Silver Spring, Maryland; Washington, D.C.; and New York City. In addition, the firm has two affiliated offices in Mexico — Mexico City and Monterrey — and three affiliated offices in Europe — Vienna, Austria; Moscow, Russia; and Budapest, Hungary. Currently, the firm is comprised of seven partners, four "Of Counsel," 23 associates, one resident foreign associate and twelve affiliated attorneys. The strength of the firm's commitment to its vision is reflected in the diversity and wealth of experience and talent of its attorneys, who include African-Americans, Caucasians, Chinese-Americans, Cuban-Americans, East Indians, Korean-Americans, Mexican-Americans, Puerto Ricans, Mexicans and Austrians. Among the jurisdictions in which the firm's attorneys are admitted to practice are the District of Columbia and the States of Maryland, New York, Virginia, California, Connecticut, Florida, Missouri, New Jersey, New Mexico, Pennsylvania, and Texas. The firm's attorneys also are admitted to practice before courts in Mexico, Austria, Russia, and Hungary. Languages spoken by attorneys in the firm's U. S. offices include English, Farsi (Persian), French, German, Italian, Japanese, Korean, Mandarin (Chinese), and Spanish.

AGAM's partners and associates are graduates of top ranked colleges and law schools, including Columbia College and Columbia University School of Law; Cornell University; Georgetown University Law Center; Hampton Institute; Harvard University and Harvard Law School; Howard University; Marshall-Wythe School of Law, College of William & Mary; Notre Dame Law School; New York University; Princeton University; University of Bonn (Germany); University of California, Berkeley (Boalt Hall); University of Vienna (Austria); and Yale College. The credentials of the attorneys of the firm are equally impressive: four of the firm's attorneys graduated *magna cum laude*, three were *cum laude*, three were *Phi Beta Kappa*, five were members of the editorial boards of law school publications, and two were editors in chief of their schools' law reviews. White House Fellowships and Japan Society Leadership Fellowships are among the honors bestowed on members of the firm. Several of the attorneys were judicial law clerks, and each of the firm's associates was carefully selected and actively recruited.

With this core group of extremely able attorneys, the firm has established a solid foundation for consistently providing quality legal services and representation that meet the standards of the most exacting client. Unencumbered by massive overhead and rigid fee schedules, **ALEXANDER, GEBHARDT, APONTE & MARKS** is able to attain the best possible result in the shortest time feasible at the least cost to the client. Fees and a variety of billing options and estimates are discussed at the outset, and as the work progresses bills are explained and documented. With the objective of containing legal costs, whenever appropriate, firm members work closely with clients' in-house counsel and staff. Clients are kept fully informed of developments and progress.

With a practice characterized by big firm sophistication and small firm responsiveness, **ALEXANDER, GEBHARDT, APONTE & MARKS** takes pride in providing superior legal services to a wide spectrum of clients, including corporations, partnerships, and individuals.

Organization

The firm is organized around three primary groups: Litigation, Corporate, and Public Law. A free exchange of ideas and information among our organizational groups generates the best solutions to clients' problems. We believe that creative and effective representation requires an in-depth understanding of our clients' markets, products, personnel, and strengths and weaknesses. With this philosophy and a proven record of successes, **ALEXANDER, GEBHARDT, APONTE & MARKS** continues to increase its client base.

The areas of practice include:

- Appellate Litigation
- Bankruptcy
- Campaign and Election Law
- Civil Litigation
- Communications, Entertainment, and Sports
- Corporate and Securities
- Employee Benefits
- Employment and Labor
- Environmental
- Government Contracts
- Immigration and Nationality
- International Law
- Legislative and Administrative Counseling
- Public Finance
- Real Estate
- Taxation

Throughout the years, **ALEXANDER, GEBHARDT, APONTE & MARKS** has remained intensely and personally devoted to its clients and its vision. The firm's growth is bolstered by both our inherent and cultivated abilities to understand our clients' needs and the zeal and tenacity to provide cost-effective solutions to their legal problems. AGAM has matured into a firm with national — and, in some areas, international — reach, and an ongoing awareness that our future will be measured by the success we achieve for our clients. As we continue to grow and expand our horizons, we will be ever mindful of our motto — *Excellence on Demand.*

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<u>EMPLOYMENT AND LABOR LAW</u>: This specialized area of the firm's practice includes employment related litigation, as well as counseling regarding employment and labor problems arising under a variety of Federal and state statutes and involving practice before Federal and state courts, administrative agencies, and arbitrators. The substantive areas of related law include the prerogatives and legal responsibilities of employers, the rights of Federal and state employees, equal opportunity obligations and requirements, labor-management relations, occupational safety and health, coal mine safety, and attorney's fees awards.

ALEXANDER, GEBHARDT, APONTE & MARKS advises and represents corporations and other institutional clients on the full range of employer-employee relations — including personnel actions, employment agreements, termination and severance agreements, non-competition clauses, affirmative action plans, and employment discrimination matters — before administrative agencies and Federal and state courts, as well as workers' compensation claims and contract compliance matters before the U. S. Department of Labor. We review and revise Employee Handbooks and Corporate Policies and Procedures Manuals for our clients. The firm also counsels managers and personnel directors on organization restructuring proposals and proposed personnel actions, and responds to miscellaneous requests for guidance to ensure that proposed decisions are consistent with applicable law and are defensible in the event of an employee challenge. We also represent employees, applicants, and retirees in every type of employment or discrimination matter before the U. S. Equal Employment Opportunity Commission, the Merit Systems Protection Board, state and local administrative agencies, and Federal and state courts.

The firm defends against all types of discrimination complaints and civil actions, whether filed before a local or state human rights commission, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Labor, Federal district court, or state trial court. Cases are handled in the United States District Courts for the District of Columbia, District of Maryland, Eastern District of Virginia, and other jurisdictions. The firm also submits briefs and presents oral arguments in Federal and state appellate courts in response to decisions of trial courts and administrative agencies.

Our attorneys represent clients on employment-related issues in jury trials, bench trials, and administrative hearings, and file and defend against motions for summary judgments (which are becoming increasingly common in employment litigation). The firm's trial experience extends to all aspects of discovery, motions practice, and pre-trial procedures. In discovery, in addition to interviewing corporate officials and witnesses, **ALEXANDER, GEBHARDT, APONTE & MARKS** diligently searches for all relevant facts through depositions, interrogatories, document requests, requests for admissions, and on-site inspections. Familiarity with the use of statistics in employment cases enables the firm to compile all pertinent statistics for presentation to the trier of fact. Our clients are advised on settlement possibilities during the course of proceedings, and our extensive experience in both employment and tort litigation frequently enables us to achieve favorable settlements for our clients. In many cases, our attorneys are able to achieve settlement before a lawsuit is filed.

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The following highlights some of the unique capabilities and significant activities of the firm in the areas of employment and labor law:

- Conducting appellate litigation before the U. S. Court of Appeals for the Federal Circuit involving an award of attorney's fees in an employment case against a Federal government agency.

- Representing a corporate client in an appeal before the Maryland Court of Special Appeals where the corporation is challenging a purported compensation agreement with a former contractor.

- Defending a corporation and its president before a local Human Rights Commission where a former employee has filed a sexual harassment charge.

- Defending a high-ranking civilian employee of the U. S. Army in his "Whistleblower" complaint before the Merit Systems Protection Board.

- Challenging a Federal agency's exclusion of a high-ranking Hispanic-American from the Senior Executive Service (SES) even though he previously served in the SES.

- Advocating, in the U. S. District Court for the Eastern District of Virginia, the discrimination claims of a large group of African-American employees in a class action against their employer.

- The firm has also completed complex employment-related litigation in two jurisdictions, the U. S. District Court for the District of Maryland and a local Florida court. A settlement was achieved permitting our corporate client to terminate an employment contract and merger agreement.

- The firm has extensive experience with the following laws of particular note in the employment area, related implementing regulations, and the pertinent case law: Family and Medical Leave Act; Americans with Disabilities Act; Civil Rights Act of 1991; Equal Employment Opportunity Amendments to the Civil Rights Act of 1964; Age Discrimination in Employment Act; sexual harassment law; wrongful discharge law; attorney's fee awards; worker's compensation; unemployment compensation; rules of the Office of Federal Contracts Compliance Program, U.S. Department of Labor; Civil Service Reform Act; and the Rehabilitation Act.

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JOSEPH D. GEBHARDT, born New York, New York, July 14, 1946. **Bar Admissions:** 1972, District of Columbia; 1981, Maryland. **Court Admissions:** 1972, U. S. District Court for the District of Columbia; 1977, U. S. Supreme Court and U. S. Court of Appeals for the District of Columbia Circuit; 1978, U. S. Court of Appeals for the Third Circuit; 1982, U. S. Court of Appeals for the Federal Circuit; 1984, U. S. Court of Appeals for the Ninth Circuit; 1985, U. S. District Court for the District of Maryland. **Education:** Cornell College (B.A., *magna cum laude*, 1968), *Phi Beta Kappa*; Harvard Law School (J.D., 1971). **Professional:** Interstate Commission on the Potomac River Basin (Chairman, 1982-83; Federal Commissioner, 1978-83); Center on Corporate Responsibility (Staff Attorney, 1973); Democratic National Committee (Staff Attorney, 1972); Center for Political Reform (Staff Attorney, 1971-72). **Professional Associations and Community Activities:** American Bar Association; Federal Bar Association; Metropolitan Washington Employment Lawyers Association; Maryland State Bar Association. **Concentration**: Civil and Appellate Litigation; Employment; Civil Rights.

CORRECTED BRIEF OF PETITIONER MARLEINA BERRY AND APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

92-3541

MARLEINA BERRY,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

PETITION FOR REVIEW OF A DECISION OF THE
MERIT SYSTEMS PROTECTION BOARD

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November 25, 1992

Attorney for Petitioner

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

MARLEINA BERRY v. UNITED STATES POSTAL SERVICE
No. 92-3541

Counsel for the petitioner, Marleina Berry, certifies the following:

1. The full name of every party or amicus represented by me is: Marleina Berry.

2. The name of the real party in interest represented by me is: Marleina Berry.

3. The parent companies, subsidiaries, and affiliates that have issued shares to the public, of the party or amicus curiae represented by me are: None.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected in this Court are: (a) the law firm of Alexander, Gebhardt, Aponte & Marks (formerly Gartrell, Alexander & Gebhardt), (b) undersigned Joseph D. Gebhardt, Counsel of Record, and (c) Gregory E. Gaskins.

November 25, 1992
Date

Joseph D. Gebhardt
JOSEPH D. GEBHARDT
Counsel of Record for Petitioner

STATEMENT OF RELATED CASES

No other appeal in or from the same proceeding in the MSPB was previously before this or any other appellate court under the same or similar title. Counsel has no knowledge of any case pending in this or any other court that will directly affect or be directly affected by this Court's decision in the pending appeal.

STATEMENT OF JURISDICTION

The statutory basis for the jurisdiction of the Merit Systems Protection Board ("MSPB") over petitioner's appeal below is 5 U.S.C. §7701. The jurisdiction of this Court over petitioner's appeal herein is based upon 5 U.S.C. §7703(a)(1). This appeal is timely because it was filed on August 3, 1992, which was within 30 days of the MSPB's final order denying petitioner's petition for review, dated July 15, 1992. See 5 U.S.C. §7703(b)(1).

STATEMENT OF ISSUE

Whether the Merit Systems Protection Board ("MSPB") erred, acting not in accordance with law and abusing its discretion, when it held that the appellant was not the "prevailing party" for purposes of an attorney fees' award, even though the appellant obtained the substantial relief sought in her MSPB appeal and that relief was "causally related, in a significant sense" to her appeal?

STATEMENT OF THE CASE

Nature of the Case

Petitioner is a federal government employee who appeals to this Court pursuant to 5 U.S.C. §7703. The issue for decision here is whether the employee was the "prevailing party" in her Merit Systems Protection Board ("MSPB") appeal. The employee obtained the substantial relief sought in her appeal when, just one business day before the scheduled MSPB hearing and following her counsel's probing discovery, the agency rescinded its adverse action against her and withdrew from the MSPB proceedings. The MSPB thereupon dismissed the appeal but refused to grant an award of attorney fees to the employee, accepting the agency's contention that she was not the "prevailing party." Petitioner submits that the MSPB decision at issue is not in accordance with law, i.e., 5 U.S.C. § 7701(g)(1) as interpreted by this Court in Cuthbertson v. Merit Systems Protection Board, 784 F.2d 370 (Fed. Cir. 1986), and also is an abuse of discretion. See 5 U.S.C. §7703(c)(1).

Course of Proceedings Below

The petitioner/appellant, Ms. Marleina Berry,[1] was placed by her employer, the United States Postal Service ("agency"), on unpaid, enforced leave effective May 13, 1991, on the ground she was unfit for duty. A.17. On May 30, 1991, appellant filed a timely appeal with the MSPB, challenging the agency's

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[1] We refer to Ms. Berry as "the appellant" throughout this Brief.

adverse action, arguing that she was fit for duty, and seeking revocation of the enforced leave and return to duty. A.18-21. The MSPB Judge assigned a hearing date of September 30, 1991. Prior to the scheduled hearing, appellant's counsel and agency counsel engaged in probing discovery as authorized by MSPB regulations. A.37. The appellant propounded and answered interrogatories, the agency responded to interrogatories, and both parties' counsel took the deposition testimony of the physicians who were to testify at the upcoming hearing. Id. The appellant and the agency exchanged prehearing submissions.

On September 27, 1991, one business day before the scheduled MSPB hearing, the agency rescinded the unpaid, enforced leave action against the appellant and granted her full back pay, annual leave, sick leave, and other benefits retroactive to May 13, 1991. A.22-24. Accordingly, the scheduled MSPB hearing was not held.

On October 4, 1991, the MSPB Judge dismissed the appeal because the appellant had achieved the relief she sought, i.e., that "the agency has totally rescinded the action" and "retroactively restored the appellant's leave." A.24. Thus, the MSPB no longer had jurisdiction over the appeal. Id.

On November 26, 1991, the appellant filed a timely motion for attorney fees with the MSPB Judge. The motion argued that: (1) the appellant is the "prevailing party;" (2) an attorney fees' award is "warranted in the interest of justice;" and (3) the fees requested are reasonable. A.34-40. On December 31, 1991, the agency filed its opposition to appellant's motion for attorney fees.

On March 27, 1992, the MSPB Judge issued his Initial Decision denying attorney fees, holding that the appellant was not the "prevailing party." A.4-7. The Judge did not reach the other two issues presented in appellant's motion. __See id__.

On May 1, 1992, the appellant filed a timely petition for review with the Board, challenging the Initial Decision denying attorney fees. The agency filed an opposition to the petition.

On July 15, 1992, the full MSPB issued a final Order denying appellant's petition for review and making final the Initial Decision denying attorney fees. A.8-9.

On August 3, 1992, the appellant filed a timely Notice of Appeal contesting the Board's final Order in this Court. Jurisdiction of this Court rests upon 5 U.S.C. §7703(a)(1).

Disposition in the Court Below

On March 27, 1992, the MSPB, through an Administrative Judge, issued an Initial Decision denying appellant's motion for an attorney fees' award. A.4-7. The MSPB Judge held that the appellant was not the "prevailing party" in the appeal on the ground that "the relief obtained by appellant was not 'causally related, in a significant sense,' to her appeal to the Board." A.6. On July 15, 1992, the full MSPB issued a final Order denying appellant's petition for review and making final the Initial Decision denying attorney fees. A.8-9.

Statement of the Facts

The appellant, Ms. Marleina Berry, is the country's first Black, female postal inspector. The United States Postal Service ("agency") hired her for this law enforcement officer position 21 years ago, and she has served as a postal inspector ever since. An impartial physician who has examined the appellant at the request of another government agency has described Ms. Berry as follows:

> In general, this woman is an impressively articulate woman who has overcome many obstacles in her life, and these achievements have occurred because she is assertive, independent and spirited. At the same time, these qualities have caused aggravation or dissention with her coworkers, especially when sexual or racial elements have been involved. Some of her complaints were substantiated in her EEO complaint, but probably many of the issues are ones which are never put on report but are part of the day to day existence in the world in which we live.[2]

This case is part of a long-running employment discrimination battle between the appellant and her agency. The appellant bumped smack into her agency's "glass ceiling" in the 1980's as postal inspectors junior to her and trained by her received promotions that were denied to her. She protested by filing discrimination complaints with her agency. The agency responded with hard-hitting retaliation, harassing and provoking her. The agency's provocations succeeded, and the

[2] Letter to Willard Galery, U.S. Department of Labor, OWCP, from Martin G. Allen, M.D., Clinical Professor, Georgetown University School of Medicine, dated September 18, 1991, at 5-6; A.32-33.

agency then proceeded to paint the appellant as mentally unstable and unfit for duty.

These were the issues presented to the Administrative Judge of the Merit Systems Protection Board ("MSPB") below. The agency, in a deft maneuver against the appellant commenced nearly two years ago, had placed her on unpaid, enforced leave indefinitely, contending that she was mentally unfit for duty as a postal inspector. She appealed to the MSPB, pleading discrimination in her petition for appeal:

> I have filed two (2) EEO complaints with the agency, alleging race and sex discrimination. I am a Black female. I believe that my termination is the product of reprisal for having filed these complaints as well as continuing race and sex discrimination.

A.20.[3]

Following probing discovery initiated by appellant's counsel, the agency concluded that its action against the appellant could not be sustained. One business day before the scheduled MSPB hearing, the agency rescinded its unpaid, enforced leave action and withdrew from the MSPB proceedings. A.22-24. The agency's tactic cleverly deprived the appellant of a full fact-finding hearing on her discrimination allegations.

After the MSPB had dismissed the appeal and the appellant

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[3] The psychiatrist who has treated the appellant regularly for several years, John W. McFarland, M.D., reported that "Ms. Berry suffers from post-traumatic stress syndrome. This trauma has been stirred through her experience of racial and sexual discrimination in her work as a postal inspector." A.15-16.

then had filed her motion for attorney fees, the agency punitively opposed the motion and offered a deceptive post hoc explanation that it "rescinded the appeal to avoid the unnecessary waste of judicial [sic] resources...." A.41. It is noteworthy that the unnecessary waste of the MSPB's resources had not been a previous concern of the agency. With heightened audacity, the agency's attorney fees' opposition again painted the appellant with a dirty brush as mentally unstable -- the very point the agency knew it could not prove at an MSPB hearing.

The MSPB Judge, who did not have the benefit of a hearing and full airing of all the facts, simply adopted the agency's attorney fees' opposition carte blanche. In denying appellant's motion for attorney fees, the Judge neglected to perform his duty of conducting a careful, pragmatic inquiry into the facts of the case that were germane to decision of the motion. See Cuthbertson v. Merit Systems Protection Board, 784 F.2d 370, 373 (Fed. Cir. 1986) and Sterner v. Department of the Army, 711 F.2d 1563, 1567 (Fed. Cir. 1983).

In this appeal, we respectfully request this Court to reverse the MSPB's holding that the appellant was not the "prevailing party" for purposes of an attorney fees' award on the basis that the MSPB decision was not in accordance with law and was also an abuse of discretion. See 5 U.S.C. §7703(c)(1). We further request that this Court remand to the MSPB the two remaining issues for decision, which the MSPB did not address below: (a) whether an attorney fees' award is "warranted in the interest of justice," and (b) whether the attorney fees requested by the appellant are reasonable.

ARGUMENT

THE MSPB ERRED WHEN IT HELD THAT THE APPELLANT WAS NOT THE "PREVAILING PARTY," EVEN THOUGH THE APPELLANT OBTAINED THE SUBSTANTIAL RELIEF SOUGHT IN HER MSPB APPEAL AND THAT RELIEF WAS "CAUSALLY RELATED, IN A SIGNIFICANT SENSE" TO HER APPEAL.

This Court holds that the MSPB must conduct a careful, pragmatic inquiry into who won, who lost, and what caused a party to win in determining "prevailing party" status for purposes of an attorney fees' award. See Cuthbertson v. Merit Systems Protection Board, 784 F.2d 370, 373 (Fed. Cir. 1986) and Sterner v. Department of the Army, 711 F.2d 1563, 1567 (Fed. Cir. 1983). However, the MSPB below completely failed to perform this mandated duty.

A. The MSPB Judge's Error in Failing to Inquire

This Court in Cuthbertson v. MSPB, supra, 784 F.2d at 373, deplored an MSPB Judge's "too-simple approach [that] skips over the clear fact[s]" in finding no relation between a well-litigated MSPB appeal and the agency's capitulation to the relief sought by the appellant prior to the scheduled MSPB hearing. Yet, that is precisely what occurred in the MSPB proceedings below.

In crafting the Initial Decision denying attorney fees,[4] the MSPB Judge committed blatant error when he found merit in the agency's argument that "its decision to rescind the enforced leave was based upon the pendency of appellant's claim for compensation [before the Office of Workers' Compensation Programs ("OWCP")], and was not causally related to the appeal." Initial Decision, March 27, 1992, at 3; A.6. However, the argument accepted by the Judge was utterly devoid of merit, as one can readily observe from the sequence of events. The agency knew that appellant's compensation claim had been filed with the agency and the OWCP eight months prior to the agency's unpaid, enforced leave action against the appellant. See A.27,17. Hence, her pending OWCP claim had absolutely nothing to do with the agency's rescinding its action and withdrawing from the MSPB hearing just one business day before the hearing was to begin.

The sequence of events clearly demonstrates the Judge's error:

- On September 6, 1990, appellant's OWCP claim (the "recurrence" claim) was filed with her agency. See A.27.
- On February 20, 1991, the agency proposed that

[4] 5 U.S.C. §7701(g)(1) provides in pertinent part: "Except as provided in paragraph (2) of this subsection, the Board . . . may require payment by the agency involved of reasonable attorney fees incurred by an employee . . . if the employee is the prevailing party and the Board . . . determines that payment by the agency is warranted in the interest of justice.

the appellant be placed on enforced leave. A.10.

- Despite having received a favorable report from appellant's treating psychiatrist, the agency on May 10, 1991, placed the appellant on unpaid, enforced leave, effective May 13, 1991. A. 13-17.
- On May 30, 1991, appellant filed her MSPB appeal challenging the agency's unpaid, enforced leave action. A.18-21.
- On September 27, 1991, the agency rescinded its unpaid, enforced leave action and thus withdrew from the MSPB hearing scheduled for the next business day. A.22-23.
- On October 4, 1991, the Judge issued the Initial Decision on the merits, noting that the agency had rescinded and canceled its unpaid, enforced leave action against the appellant; accordingly, on behalf of the MSPB, he dismissed the appeal. A.24-26.
- Two and a half weeks later, on October 22, 1991, OWCP issued its decision on appellant's pending claim and found the appellant fit to return to her position as postal inspector. A.27.

As the sequence of events above clearly shows, appellant's

OWCP claim had no relation to the agency's withdrawal from the MSPB proceedings. There was absolutely no nexus between the agency's withdrawal at the MSPB and appellant's OWCP claim since: (1) the agency had taken its unpaid, enforced leave action against the appellant eight months after it knew of her OWCP claim and (2) the agency withdrew from the MSPB proceedings in advance of the OWCP decision on appellant's claim.

When the agency rescinded its adverse action and withdrew from the scheduled MSPB hearing, asserting it was because of appellant's pending OWCP claim, this was nothing but a ruse intended for the agency to save face and to avoid accountability for its wrongful action against the appellant. The actual reason that the agency threw in the towel immediately before the start of the MSPB hearing is that the probing discovery initiated by appellant's counsel proved, through convincing medical evidence, that the appellant was fit for duty and should not have been placed on unpaid, enforced leave status. The MSPB proceedings below were therefore "causally related, in a significant sense" to the agency's withdrawal of its action against the appellant. See Cuthbertson v. MSPB, supra, 784 F.2d at 373.

Furthermore, the MSPB Judge misinterpreted the OWCP decision of October 22, 1991, which was supported by the medical opinion of Martin G. Allen, M.D. (A. 27-33), in finding that "the agency's determination regarding appellant's fitness for duty had indeed been correct." Initial Decision, March 27, 1992, at 3; A.6. Adopting the agency's position without a careful, pragmatic inquiry, the Judge in effect found the appellant unfit for duty, However, <u>all</u> the medical opinions in the record before the Judge contradicted this finding:

- The Judge was aware of the April 8, 1991 medical opinion of appellant's treating psychiatrist for several years, John W. McFarland, M.D., who declared that "... Ms. Berry is capable of resuming her full postal inspection duties." A.16. The Judge also knew that Dr. McFarland had "testified in his deposition taken by the agency that appellant was fit for duty." A.37.
- Dr. McFarland's April 8, 1991 opinion further stated that he "was called by a[gency] psychologist Dr. [Eric] Ostrov who verbally agreed with [Dr. McFarland's] assessment of Ms. Berry's situation." A.16.
- The Judge was also informed that "the agency's physician, Dr. Jonathan Kelly, testified during his deposition that there is a possibility that appellant could now be fit for duty." A.37.[5]

[5] The only contrary medical evidence of record (which had been provided by the agency) was an October 23, 1990 report prepared by Dr. Jonathan Kelly, a physician hired by the agency, who had a single interview with the appellant (<u>see</u> A.13) and not surprisingly opined in favor of the agency's position against the appellant. A.12. Further, Dr. McFarland made telling observa-tions about Dr. Kelly's report (<u>see</u> A.15):

> Dr. Kelly faults Ms. Berry's participation in the interview process for being controlling, distrustful, guarded and indirect. I would dare say that as a law

Based upon the three medical opinions cited above, the Judge should have had no doubt about appellant's fitness for duty, but any slight doubt at all should have been completely removed by the OWCP decision of October 22, 1991, supported by Dr. Allen's medical opinion, which was provided to the Judge along with Appellant's Motion for Attorney Fees Award. A.27-35. The OWCP decision concluded that "Ms. Berry can return to her position as postal inspector...." A.27.[6] OWCP's calling for appellant's return to her postal inspector position was the exact opposite of a finding that the appellant was unfit for duty, which was the MSPB Judge's finding. See A.6.

In accepting carte blanche the agency's opposition to

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enforcement officer doing undercover work, one is taught to control, to distrust and to be defensive, guarded and indirect. These are qualities of survival. As a black woman, the need for these qualities probably grows more acute.

I would dare say that as a white male, Dr. Kelly has never been the victim of racial or sexual discrimination in the workplace. From his report, I would conclude that Dr. Kelly fails to appreciate the devastation that they can bring. From his report, I would conclude that Dr. Kelly failed to examine the legitimacy of Ms. Berry's complaints of discrimination in the workplace. His evaluation was based only on official communications of the Inspection Service. From his report, I would conclude that Dr. Kelly was unable to appreciate Ms. Berry's cultural background as a law enforcement officer and as a black woman. People see and describe the same things in very different ways depending upon what has been the breadth of their experience.

[6] That OWCP ruled the appellant was entitled to receive compensation benefits for the period prior to the OWCP decision is fully consistent with OWCP's normal practice that claimants be allowed to receive continuing benefits up to the date of decision.

appellant's motion for attorney fees without inquiring into all of the facts surrounding the dispute, the Judge was remiss in performing the duty of conducting a careful, pragmatic inquiry as required by Cuthbertson v. MSPB, supra, 784 F.2d at 373, and Sterner v. Army, supra, 711 F.2d at 1567.

B. Appellant - The "Prevailing Party" under Case Law

The appellant was clearly the "prevailing party" below because the substantial relief she sought and gained was "causally related, in a significant sense" to her MSPB appeal, even though the agency never allowed the MSPB to reach a decision on the merits. Cuthbertson v. MSPB, supra. All an appellant need demonstrate in order to be a "prevailing party" is that "he or she has obtained all or a significant part of the relief sought in petitioning for appeal." Sterner v. Department of the Army, 711 F.2d 1563, 1566 (Fed. Cir. 1983), quoting Hodnick v. Federal Mediation & Conciliation Service, 4 M.S.P.B. 431, 434 (1980).[7] Because the MSPB Judge below improperly accepted the agency's deceitful explanation without a careful, pragmatic inquiry into the disputed facts, plainly ignoring the sequence of events and plainly misinterpreting the medical evidence as outlined above, the MSPB was wrong to conclude that the relief gained by the appellant was not

[7] An MSPB appellant can be designated a "prevailing party" notwithstanding the fact that the Board never made a decision on the merits in the appeal. See McIver v. Department of the Interior, 45 M.S.P.R. 68 (1990); Schneider v. Department of the Army, 39 M.S.P.R. 462 (1989); Hatler v. Department of the Air Force, 9 M.S.P.R. 416 (1982).

causally related to her appeal.

Cuthbertson v. MSPB is strikingly similar to this case, providing a useful guide to decision of the instant appeal. This Court held that petitioner Cuthbertson was the "prevailing party" for purposes of an attorney fees' award when "the agency's desire to avoid further MSPB hearings and proceedings played a significant part in the making of the settlement agreement." 784 F.2d at 373. In Cuthbertson, petitioner had appealed his demotion by his employing agency to the MSPB, but previously he had lodged a discrimination complaint with his agency challenging his demotion. At the same time the MSPB was resolving a number of pre-hearing issues (including jurisdictional issues), Cuthbertson's agency was attempting to settle his discrimination complaint. These discussions resulted in a tentative agreement in which Cuthbertson obtained substantially all the relief he sought in his MSPB appeal. Thereupon, at his employer's request the MSPB dismissed Cuthbertson's appeal as moot. 784 F.2d at 372.

When Cuthbertson sought payment of his attorney fees, the MSPB refused to designate him the "prevailing party." On appeal, this Court chastised the MSPB for --

> [skip]ping over the clear fact[s]... [and] neglect[ing] the obvious possibility that the settlement (as it was finally made effective) may well have been triggered by and pursued because of the existence of the MSPB proceeding and the agency's desire to forestall that proceeding, the result it might reach, and what it might reveal about the agency.

784 F.2d at 373. The Cuthbertson Court pointed out that

petitioner's "considerable use of the discovery process ... revealed or sketched for the agency ... a very large part of petitioner's discrimination case...." Id. The Court reasoned that Cuthbertson was the "prevailing party" because the substantial relief he sought and gained was causally related to his MSPB appeal. The Court astutely recognized that "...an agency could grant all the relief requested, shortly before the MSPB decision had been promulgated, simply to avoid having to pay attorney fees if the MSPB proceeding went to final decision." Id. To guard against this type of practice, this Court held that Cuthbertson must be considered the "prevailing party" for purposes of an attorney fees' award.

As in Cuthbertson, the chronology of events leading up to the agency's withdrawal from the MSPB proceeding below contradicts the agency's post hoc explanation. As shown above, it was impossible for the agency's withdrawal at the MSPB to be due to the pendency of appellant's OWCP claim, even though the MSPB Judge below erroneously relied upon that contention. The agency had knowledge of appellant's OWCP claim from the time it was filed on September 6, 1990, to the time it dropped out of the scheduled MSPB hearing on September 27, 1991. Importantly, the agency withdrew at the MSPB before the OWCP claim was decided. Later, in its attorney fees' opposition (A.41), the agency professed concern about avoiding the "unnecessary waste of judicial (sic) resources" -- a concern that just happened to materialize more than a year after the agency first became aware of appellant's OWCP claim, and just one business day before the MSPB hearing was scheduled to begin. Until then, the agency had vigorously opposed appellant's MSPB appeal; it had filed a defense to her MSPB appeal, conducted discovery (including participation in depositions), and filed a prehearing submission. See A.35-37.

In Cuthbertson, this Court was not deceived by the agency's pretextual justification for settling the dispute prior to the MSPB making a decision on the merits. If the MSPB below had conducted the proper pragmatic inquiry into the disputed facts as required by Cuthbertson and Sterner, the MSPB would not have allowed the agency's deception to control the decision at issue here.

The MSPB, in Sterner v. Department of the Army, supra, 711 F.2d at 1567 n.14, recited the type of pragmatic inquiry that is needed to decide "prevailing party" status, which the MSPB failed to utilize below:

> ...If, as in this case, there is initially a genuine dispute as to whether the plaintiff fee claimant is a "prevailing party," inquiry on that question might well proceed first. This inquiry is properly a pragmatic one of both fact and law that will ordinarily range outside the merits of the basic controversy. Its initial focus might well be on establishing the precise factual/legal condition that the fee claimant has sought to change or affect so as to gain a benefit or be relieved of a burden. With this condition taken as a benchmark, inquiry may then turn to whether as a quite practical matter the outcome, in whatever form it is realized, is one to which the plaintiff fee claimant's efforts contributed in a significant way, and which does involve an actual conferral of benefit or relief from burden when measured against the benchmark condition. Bonnes v. Long, 599 F.2d 1316, 1319 (4th

Cir. 1979) (interpreting 42 U.S.C. § 1988), reaff'd after remand, 651 F.2d 214 (1981), cert. denied, 455 U.S. 961, 102 S.Ct. 1476, 71 L.Ed.2d 681 (1982).

In another similarity to Cuthbertson, the MSPB below failed to examine the effect that appellant's use of discovery had upon the agency's decision to rescind the adverse action and withdraw from the MSPB hearing. In her attorney fees' motion, the appellant informed the Judge of the considerable use the parties had made of the discovery process: (1) the appellant propounded and answered interrogatories; (2) the agency responded to appellant's interrogatories; and (3) counsel took the depositions of the physicians were scheduled to testify at the MSPB hearing regarding appellant's fitness for duty. See A.35-37. However, the Judge ignored appellant's compelling argument that her counsel's discovery had brought to the agency's attention the key medical evidence which proved that the appellant had improperly been placed on unpaid, enforced leave. See A.34-40. In Cuthbertson, this Court admonished the MSPB Presiding Official for discounting the possibility that the agency learned new facts that supported Cuthbertson's appeal. 784 F.2d at 373. Likewise, the Judge below erred by failing to examine the effect that discovery had upon the agency's decision to withdraw from the proceedings.

Moreover, the MSPB's refusal to deem the appellant a "prevailing party" here is inconsistent with the purpose for awarding attorney fees. The rationale supporting an attorney fees' award to a prevailing party is grounded in both judicial economy and just compensation to a successful litigant. "The purpose of the attorney fees provision is to facilitate an appellant's access to counsel by alleviating his burden of bearing legal expenses as a result of an erroneous decision of the agency." Sanders v. Equal Employment Opportunity Commission, 45 M.S.P.R. 693, 697 (1990). Because decisions of the MSPB are equivalent to decisions of the United States District Courts and are subject to review by the Federal Circuit, MSPB appellants are encouraged by the statutory attorney fees' provision to obtain counsel to present their cases to the Board. Having appellants represented by counsel before the MSPB enables this Court to readily review the record and decide any pertinent issues of law, as opposed to dealing with lingering questions of fact that unrepresented appellants failed to present effectively at their hearings. To continue to encourage federal employees to obtain counsel at the initial stage, this Court must not penalize the employee whose counsel's efforts are highly effective and result in the agency's rescinding an adverse action prior to an MSPB hearing. Indeed, important policy reasons of administrative and judicial economy strongly argue for payment of attorney fees in such a case.

Further, Watts v. Department of the Air Force, 34 M.S.P.R. 18 (1987), upon which the Initial Decision denying attorney fees relies, has no relevance to the instant case. Appellant Watts appealed his removal from a federal government position and requested that the MSPB reinstate him to his position and accommodate his disability. Prior to the effective date of his removal and prior to the filing of his MSPB appeal, Watts applied for disability retirement to a different federal agency. His disability application was granted, and as a direct result of the application being granted, the employing agency rescinded Watts' removal. The MSPB then dismissed his appeal as moot, and Watts petitioned the MSPB for an award of attorney fees as a "prevailing party." The MSPB denied attorney fees to Watts, reasoning that his agency had rescinded his removal because his previously filed request for disability retirement had been granted by a different federal agency. Watts had not asked the MSPB for disability retirement in his appeal. As such, the relief obtained by Watts was completely unrelated to his MSPB appeal. See 34 M.S.P.R. 18 (1987).

Had the MSPB below conducted the proper pragmatic inquiry, the Judge would have realized that, as a result of the agency's capitulation, the appellant had obtained the substantial relief she had requested in her MSPB appeal: rescission of the unpaid, enforced leave. See A.19, 22-24. The Judge further would have realized that the agency's asserted reason for withdrawing at the MSPB -- decision of appellant's pending claim by OWCP -- had not yet taken place. Indeed, the OWCP claim was decided after the Judge dismissed the MSPB appeal. See A.24, 27. Hence, the MSPB's reliance upon Watts was altogether misplaced.

As this Court declared in Sterner v. Department of the Army, supra, 711 F.2d at 1567,

> ... determining who prevails is really no more than a totaling up of who won and who lost. It is a practical matter....

Here, it is plain that the appellant won, the agency lost, and this result was caused by appellant's litigation efforts focusing on the key medical evidence that was dispositive of the case. In addition, the agency feared appellant's evidence of discrimination that would have been presented at a full fact-finding MSPB hearing. See supra at 5-6. The agency's capitulation was real, and it was directly connected to the diligent efforts of appellant's counsel in the case.

Through her appeal, the appellant sought to have the agency's unpaid, enforced leave action rescinded and to obtain those benefits to which she was entitled. See A.19. The appellant won the agency's rescission of the adverse action plus full back pay, annual leave, sick leave, and other benefits. A.22-24. Totalling up who won, who lost, and what caused the appellant's victory, the appellant clearly is the "prevailing party" under the Sterner and Cuthbertson decisions.

CONCLUSION

As demonstrated above, the MSPB's denial of "prevailing party" status to the appellant was not in accordance with law and was also an abuse of discretion in contravention of 5 U.S.C. §7703(c)(1). The appellant obtained the substantial relief she sought in her MSPB appeal, and thus prevailed. See A.19, 22-24. Not acting in accordance with law in this case, the MSPB neglected to make the required pragmatic inquiry into who won the case and what actually caused the agency to capitulate. The MSPB further abused its discretion by failing to make its "prevailing party" determination based upon the whole record. See supra at 9-13. The agency's illogical, post hoc explanation for its withdrawal at the MSPB and rescission of the adverse action, adopted by the MSPB, is pure deception and should not be allowed to stand. The appellant, a federal law enforcement officer with 21 years of service, surely deserves better.

Accordingly, this Court should (1) reverse the Board and rule that the appellant is the "prevailing party" pursuant to 5 U.S.C. §7701(g)(1), and (2) remand the remaining attorney fees' issues to the MSPB for decision.

Respectfully submitted,

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November 25, 1992

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OF COUNSEL:
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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MARLEINA BERRY,	:	
Appellant - Petitioner,	:	
v.	:	No. 92-3541
UNITED STATES POSTAL SERVICE,	:	
Agency - Respondent.	:	

CERTIFICATE OF SERVICE

In accordance with Rule 31 of the Rules of the U.S. Court of Appeals Federal Circuit, I hereby certify that I have this 25th day of November 1992 filed the required copies of the Corrected Brief of Petitioner Marleina Berry and Appendix with the Clerk's Office, and have mailed the required copies of the brief to: Yvette Chancellor, Esq. and R. Andrew German, Esq., Office of Labor Law, UNITED STATES POSTAL SERVICE, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260-1133.

Joseph D. Gebhardt

Joseph D. Gebhardt

APPENDIX

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NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

92-3541

MARLEINA BERRY,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

DECIDED: August 9, 1993

Before NIES, Chief Judge, ARCHER and PLAGER, Circuit Judges.

ARCHER, Circuit Judge.

DECISION

Marleina Berry petitions for review of the Administrative Judge's (AJ) initial decision, Docket No. DC0752910607-A-1, which became the final decision of the Merit Systems Protection Board (MSPB or board) when the full board denied review on July 15, 1992. The AJ denied Berry's motion for attorneys fees arising from Berry v. United States Postal Service, MSPB Docket No. DC0752910147 (Nov. 8, 1991) because she "failed to show that she was a prevailing party." We reverse and remand.

DISCUSSION

I.

The United States Postal Service (agency) placed Berry on administrative leave on September 11, 1990 because of an incident on September 6, 1990 which caused the agency to believe that retaining Berry in a duty station might be dangerous. Pursuant to agency scheduled fitness for duty examinations, two appointed physicians, after conducting psychiatric evaluations on September 24, and 25, 1990, concluded that Berry was unfit for duty as a postal inspector. An agency doctor thereafter concurred in this conclusion. Based on these evaluations, Berry was given notice on February 20, 1991 of "proposed placement on enforced leave." Berry's attending psychiatrist in a letter dated April 8, 1991, advised the agency that "Ms. Berry is capable of resuming her full postal inspection duties." Nonetheless, the agency issued its final decision placing Berry on enforced sick leave effective May 13, 1991. Berry appealed to the board seeking a decision retroactively revoking the enforced sick leave and restoring all annual and sick leave used during the enforced leave.

On September 27, 1991, the last business day before the scheduled board hearing, the agency granted Berry the relief she sought in her MSPB proceeding including rescission of the enforced leave retroactive to May 13, 1991 and restoration of her annual and sick leave and other benefits. Then the AJ dismissed the appeal for lack of jurisdiction based on the agency's rescission of the adverse action.

After the agency's proposed decision to place her on enforced sick leave but before that decision was made final, Berry filed a claim with the Office of Workers Compensation Program (OWCP) on March 22, 1991 in which she stated that she had suffered a recurrence on September 6, 1990 of her prior mental disability that first occurred in 1988. As previously noted, Berry's attending physician shortly thereafter concluded that she was "capable of resuming her full postal inspection duties." Later, on September 18, 1991, OWCP's consulting physician, Dr. Allen, concluded in his report to OWCP that "Ms. Berry can return to work in her position as postal inspector" and that she "is not psychiatrically disabled." The OWCP issued its decision on October 22, 1991, recognizing that Berry had suffered a recurrence of her prior mental disability and was entitled to reimbursement of the costs of treatment and medicine, and that she could file a claim for periods of lost time from work. The decision also concluded that Berry could return to the postal inspector job based on the report it received from the consulting physician, Dr. Allen.

Berry filed a timely application for attorney fees incurred in connection with her MSPB appeal. On March 27, 1992, the AJ denied Berry's claim for attorneys fees on the ground that she was not the "prevailing party" as that term is used in 5 U.S.C. § 7701(g)(1) (1988). This decision became the final decision of the board when it denied review on July 15, 1992, and this appeal followed.

II.

A decision of the board must be affirmed unless it is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without proper procedures; or (3) unsupported by substantial evidence. 5 U.S.C. § 7703(c); Yorkshire v. Merit Sys. Protection Bd., 746 F.2d 1454, 1458 (Fed. Cir. 1984).

Pursuant to 5 U.S.C. § 7701(g)(1)

> the Board . . . may require payment by the agency involved of reasonable attorney fees incurred by an employee . . . if the employee . . . is the prevailing party and the Board . . . determines that payment by the agency is warranted in the interest of justice.

A petitioner is a "prevailing party for fee purposes if he obtained all or a significant part of the relief he sought from the MSPB, and if that relief was causally related to the initiation of the proceeding before the MSPB." Cuthbertson v. Merit Sys. Protection Bd., 784 F.2d 370, 372 (Fed. Cir. 1986). Further, according to Cuthbertson,

> if the relief achieved is significantly due to the initiation of the MSPB proceeding, the "prevailing party" provisions of 5 U.S.C. § 7701(g)(1) . . . . become applicable. Otherwise, an agency could grant all the relief requested, shortly before the MSPB decision had been promulgated, simply to avoid having to pay attorney fees if the MSPB proceeding went to final decision.

Id. at 373.

The agency argues that it restored Berry's sick leave on September 27, 1991 "because it had just received" Dr. McFarland's September 1990 report concluding that Berry should be placed on disability. With this report, "which made all examining physicians in agreement that Ms. Berry was unfit for duty," the agency "believed that Ms. Berry's OWCP claim would be granted" and that "the MSPB case would become moot." From this, the agency asserted that the agency's action "was based upon the OWCP proceedings."

The AJ determined that the relief afforded Berry was not "causally related" to the initiation and prosecution of the MSPB proceeding. Instead, the AJ concluded that Berry's relief was causally related to the OWCP claim. We are not convinced that McFarland's September 1990 report and the consequent belief by the government that the OWCP claim would be allowed should defeat Berry's claim to attorney's fees. This report does not differ from the determination made by two agency-appointed doctors and confirmed by a third agency doctor. Clearly the agency's position would have been no different if it had had this report at the time it placed Berry on enforced leave. Furthermore, we fail to see that the probable grant of Berry's compensation claim would necessarily render moot Berry's MSPB appeal as urged by the agency. Berry's claim for compensation to the OWCP for her disability could not afford her all the relief she sought in the MSPB proceeding.

In her appeal to the MSPB, Berry sought revocation of enforced leave and restoration of sick and annual leave. The OWCP claim was for disability compensation and reimbursement for treatments and medicine. On the last business day before the scheduled MSPB hearing, the agency restored Berry's leave. One month later, Berry's entitlement to reimbursement and compensation was approved by OWCP, and she then became entitled to "file a claim for all periods of lost time from work [due to her disability.]" The OWCP did not give Berry what she prayed for from the MSPB. Thus, while the agency's rescission of the adverse action may have been influenced by the agency's perception as to what the ultimate outcome of the OWCP proceeding would be, the OWCP decision could not be the basis for the agency's concessions. Moreover, although the agency thought OWCP would decide favorably to Berry, this decision was not forthcoming until more than a month after the agency granted Berry the relief she sought in the MSPB proceeding. Because only the MSPB could grant Berry what she ultimately received by the agency's concession, we are convinced that the MSPB proceeding must be viewed as causally related to Berry's success in obtaining rescission of the adverse action.

Accordingly, we hold that Berry was a prevailing party for purposes of 5 U.S.C. § 7701(g)(1). The decision of the board is, therefore, reversed and the case remanded to determine whether payment of attorney fees by the agency is warranted in the interest of justice and, if so, whether the requested fees are reasonable.

See 5 U.S.C. § 7701(g)(1); Sterner v. Department of the Army, 711 F.2d 1563, 1565-1566 (Fed. Cir. 1983).

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BERNEY T. WILBURN, Petitioner v. DEPARTMENT OF

TRANSPORTATION, Respondent

No. 84-1193

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

757 F.2d 260

March 13, 1985

PRIOR HISTORY: Appealed from Merit Systems Protection Board.

DISPOSITION: REVERSED AND REMANDED.

COUNSEL: Joseph D. Gebhardt, Dobrovir & Gebhardt, of Washington, D.C., argued for petitioner.

Sandra P. Spooner, Commercial Litigation Branch, Department of Justice, of Washington, D.C., argued for respondent. With her on the brief were Richard K. Willard, Acting Assistant Attorney General and David M. Cohen, Director.

Patricia Shebest Crockett, Office of the Chief Counsel, Research & Special Programs Administrator, Department of Transportation, of counsel.

JUDGES: Davis, Bennett, and Newman, Circuit Judges.

OPINIONBY: BENNETT

OPINION: [*261] BENNETT, Circuit Judge.

Berney T. Wilburn appeals the decision of the Merit Systems Protection Board, No. DC03518210059, affirming the Department of Transportation's release of Wilburn from his competitive level by a demotion. We reverse and remand.

BACKGROUND

In 1970 Wilburn began working as a transportation specialist, GS-2101-15, in the Office of Facilitation, Department of Transportation (DOT). Orginally, this office was under one of the assistant secretaries of DOT. Subsequently, DOT shifted the Office of Facilitation to its newly created Research and Special Programs Administration (RSPA). In 1981 RSPA announced that it was abolishing the Office of Facilitation as part of an effort to meet its personnel ceiling. Wilburn accepted, under protest, RSPA's 6-grade demotion and reassignment as a transportation specialist to the Materials Transportation Bureau's Office of Hazardous Materials Regulation, effective September 20, 1981.

On June 9, 1982, DOT notified Wilburn that it was separating him by a second reduction in force, effective July 23, 1982. Wilburn filed a motion for ancillary proceedings, requesting that the board reopen the record in order to consider his claim that the latter reduction-in-force action was a reprisal for appealing his previous demotion. In a July 3, 1982 letter, the motion was denied on the grounds that the board did not have jurisdiction until the RIF became effective. See 5 C.F.R. @ 1202.22(b) (1981). The board, however, informed Wilburn of his right to appeal once DOT effected the separation. Wilburn did not appeal his separation, and the 20-day time limit expired under the foregoing regulation.

On July 25, 1982, the board issued an initial decision affirming DOT's demotion of Wilburn in 1981. On February 23, 1984, the full board denied Wilburn's petition for review of the initial decision.

DISCUSSION

Prior to the effective date of the 1981 reduction in force, DOT established three new GS-2101-15 positions in the Office of Emergency Transportation. DOT offered the positions to three of its employees whose positions in the Office of Facilitation were to be abolished. John Norris and Maurice Ronayne, who were in Wilburn's competitive level, accepted the positions. William Myers, who performed some duties similar to those of Wilburn, Norris and Ronayne, declined the position in favor of retirement. DOT immediately abolished the position declined by Myers and created another GS-2101-15 position in the Office of Emergency Transportation, offering it to another employee, Lloyd Milburn, who accepted it. Wilburn contends that DOT violated 5 C.F.R. @ 351.201(b) (1981) by not offering him the vacant position after Myers declined it.

DOT asserts that the determination of whether to exclude the vacant position from consideration in the implementation of the reduction in force was a matter of unfettered agency discretion. Accordingly, DOT reasoned that it was not required to offer Wilburn the vacant GH-2101-15 position once Myers had declined it. However, 5 C.F.R. @ 351.201(b) limits an agency's [*262] discretion in filling a vacancy. The regulation dictates that once an agency "chooses to fill a vacancy by an employee who has been reached for release from his . . . competitive level," the agency must follow the reduction-in-force regulations. In order to reflect properly the congressional concern for fairness, we strictly construe the regulation's limitation of agency discretion. To do otherwise would open the door to sham by manipulation of the reduction-in-force procedures. DOT does not contest the fact that Wilburn was qualified for the newly created vacant position; nevertheless DOT abolished the position once Myers had declined it, instead of offering it to Wilburn. In light of the fact that DOT created the vacant position prior to the effective date of the reduction in force, we must presume that DOT adequately considered the need for it as well as the relevant budgetary factors. Thus, DOT strongly appears to have abolished the newly created vacant position for reasons personal to Wilburn. In so concluding, we have considered, but reject, DOT's argument that it simply changed its mind about a need for the position and that to do so was within its discretion.

The legislative history of the Civil Service Reform Act of 1978 reveals that the purpose of 5 U.S.C. @ 2301(b) (1982) is to protect employees against political coercion, discrimination, personal favoritism and unfair, arbitrary or illegal action. S. Rep. No. 95-969, 95th Cong., 2d Sess. 19 (1978); H.R. Rep. No. 95-1403, 95th Cong., 2d Sess. 4 (1978). 5 U.S.C. @ 2301(a)(1) specifically requires an executive agency, such as DOT, to adhere to merit system principles. Section 2301(b)(2) provides in part:

All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management. . . .

Accordingly, the linchpin of federal personnel management is fairness, i.e., employees who are similarly situated are entitled to similar treatment. See Kellerman v. United States, 205 Ct. Cl. 484, 504 F.2d 1128, 1133 (1974), Smith v. United States, 151 Ct. Cl. 205, 208 (1960). The notion of fairness is implicit in the reduction-in-force regulations. 5 C.F.R. @ 351.201(b) reflects the congressional concern for fairness, limiting an agency's discretion in filling a vacancy during a reduction in force.

An agency has the burden of demonstrating to the board that its action is supported by a preponderance of the evidence, 5. U.S.C. @ 7701(c)(1)(B); Crispin v. Department of Commerce, 732 F.2d 919, 921 (Fed. Cir. 1984). DOT's assertion of absolute discretion does not satisfy its burden under the facts of this case. DOT's refusal to offer Wilburn the vacant position undercuts the merit system principles on which the Civil Service Reform Act of 1978 was founded. Accordingly, we reverse and remand for a reconsideration of the case in light of all pertinent regulations.

While we regard the other portions of the board's opinion with skepticism, in light of our foregoing discussion, we need not address Wilburn's other contentions of error.

A procedural matter remains. Wilburn has filed a motion with the court for leave to submit new evidence allegedly not available before the presiding official's decision was rendered and which, contrary to her conclusion, allegedly will show that a transfer of functions in fact took place and that his transfer rights were unlawfully denied. 5 C.F.R. @ 351.302(c) (1981). The motion is denied as moot because of our resolution of the appeal on other grounds.

REVERSED AND REMANDED

Mable Blake thought she had set her career on course seven years ago when she became a voucher auditor with the Soil Conservation Service (SCS) in Florida. She was good at her job, good enough to earn cash bonuses and yearly evaluations full of praise at the agency, a division of the U.S. Department of Agriculture. She took night classes to earn her college degree, and asked USDA for the training she needed to make a professional climb.

But Blake, who is black, says the training was denied, and her career stood still while white colleagues advanced. In 1985 she finally complained of discrimination to the agency's civil rights office. Her boss, she says, responded by threatening to downgrade her job. After she took her complaint to the next step, her performance rating dropped. And when she refused to sign the lower appraisal, supervisors halted a bonus she had been awarded.

For two years, Blake's complaint languished with SCS. Finally, in mid-April, she took her claims to federal court. USDA refuses to discuss the case, though it has denied all charges of discrimination in court documents.

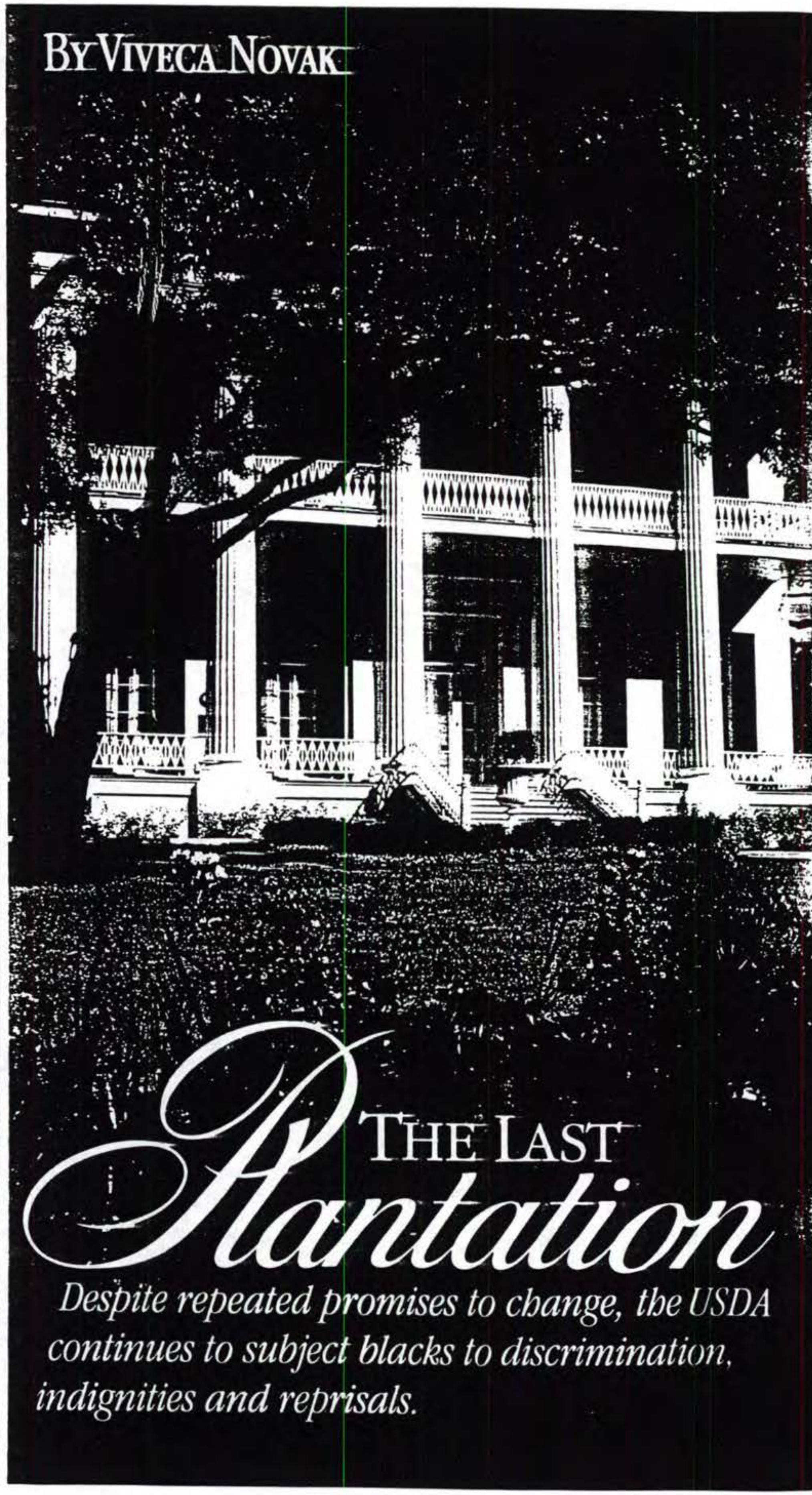
Says Blake, "They'll do everything possible to deny this kind of thing is going on." The way she sees it, there is little doubt about what happened: She has joined a regiment of minority workers at the government's farm bureaucracy who can't get ahead because of the color of their skin.

USDA may lack antebellum architecture and spreading fields of cotton, but it has nevertheless earned the nickname by which some workers know it — "the original plantation."

"If USDA had devoted the same attention to eliminating discrimination that it has to eliminating foot-and-mouth disease, we'd have no problems like this," an official in the agency's civil rights section said recently.

A behemoth institution with 91,000 employees nationwide, USDA is home to the programs that give out food stamps (Food and Nutrition Service), pay farmers price supports (Agricultural Stabilization and Conservation Service, or ASCS), loan them money to keep their farms going (Farmers Home Administration, or FmHA), help them prevent soil erosion (SCS), run the nation's forests (Forestry Service) and carry out other huge tasks. In all, USDA gives out more than $47 billion in direct payments and loans to the public yearly, in addition to technical support and educational programs.

In a way, it's an unlikely villain, this fountain of largesse that was once a cen-



terpiece of New Deal reform. But the USDA of today is also the product of an agricultural good ol' boy network whose members historically haven't welcomed blacks as colleagues.

Every so often, USDA's discriminatory policies draw the spotlight. Last year, there were the cases of Edith Thomas, a high-ranking black nutritionist with the Extension Service (which provides educational services) in Washington, and Walter White, a black SCS worker in Arkansas whose complaints helped spark a large-scale investigation of USDA offices in that state. After long struggles, both won large out-of-court settlements.

But settlements are rare compared with the kind of indignities, reprisals and anxieties White and Thomas suffered. While it's difficult to judge personnel disputes from the outside, interviews with minority USDA workers around the country reveal a systemic problem that hasn't gone away despite periodic, sweeping declarations of good intentions from USDA chiefs. Stark statistics reinforce the story: For example, of 5,300 foresters working with the Forest Service across the country last year, 30 were black.

At a hearing last year on a USDA employment discrimination case, U.S. District Court Judge Gerhard Gesell told the parties the case was "just another rather frequent race case that has come to my attention from this agency, which is obviously working its way into a very difficult problem . . . with the way it's treating blacks . . . . It's happening all the time."

It's been 23 years since the Civil Rights Act ordered the federal government to eliminate minority underrepresentation in its ranks. Many departments have done so. But USDA has continued to dwell near the bottom of the federal pack and even lags behind the private sector.

As of September 1985, the government as a whole had 26.4 percent minority workers, the private sector 20.3 percent in workplaces with 100 or more employees. But USDA weighed in with only 14.5 percent minorities, placing it 72nd among among 80 major government agencies and last among the cabinet-level departments.

The problem is not department-wide, but in several key farm program divisions, and especially in field offices, the absence of minorities has been disheartening. The ASCS has no black workers in 16 states, FmHA has none in nine states, and SCS none in seven. Of ASCS's work force of 24,246 outside of Washington, in fact, only 2.6 percent are black. The statistics are perhaps most startling in a rural state like Mississippi, where 35 percent of the population is black and the need for USDA services among black farmers is disproportionately high. Here the FmHA staff is only 9.3 percent black.

Once minorities get in the USDA door, their troubles are by no means over. Race discrimination complaints filed by blacks rose 41 percent from 1985 to 1986 — despite declining overall employment at the department.

"Some units have done much better than others at mainstreaming equal opportunity procedures," acknowledges Assistant Secretary for Administration John Franke Jr. "In the field, where 90 percent of our employees are, program delivery has been the focus, and human management skills have tended to be ignored. There hasn't been the priority placed on it that there should have been."

Virtually every secretary of agriculture in the last 15 years, including Reagan's two appointees, has publicly vowed to end the discrimination. But movement seems to come only when the media or Congress puts the pressure on. Even then the best intentions from the top don't always filter down or aren't taken seriously. In 1983, Equal Employment Opportunity Commission (EEOC) Chairman Clarence Thomas testified to Congress that USDA had told him it would not implement its own affirmative action plan. In fact, USDA alone among federal agencies has not filed a required department-wide plan with EEOC since 1981, says Douglas Bielan, overseer of the EEOC's federal programs.

Last year Secretary Richard Lyng confronted the issue, sending out a ringing two-page condemnation of alleged abuses. Delivered to assistant secretaries and agency heads, it read in part:

"Discriminatory practices in any form must not and will not be tolerated. Avoidance of discrimination must be our daily, regular, constant practice. It must be so deeply ingrained in our policies and practices that it becomes automatic. . . .Do not take this matter lightly."

Lyng's statement came after the department had locked horns with Edith Thomas, the Extension Service nutritionist in Washington. Among her charges: that supervisors kept her from providing educational services to black colleges, that she was the victim of racial slurs, that her yearly evaluation was lowered in reprisal for her complaints. At one point, the agency fired her, alleging abuses of sick leave and travel expenses, then retracted the dismissal.

But there is plenty of evidence that Lyng's message hasn't gotten through at some USDA divisions, even in Washington. Take, for example, the case of Jenkins Odoms, FmHA's occupational safety and health manager from 1981 to 1986. While whites in the same position in other agencies were GS-13s or 14s, Odoms, who is black, remained a GS-11, despite being recommended for promotion by his supervisor. (The government's ranking system goes from GS-1 to GS-18.) His complaint, filed in early 1986, describes a classic case of nonadvancement due to racial discrimination, says his attorney, Joseph Gebhardt. "They never gave me a reason, they never explained" why there was no promotion, Odoms says.

This summer, a final review of Odoms's case by FmHA's equal opportunity office, which recommended a retroactive promotion and back pay, was quashed due to pressure from higher officials in the agency, a source close to the investigation told *Common Cause Magazine*.

FmHA has had worse cases of employment discrimination, says the source, who asked not to be identified. "I don't understand why they're fighting it, but it seems like none of the [FmHA] managers are ever willing to get down and actually resolve a complaint. They fight every one."

Odoms, meanwhile, gladly left USDA in December to become a GS-12 Army safety and security officer.

"I know of no other department where black employees have been under such attack," says Gebhardt, who has handled several similar USDA cases.

The streak of prejudice, not surprisingly, is traceable to Civil War days. In 1862, Congress set aside tracts of land whose proceeds were to start agricultural schools. They were all white, so legislators in 1890 gave similar land grants to establish schools for blacks.

But for nearly a century the black schools ran on shoestrings while the white schools raked in most of the congressional and state funding. Only in the last few years, partly due to embarrassing publicity, have federal funds been more equally shared.

Even today, the white schools remain mostly white and the black schools mainly black, in a system of institutionalized segregation made all the worse because this is the pool from which a huge chunk of USDA workers are drawn.

"The pattern is entrenched," says a congressional staffer who has followed employment discrimination issues at the department. "USDA relies on the agricultural institutions as the feeders. They're really the old boy network. They're not accustomed to dealing with minorities as equals or women as equals."

Viveca Novak is a frequent contributor to Common Cause Magazine.

UNIPHOTO

Some say progress was made in the 1970s — though with significant setbacks. In 1976 Secretary Earl Butz was forced to resign after he let slip an egregious display of racist humor. After Reagan appointed John Block USDA secretary in 1981, many workers say there was an abrupt end to any forward motion in the civil rights arena.

In the last seven years, the main civil rights office at USDA has had nine directors, following one another through the door in Keystone Cops chaos. Isidoro Rodriguez, who served from 1982 to 1983, earned particular notoriety when he was forced to resign after writing a memo that proposed making USDA "a benchmark" for the entire administration in a grand scheme to roll back affirmative action.

The turnover, along with significant budget cuts, caused investigations and other work to grind almost to a halt. Only recently have teams of investigators begun to go into the field again regularly.

The department under the Reagan administration has even come under fire from the U.S. Civil Rights Commission, whose chairman, Clarence Pendleton Jr., has never championed affirmative action. After a scathing attack by the commission on USDA's lack of attention to the needs of minority farmowners, Pendleton wrote Block that USDA had "dismantled, in 1982, the few civil rights enforcement mechanisms developed by USDA over the past decade. . . . We strongly urge you to reconsider the direction your department has taken in civil rights."

Even the best intentions at the highest levels, however, run into something beyond attitudinal roadblocks. Some of the problems are structural — particularly the county committee system that exerts considerable sway in the field offices of FmHA, the ASCS, SCS and several other programs.

Such boards, made up of locally elected farmers, have the most power at ASCS, where they actually make hiring decisions for county office heads. This is how blacks are excluded: The state office can hire trainees for county directorships. But after the training period, the workers must be placed in a county within a year or they are terminated. That's where the overwhelmingly white local committees have the power to say no.

"If there are five people on the eligible list, the minority or the woman will typically be the last chosen [for a county slot] — if they are chosen at all," says Willie Cook, deputy director for EEO and civil rights at the ASCS. "When trainees are terminated, they are usually minorities."

At the end of 1985 the powerful ASCS county committees in Arkansas were made up of 363 white males, three white females and two black males — so it was no surprise when investigators from the department's civil rights office turned up a young black man who completed his training only to go through 13 county interviews, watching his white classmates chosen first each time. When he threatened a civil suit — and when he was the only eligible candidate left — he was placed, according to a black state board member who watched the process.

WASHINGTON POST PHOTO

"I had hoped to become state conservationist," says Walter White — a dream crushed when a top official said no Arkansas county was ready for a black director.

To the frustration of ASCS's civil rights office in Washington, a law keeps the county offices free from federal affirmative action requirements — despite its workers being paid with federal funds and getting federal benefits. And because the committee system is viewed as a democratic way to run a federal agency (despite the exclusionary results), and because of some farmers' political muscle, change is unlikely without a concerted push from the highest ranks of USDA. The department, however, is unlikely to risk congressional wrath over this issue.

"We know our minority representation is extremely poor, and our counsel has advised us that they would not like to defend the agency's position on minority employment in federal court," says Cook. "We'd like to see this [committee] system changed, but . . . every time we even have mentioned it . . . we start getting letters from senators and congressmen. These [farmers] have a lot of political clout."

At the Soil Conservation Service, local board members wield less hiring authority but are still influential. Nationwide as of September 30, 1986, of 16,108 members of soil and water conservation boards, 58, or two-fifths of a percent, were black.

The Arkansas SCS county boards, whose 380 members last year included one black, were the subject of a class action complaint last year by SCS field worker Walter White, prompting a multi-agency investigation after he drew the attention of Rep. Don Edwards (D-Calif.). According to White, minorities are systematically excluded from board slots.

White, a 22-year veteran of SCS, says he was once told by the top agency official in the state that no county there was ready to have a black in charge of its SCS program. "Back when I was hired in 1965, the SCS was gung-ho on hiring minorities," White says. "Then in the last 10 years they forgot we existed. At one time in my younger days, I had hoped to become state conservationist" — a dream he gave up long ago.

USDA investigators indeed found divisions in Arkansas in poor shape in the area of affirmative action. In ASCS county offices, for example, 91.9 percent of the women and minorities stood below a GS-7. But among white males, 71.6 percent were at the GS-9 level and higher.

"The clustering of women and minorities in lower grades depicts a pattern which has existed for many years within ASCS Arkansas," the report said. "There is no evidence of any positive change." Employees said they were intimidated by the complaint process.

White's complaint was settled with a promotion and $30,000, and the state conservationist was replaced. Some investigators' recommendations have been implemented, and White agrees that more attention is now given to minority concerns. But without the investigation, he believes, nothing would have changed — and the committee system has still not been altered.

White also says he has paid a price for speaking out. After his complaint was settled, his house was torched by an arsonist. No one has been arrested for the crime, and White says hostility from local officials is palpable.

Others who stepped forward may also be paying for their actions. After the investigation Claude Kennedy, the only black state board member in the Arkansas ASCS, lost his slot on the five-member committee. Kennedy had told investigators that his state director once said he didn't "have time" for affirmative action. The director denied the quote. Not long after that, Kennedy learned he would not be reappointed, though he is a 16-year committee veteran, a Republican and a third-generation cotton and soybean farmer. Kennedy says he was branded a "troublemaker" ever since he raised questions about blacks rarely being hired by county offices.

"I just really object to the way it was done," says Kennedy of his ouster from the ASCS committee, "because I had spoken out in what I believed were problem areas." A source involved in the selection process would say only that Kennedy was not reappointed because he had served many years.

Investigators from the USDA civil rights office went to Florida in February. Their findings, released in late July, are similar to those in Arkansas. In several agencies, promotions and awards were going disproportionately to whites. "Attitudinal barriers" were blamed in the report for the fact that of 42 ASCS county directors, none was black, and the agency had no affirmative action plan. In the SCS, morale among black workers was very low, and most feared reprisals for complaining.

One black worker interviewed by investigators claimed Florida state conservationist Jim Mitchell said at a meeting that he didn't care if employees of SCS are members of the KKK if it does not affect their job.

Mitchell denies mentioning the Klan at the meeting, but said in an interview that employees have the right to their private lives. "If they want to join in some social outlet, KKK or otherwise," he says, "it's none of my business as long as it doesn't affect the work of the SCS." In the Florida SCS, 26 of 203 employees, or 12.8 percent, are black, with no black women above a GS-7. Mitchell says the personnel department does try to recruit minorities, but that the state's 1890 school turns out few the agency considers qualified.

Florida is also the home of the Rev. Freddie Hickmon, this year's celebrated case and an ASCS worker in Gainesville. His complaint, filed a year and a half ago, was settled in late July with a substantial promotion and payment. Hickmon is a church pastor, a former mayor of predominantly white High Springs, and was a governor's appointee to a judicial screening panel. But at ASCS, despite more than 20 years of service, he was stuck as a GS-4 duplicator operator — three slots below a position he earlier filled.

When Hickmon returned after a year's layoff in 1973, he was offered his old GS-7 job back with the warning that it would be mostly travel. He declined, taking the duplicating position for what he thought would be a short time. He says his old job went to a white worker who was told it promised quick promotions. And Hickmon, the only black and the lowest-ranking employee of 28 in the state office, was passed over each time he applied for another position he was qualified for, he says. After spending nearly half his life with the agency, at age 44, he was making $17,226 per year.

Hickmon says he's happy with the settlement. But "in a situation like mine, you're never made whole. You have to forget about the past," he says. "Five million dollars wouldn't compensate for what I've been through."

In neighboring Alabama, things aren't much better. Although more than a quarter of the state's population is black, only 35 of 432 ASCS employees are black — perhaps because the county committees that influence hiring have not a single voting black member.

Mable Blake says her discrimination complaint led to reprisals from her boss. "They'll do everything possible to deny this kind of thing is going on," she says.

GARY S. WOLFSON

Among the named plaintiffs in a class action suit pending there is Herman Banks, who interviewed no fewer than 19 times with county committees before he got a job. Even then, he says, it was only because two blacks were the last eligible candidates.

"One of the committeemen started telling stories about 'niggers' during my interview," Banks remembers. "It was obvious that even if I had already been a county director for 30 years, with an excellent record, I was not going to get placed because of my race." Banks left in 1979.

Critics say worker discrimination also takes its toll on black farmers who depend on USDA programs. Allegations of loan practices skewed against blacks have dogged FmHA since the 1982 Civil Rights Commission report, which attacked the agency for forcing blacks off the land by not providing them with needed loans.

But the drop in loans to black farmers only accelerated; the number of ownership loans fell more than 91 percent between 1980 and 1986 — far more than the 68 percent drop in such loans to all farmers. The number of farm operating loans to blacks was cut almost in half, while whites saw an increase of two-thirds. Last year, no black farmers in Tennessee, Arkansas and Alabama received ownership loans. While the U.S. once had a strong core of black farmers — 925,710 in 1920, or 14 percent of all farmers — they numbered only 33,250 in 1982, only 2.2 percent of the total, according to USDA figures. If the USDA claims, as it sometimes does, that it can't hire more blacks because few blacks are interested in agriculture, the response is that USDA's own policies helped create the shortage.

"Anybody looking at these statistics would have to question the department's interest in aiding black persons who want to remain in farming," says a USDA civil rights official who asked not to be named.

Franke, the assistant secretary, concedes the internal atmosphere may contribute to results on the outside. "When you don't have parity in your employment, you may not have it in your program delivery," he says. "If there had been a stronger commitment to the small, disadvantaged farmer, we'd probably have more blacks in farming now."

In some areas, particularly where investigators have put agencies under the microscope, Lyng's avowed policy to rid the department of its problems with minorities may be trickling down. Investigators have just returned from California and are scheduled to visit at least two more states this year. Some hope lies with a new department policy of scoring agency managers, in their yearly evaluations, on their treatment of minorities. But nobody is sure how seriously that will be taken.

"The missing ingredient has been sustained leadership," says a USDA official. "There has not been a sense of urgency about this, only little bursts of enlightenment with long slack periods."

Meanwhile, in Florida, SCS black employees have responded to the situation by forming an informal network that loosely orchestrates applications for promotions.

"We want to be sure the best [black] person applies for the position, and we don't want to compete against each other," says one black worker.

Mable Blake feels a need for that kind of support. She recently phoned Walter White in Arkansas, just to express solidarity.

"It's important to say 'I know what you're going through,' " says Blake. ◆

FEEDBACK

FOLLOWUP

USDA and Minorities

Despite vows from top officials at the U.S. Department of Agriculture to reduce employment discrimination (see "The Last Plantation" by Viveca Novak, September/October 1987), new cases continue to turn up.

In February 115 black employees of the Foreign Agricultural Service (FAS) filed an administrative complaint charging the agency with discriminating against blacks in promotions, choice overseas assignments and merit awards. Among the problems, they say, is that all of the assistant administrators who make personnel decisions within the agency are white. Leaders of the group say they may file suit if the department doesn't address the charges quickly.

"It doesn't make sense to keep these [black] people in dead-end positions with no possibility of advancement or promotion," says Dugger Harris, a foreign marketing specialist who signed the complaint. Harris also has a separate case pending against the FAS, and when he goes to court May 16 it will mark the first time a major discrimination case at USDA has gone to trial, says his attorney, Joseph Gebhardt. Harris charges that, among other offenses, a supervisor called him a "black dog" at a staff meeting last fall. The supervisor, William Davis, told two newspapers that he was referring to a photograph of a dog when he made the remark.

Still pending in court is the case of Mable Blake, a Soil Conservation Service employee in Florida whose blocked career progress was described in the *Common Cause Magazine* story. Although little has changed for her, the overall hiring and promotion record for minorities in her office has improved markedly since last fall, she says.

Bias plagues county contracting

Minority-owned firms find slim procurement pickings, report says

by Bill Borda
Staff Writer

While Montgomery County has made great strides in working with minority, female and disabled businesses, a gap still exists between the number of these firms and the contract dollars they get, according to a recently released report.

The report, which evaluates the county's MFD (Minority, Female and Disabled) contracting program, says discrimination still exists within the program against women, blacks, Hispanics, Asians and Native Americans.

The county's MFD program requires that at least 20 percent of county goods and services contracts be awarded to businesses that are at least 51 percent owned by minorities, females and the disabled. From fiscal years 1986 to 1990, MFD firms landed 23.4 percent of county contracts.

However, this occurred during the same period when procurement opportunities grew 59 percent, and minority firms composed 32.6 percent of the firms enrolled on the county's bidder list in 1990.

"Majority-owned firms hold the dominant position in securing contracts from the county, a position that is unlikely to erode in the future," the report prepared by attorneys Koteles Alexander and Joseph Gebhardt said.

In response to the report, the County Council introduced a bill Tuesday to continue the MFD contracting program.

The report discovered firms owned by white males composed 72.4 percent of the county's bidder list, but were awarded 76.6 of all contracts, including 87.7 percent of prime contracts.

"These figures clearly show the county's heavy dependence on majority-owned businesses, who over the past five years have obtained $556.8 million in total contracts," the report said.

Blacks fared the worst among minorities seeking contracts. From 1986 to 1990, black-owned firms made up 11.8 percent of the bidders in the county, but only received 4.7 percent of the county's contracting dollars.

The report found blacks only landed 1.1 percent of the county's prime contracts. When trying to subcontract, many minorities are cut out of opportunities because of discrimination, the report says.

Hispanic-owned firms received 3.6 percent of the county's contracting opportunities, which the report says is comparable to their 3.5 percent representation on the bidders list.

However, the report says, Hispanics do experience discrimination — their "surnames are regarded as a liability."

"Majority-owned firms that do business with the Hispanic-Americans in the county strongly question their qualifications and reliability, associating Hispanic-American-owned firms squarely with those 'minority' firms they clearly want to keep at arm's length," the report says.

Women-owned firms were underutilized, according to the report. Women-owned firms comprised 10 percent of the bidders list from 1986 to 1990, but were only awarded 8.2 percent of the contract dollars.

Discrimination is also holding back Asian-owned firms. The report says: "Their 1.6 percent share of county contracting dollars during the recent five years was significantly smaller than their 3.5 percent representation on the bidders list."

MONTGOMERY COUNTY
MINORITY-FEMALE-DISABLED (MFD) CONTRACTING PROGRAM EVALUATION AND UPDATE PROJECT

FINAL REPORT ON PHASE II OF CONTRACT OF JANUARY 2, 1990

Alexander, Gebhardt, Aponte & Marks

Joe authored this

II. EXECUTIVE SUMMARY

1. This study finds that the County's MFD program meets the requirements of City of Richmond v. J.A. Croson Company, 488 U.S. 469. 102 L.Ed 2d 854. 109 S.Ct. 706 (1989), in both essential respects: First, there is a sufficient factual predicate for the County to have a compelling interest in enacting a race-based and gender-based preference program in procurement. Second, the County's preference program is narrowly tailored to remedy identified discrimination against minorities and women in County contracting and the general marketplace in the County.

2. This study employed multiple data collection techniques, including analysis of the County's statistical data, direct evidence obtained from focus groups of both majority-owned businesses and separate MFD groups, and a survey of MFD firms doing business with or seeking business from the County. The statistical data analyzed in this study consist of the County's bidder's list and weekly activity reports for FY 1986 through FY 1990. These data are somewhat at variance with the MFD statistics previously reported by the Montgomery County Government at the end of each fiscal year. The principal reason for the variance is that this study encompassed all the contracts for FY 1986-1990 that were awarded by the County (including new contracts, modifications, renewals, exclusions, administrative actions, and delivery orders), while the MFD legislation requires that only MFD-eligible contracts be included in the County's year-end statistical reports. These eligible contracts have not uniformly included all County contracts.

3. The County awarded $167 million in contracts for goods and services to private firms and certain non-profit entities in FY 1990. County procurement has risen in recent years, with a 59% increase occurring over the five-year period between FY 1986 and FY 1990, when the County awarded a total of $727 million.

4. Stimulated by rising procurement, the County's bidder's list grew more than three-fold during the recent five years. In FY 1990, this list contained 6,194 private firms and non-profit entities seeking to do business with the County. Majority-owned firms, numbering 4,176, make up 67.4% of the bidder's list, while MFD firms number 2,018 and comprise almost one-third (32.6%) of the list. The biggest one-year growth in the bidder's list, an increase of 919 firms (17.4%), took place between FY 1989 and FY 1990.

5. The County's MFD program is an essential step in lessening the effects that discrimination, especially stereotypical and prejudicial attitudes, has had on business opportunities for MFD firms operating in the County. The MFD program demonstrates that the County has made important progress by beginning to close the gap between the number of MFD firms and these firms' share of total contract dollars from the County. In contrast, firms owned by African Americans, Hispanic Americans, Asian Americans, and women face a much more unfavorable and discriminatory environment within the general marketplace in Maryland. For each of these MFD groups, the underutilization and corresponding disparities in the general

marketplace greatly exceed the similar disparities found in the County's distribution of its contract awards.

6. In accounting for its procurement awards, the County includes in its "disabled" category non-profit entities that serve the handicapped, which in our estimation receive 75% of contract dollars in the disabled category and $38.5 million of the total contract dollars in the MFD category. The County's statistics for the disabled category thus inflate the share of contract dollars received by the entire MFD business class by a full 5.3%. If contract receipts for non-profit entities serving the handicapped were deleted from the MFD totals, the total share of MFD firms' awards would be about 18% for the recent five-year period from FY 1986 to FY 1990.

7. Majority-owned firms hold the dominant position in securing contracts from the County, a position that seems unlikely to erode in the future. As County procurement has risen, these firms have demonstrated enduring strength, receiving contract awards in excess of their proportion of the bidder's list. Representing an average of 72.4% of the bidder's list for the recent five years, majority-owned firms obtained $557 million out of the $727 million in County contract awards, or 76.6% of total procurement, as well as 87.7% of prime contracts, 76.5% of competitive awards, and 76.8% of non-competitive awards between FY 1986 and FY 1990.

8. African American-owned firms fare the worst of all groups seeking contracts from the County. The primary cause is discrimination. These firms represented an average of 11.8% on the bidder's list during the recent five years, yet they received just 4.7% of the County's contract dollars, a total of $34.4 million. In FY 1990, while comprising 13.9% of the bidder's list, they received only 4.5% of County contract dollars. Fully 58% of African American-owned firms' contract dollars came from MFD subcontract awards, illustrating their dependency on such awards. The *prima facie* case of discrimination against these firms that the statistics reveal was strongly corroborated by our focus groups, interviews, and survey. Half of the African American business owners responding to our survey cited discriminatory treatment as a factor contributing to their business difficulties, and 83% reported difficulty in attempting to enter local markets. The majority-owned business focus group tended to confirm these difficulties. The County clearly has a compelling interest in a race-based preference program for African American-owned firms in County contracting.

9. Contracting by Hispanic American-owned firms with the County on the whole is tenuous. While these firms' share of FY 1986-90 contract dollars (3.6%) is comparable to their current bidder's list representation (3.5%), our focus group and survey research credibly confirmed that Hispanic American-owned firms encounter a variety of tangible discriminatory factors in connection with County contracting and the general marketplace. Thus, the County has a compelling interest in a preference program for Hispanic American-owned firms in County contracting.

10. Discrimination is holding Asian American-owned firms back. Their 1.6% share of County contract dollars during the recent five years was significantly smaller than their 3.5% representation on the bidder's list. In FY 1990, the picture did not improve as Asian American-owned firms represented 4.2% of the bidder's list yet received only 2.8% of County procurement. These firms have particular difficulty winning prime contracts, receiving less than 2% of them in FY 1990 and over the past five years. Our focus group and survey research fully corroborated this statistical prima facie case of discrimination against Asian American-owned firms. Hence, the County has a compelling interest in a preference program for Asian American-owned firms in County contracting.

11. The small group of Native American-owned firms seeking County contracts are struggling and not fully succeeding in their efforts. For example, while their representation on the bidder's list grew to nearly 0.4% in FY 1990, their share of County contract dollars was just 0.15%. They received no prime contracts from the County in FY 1990, and 90.9% of their contract dollars are derived from MFD subcontracts. They also received a dramatically lower share of the County's construction and professional services contracts than their availability for such work would indicate. In our survey of Native American-owned firms, all six (6) such firms responding cited the lack of governmental assistance as a factor that contributes to their business difficulties. The County clearly has a compelling interest in a preference program for Native American-owned firms in County contracting.

12. The County underutilizes women-owned firms, which now constitute 10% of the bidder's list and yet were awarded 8.2% of total County procurement in FY 1990. Over the recent five years, their 8.4% availability on average on the bidder's list compared to their 5.9% receipt of County contract dollars. Our focus group and survey research supported this statistical *prima facie* case of discrimination and brought to light that women-owned firms encounter a number of special, rather unique difficulties in connection with County contracting and the general marketplace, many of which are rooted in discrimination, especially sexist attitudes and stereotyping. Accordingly, the County has a compelling interest in a preference program for women-owned firms in County contracting.

13. The County may legitimately have a preference program for disabled business owners in County contracting. Our focus group and survey research strongly suggested that disabled-owned firms currently operate at a disadvantage in connection with County contracting and the general marketplace and are unable to compete on an equal basis with non-disabled businesses. Physical barriers and discriminatory treatment are the twin causes of the disabled's problems in business. In the disabled category, 25% of County procurement to this category has in our estimation been awarded to disabled-owned business firms, with the remaining 75% going to non-profit entities serving the handicapped. It thus appears that the small number of MFD-certified, disabled-owned firms are receiving an equitable share, not an excessive share, of County contract dollars.

14. No evidence exists of discrimination against Alaska natives and Pacific Islanders in connection with County contracting or in the general marketplace in the County.

15. The County's MFD program has a narrowly tailored remedy which is designed to overcome identified discrimination against minority-owned and women-owned firms. There is a sufficient factual predicate of discrimination against African Americans. Hispanic Americans. Asian Americans. Native Americans. and women in connection with County contracting and the general marketplace for the County to include these groups in a preference program. The County's MFD subcontracting program is administered in a manner that neither injures nor unduly burdens majority (white male) prime contractors. Majority-owned businesses' share of total procurement held steady over the recent five years. as their dollar volume from contract receipts rose nearly 40%: from $86.1 million in FY 1986 to $119.8 million in FY 1990. During recent years. the County extensively used its waiver mechanism to waive 3.7% of total procurement (nearly $30 million) from the MFD subcontracting provision. while awarding 6.8% of total procurement as subcontracts to MFD firms (nearly $50 million). Furthermore. the County's goal of directing twenty percent (20%) of its procurement to MFD firms is not excessive in that MFD firms (excluding non-profit entities serving the disabled) now comprise almost one-third (32.6%) of the bidder's list but received only about 18% of County procurement revenues during the recent five years.

16. The County's many race-neutral programs provide important services to small businesses including MFD firms. The County's extensive outreach programs featuring technical assistance. training. counseling. and networking incorporate the spectrum of race-neutral programs and demonstrate the depth of the County's consideration of such programs. Nevertheless. according to County officials and MFD focus group members. these programs or similar race-neutral efforts to remove discriminatory barriers could not possibly counteract a tremendous drop in County and private contracts awarded to MFD firms if the County were to discontinue the MFD program.

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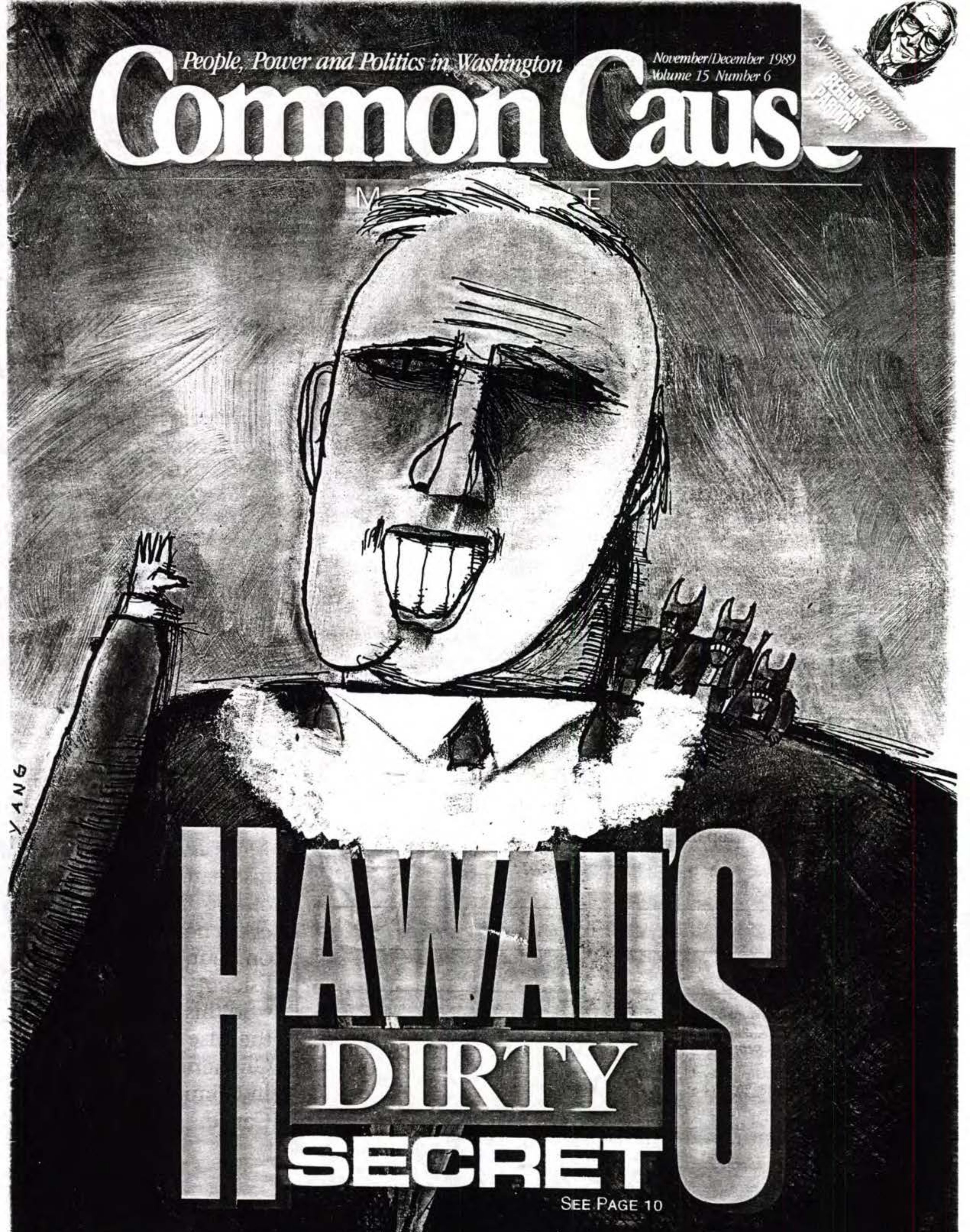

SEE PAGE 10

By Viveca Novak

Hawaii's Dirty Secret

Welcome to paradise—where a combination of negligence, incompetence and greed has deprived native Hawaiians of what's rightfully theirs.

On the map, Anahola Beach looks like an inviting cove on the east coast of Kauai. But visitors to the Garden Island in the Hawaiian chain aren't encouraged to stop, and no signs point the way from the main road heading north from the airport.

It's no wonder. Those who do locate the beach, once used as a public park, find the area dominated by a community of shacks made of little more than plastic sheeting and some pieces of wood. Fifteen families of native Hawaiian ancestry are camped here — about 40 adults, 32 children.

This is not the Hawaii of travel brochures, the idyllic melting pot of the Pacific, the tranquil vacationland of aloha spirit. This is militant Hawaii, the Hawaii of wrongs not made right, a land claimed by descendants of those here long before westerners arrived.

The Anahola squatters are here in part because they have few other options, but they are also here as a matter of principle. Nearly 70 years ago Congress passed a law setting aside roughly 200,000 acres of the islands — including this beach — for homesteading by native Hawaiians. After decades of official inaction and abuse, Hawaiians are trying to claim the land they say is lawfully theirs; more than that, throughout the archipelago native Hawaiians are demanding self-determination, money reparations and an apology from the U.S.

"The key is to return the land to the people — that's the source and the wellspring," says Mililani Trask, an attorney and a moving force among Hawaiian activists.

But Hawaii is dominated by an interlocking web of unusually large landowners and a powerful political machine, and Hawaiians are largely shut out. Eight private and government entities control about 70 percent of the state's land. The U.S. government alone owns or controls 16.5 percent, and the state 29.4 percent. And 25 percent is owned by six private landowners.

The largest of these, the Bishop Estate, is just one of many examples of unfairness cited by native Hawaiians. At last count the estate owned 8 percent of the land, worth

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VIVECA NOVAK

about $2 billion. The estate's proceeds, according to the will of a Hawaiian princess, are supposed to provide education for native children. But critics point out that its Kamehameha Schools, which have a larger endowment than any pre-college facility in the country, enroll only 6.4 percent of eligible Hawaiian students. Meanwhile the estate's trustees, appointed by state Supreme Court justices in a set-up fraught with cronyism, pull down huge salaries — $648,000 apiece last year, nearly $1 million the year before. All of the current trustees are associated with the Democratic political machine.

So in August, when congressional field hearings on the 1921 Hawaiian Homes Commission Act focused some attention on lands for Hawaiians, natives had reason to be skeptical. It's the latest in a line of forums on Hawaiian issues. And they see the chairman of the hearings, Sen. Daniel Inouye (D-Hawaii), sometimes called the godfather of modern Hawaiian politics, as part of the political network that has done little for them. Inouye disagrees with this characterization. "I have gone out of my way" to help native Hawaiians, he says. "You'll never satisfy all of them."

The body that administers the act, the Department of Hawaiian Home Lands (DHHL), is leasing only 32,700 of its approximately 187,000 acres to homesteaders. The remainder is used by state, federal and local governments and by non-Hawaiian ranchers, growers and other businesses — in some cases at virtually no cost. Meanwhile, there are 19,000 Hawaiian applications for homestead lots pending on DHHL's waiting list. "By moral and legal right, these people shouldn't be waiting," says Maui Loa, a 36-year-old artist who sued in 1980 to compel enforcement of the act. "To wait is to die."

Decimated by disease beginning soon after the arrival of explorer James Cook in 1778, Hawaiians have continued a steady decline. Today there are few full-blooded Hawaiians left; part-Hawaiians number about 200,000, or just under a fifth of the state's population. In general, they cut a wretched statistical profile. Of the state's 14,000 adults on AFDC, one in three is Hawaiian, and 34 percent of Hawaiians live in poverty. Native Hawaiians make up about 46 percent of adults and 66 percent of youths in correctional facilities. They have a death rate 34 percent higher than the average American and the highest lung cancer rate in the nation.

This sounds like a familiar story — a once self-sufficient indigenous people become disenfranchised and dependent. But though there are many parallels between native Americans and Hawaiians, the U.S. has recognized more than 500 mainland Indian and Alaskan tribal governments in a nation-within-a-nation relationship; as bad as the conditions of many tribes, most largely control their own lands and resources and have significant protections. Critics argue that only Hawaiians have been left out. "This is America's last excluded, forgotten native people," says Trask.

"These are land preservation and native issues that are every bit as important as parallel issues on the mainland," says Charles Wilkinson, an Indian law expert and professor at the University of Colorado law school. "The situation is at least as compelling on the islands. As recently as the 1890s, [Hawaiians] were considered an independent foreign nation. To a much greater degree than on the mainland, their land was taken, their sovereignty was taken."

Sugartown

Polynesians had lived on the Hawaiian islands for probably 1,300 years before Cook arrived. But by the late 19th century, sugar barons — mostly American — controlled much of the land. In 1893, with the approval of the local U.S. representative and the backing of U.S. military personnel, they and other business interests seized control of the government as well.

Later that year, when the businessmen's provisional government asked the U.S. to annex the islands, President Grover Cleveland declined, stating: "By an act of war, committed with the participation of the diplomatic representative of the United States and without authority of Congress, the government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our na-

VIVECA NOVAK

VIVECA NOVAK

"The key is to return the land to the people," says Hawaiian attorney Mililani Trask (above). One target of the native rights movement is Sen. Daniel Inouye (left), the powerful Democrat who heads the Select Committee on Indian Affairs.

tional character as well as the rights of the injured people requires we should endeavor to repair."

His successor, William McKinley, was not so charitable; the annexation went through in 1898. Hawaiians were left with little political power and practically no land.

Ironically, the self-interest of the sugar barons was behind what looked like remedial action two decades after annexation. Wanting to secure their leases of productive government land for as long as possible, they pushed a plan in Washington to set aside roughly 200,000 acres where Hawaiians of 50 percent or more pure blood could "rehabilitate" themselves by leasing homestead lots for $1 a year for 99 years. The catch was that the home lands, created by the 1921 Hawaiian Homes Commission Act, did not include any cultivated sugar lands — the choice agricultural property — and consisted of parcels with vaguely defined boundaries. The federal government ran the program until Hawaii became a state in 1959 and took on the responsibility — though Washington retained some important oversight powers, including the sole right to sue if the program was not enforced.

Current DHHL Chairman Ilima Pi'ianaia describes the program's abuse as "an incredible history." Much of the terrain designated as home lands is rocky, arid, steep or otherwise unproductive. In addition, Congress said no more than 20,000 acres could be homesteaded in any five-year period — a limit not removed until 1978. The application process was hopelessly inconsistent, sometimes giving priority to those with more pure Hawaiian blood or those who showed an "ability to serve as an example." Usually waiting lists weren't made public, so applicants never knew their ranking. At times, land was given out by lottery.

Direct funding for the program has been almost nonexistent, while the costs of putting in basic services like dirt roads, water and electric lines are high given the remoteness of some of the tracts. For years DHHL's only real source of income was through general land leases to other parties — but until 1965, another state bureaucracy, the Department of Land and Natural Resources, controlled leases of home lands not being homesteaded and often took action that provided little return for the program.

"Basically, they set up a reservation and kept the Hawaiians off it," says Joseph Gebhardt, a Washington attorney who has represented native Hawaiians.

Potential homesteaders can apply for three types of lots — residential, agricultural or pastoral (for ranching). Currently the house lots are as small as a quarter-acre, the others up to several hundred acres. Stories abound of 30-year waits for land and waiting lists lost and ignored while leases went to well-connected non-natives. On the Big Island, the Parker Ranch — said to be the nation's second-largest ranch — has for years leased large amounts of Hawaiian home lands for nominal rent; it pays DHHL $124,510 annually for 32,845 acres, or $3.79 per acre. But only 20,943 acres on the island are leased to homesteaders.

On Maui only 541 of 28,995 DHHL acres are homesteaded. But a company tied to a well-connected former speaker of the House and mayor of Maui, Elmer Cravalho, leases 15,620 acres for only $40,550 yearly (even less until activists made it an issue).

Water is a major issue, since much of the home lands are parched, and a conflict involving a large sugar plantation on the western end of Kauai has brought the controversy to a head. While only 831 acres of home lands on the island are leased to homesteaders, a 14,558-acre chunk is leased by Kekaha Sugar, a subsidiary of Amfac, one of Hawaii's original sugar kings. Kekaha pays only $3.79 per acre per year for its lease, a total of $55,208.

Kekaha also uses nearly all of the area's available water — in fact, much of the home lands it leases provides a valuable watershed for its vast plantation of owned and rented land. Five nearby ranch lots, leased to homesteaders beginning in the 1950s, never received enough water to support ranching. DHHL, the state's congressional delegation and others say they interpret the law as requiring the state to provide homesteaders adequate water. Nevertheless, when the state renewed Kekaha's various land leases in 1969, it gave the company the right to most of the Waimea River's waters. None was reserved for the homestead ranches.

Several years ago two remaining ranchers rebelled, tapping into a Kekaha Sugar irrigation ditch. Kekaha sued and got an injunction against them. A second attempt by the ranchers brought another suit and, because of the competition for water, the company has actively opposed the award of more homestead lots and planned improvements of the homesteaders' water system.

"The Waimea River waters are transmitted across state lands and home lands, in effect without any ability of the homesteaders to take some for irrigation purposes," says Alan Murakami, litigation director for the Native Hawaiian Legal Corp. "They're stuck."

State and local governments also arrange low-rent leases for themselves. The city and county of Honolulu pay $1 a year, the same rent a homesteader would pay, for Waimanalo Beach Park

on Oahu. Other lands are used by state agencies, notably the Department of Transportation.

The U.S. military also occupies vast tracts of land on the islands — headquarters of the Pacific Fleet — including a 1,300-acre parcel of home lands on Oahu set aside for the Navy's use by executive orders in the 1930s. Two smaller parcels of land on Oahu are leased to the military by DHHL at a rate of $1 per year apiece.

Once homesteaders do get leases, they face the next hurdle: coming up with money to build a house. DHHL makes loans, but its funds are limited. Bank loans are difficult to get because homesteaders, as long-term renters, can't use the land as collateral. On the other hand, they often have to pay county taxes on the property — taxes that can be prohibitive in a state with high land values.

Machine Politics

The elite Republican grip of King Sugar held sway from annexation until the 1950s and Hawaiians found themselves increasingly inconsequential. Perceptions of corruption were widespread. "The governor and his cabinet are aiding and abetting the exploitation of land and the money-grubbing efforts and tactics of . . . the five sugar agencies . . . and a crooked political set-up . . . in this ocean-bounded Paradise of the land monopolists," read a letter to President Franklin Roosevelt in 1938 from members of Hawaii's Independent Nonpartisan Party.

Since then, the characters have changed but similar kinds of problems have persisted. After World War II, populist Democrats backed by Japanese-Hawaiians challenged the political dominion of the Big Five. Sen. Daniel Inouye, then a GI bill student who had served in the highly decorated 442nd Regimental Combat Team of Japanese-Americans, played a leading role, pledging Japanese-American support for rising Democrat John Burns, a cop considered a hero for his part in helping stave off wartime persecution of many Japanese-Hawaiians. At the same time, the Japanese gained economic leverage through fierce labor organizing that produced what have been some of the nation's most powerful unions.

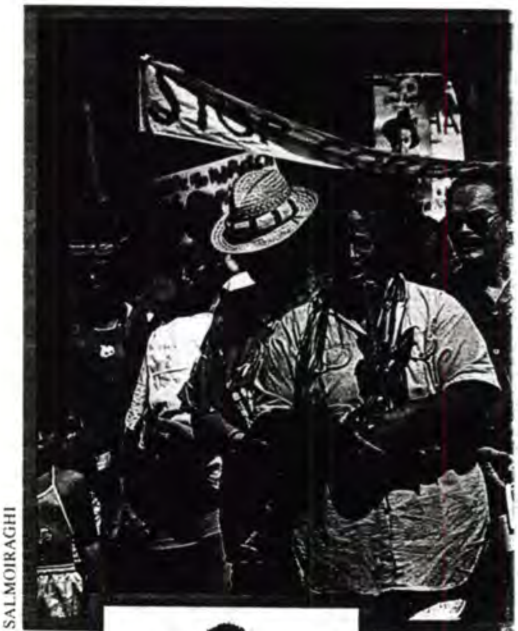
A 1954 Democratic sweep of state legislative races and the 1962 election of Burns as governor kick-started the Democratic-labor machine that has dominated Hawaii in a way sometimes likened to the late Richard Daley's Chicago. In 1974 Burns's Japanese-American lieutenant governor, George Ariyoshi, took Burns's place and kept the machine purring. Ariyoshi's pick, John Waihee — the state's first part-Hawaiian governor, but viewed as relatively unsympathetic to native demands — was elected in 1986.

Over the years Inouye's influence has swelled. Hawaii's first congressman after statehood, he was elected to the Senate after one term. Strongly backed by Japanese-Hawaiians, labor and business interests, he regularly wins reelection by huge margins and sits atop a well-fattened war chest.

A loyal Democrat, Inouye has also gathered power and prestige within the Senate, giving the keynote speech at the 1968 party convention and earning praise for distinguished service on the Watergate Committee. He was the Senate's third-ranking Democrat from 1979 until last year when he stepped down for an ultimately unsuccessful run for majority leader. However, he still heads the powerful Democratic Steering Committee.

Inouye overshadows the rest of Hawaii's congressional delegation. Except for Republican Rep. Patricia Saiki, who won an upset victory in 1986, the others are part of the same political club, and clearly Inouye is club president. Sen. Spark Matsunaga (D), also Japanese-American, served in the precursor to the same legendary military unit Inouye joined. Rep. Daniel Akaka, a part-Hawaiian, is a former Ariyoshi aide.

At the state level, Hawaii's politics are often described as plagued by cronyism and conflicts of interest, a tendency some attribute to too much political inbreeding in a state no larger than a mid-sized mainland city. The Honolulu police department, for instance, counts among its alumni several controversial characters with ties to top state Democrats. Ex-cop Larry Mehau, a close friend of Ariyoshi, now owns the largest security firm in the state. Mehau was the subject of a two-year federal and city criminal investigation, led by the Drug Enforcement Administration, but no indictment resulted.



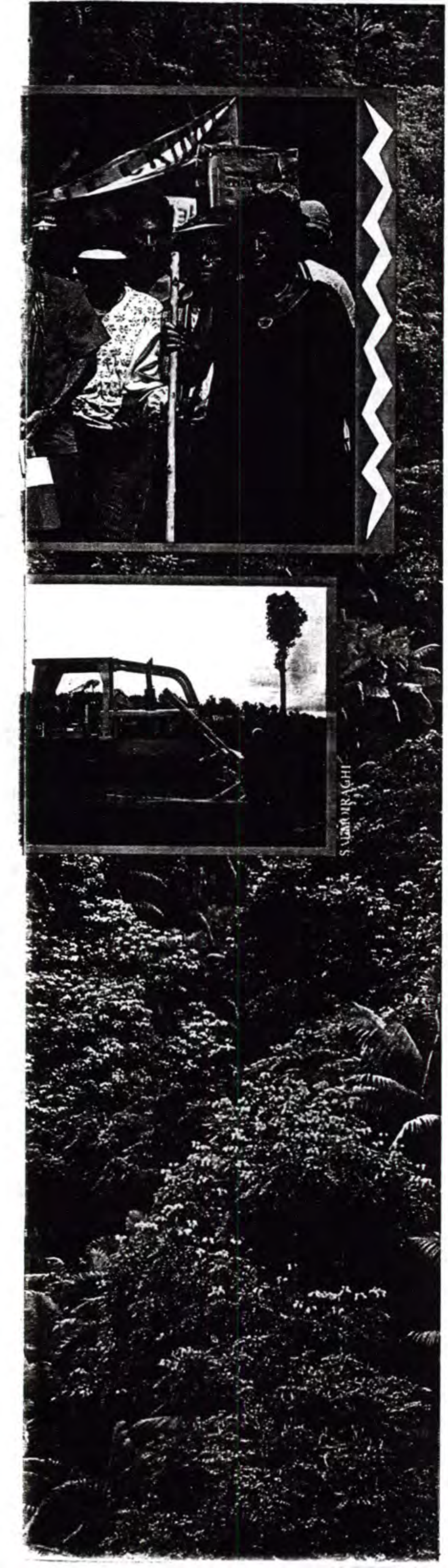
SALMOIRAGHI

VIVECA NOVAK

A geothermal project pits native Hawaiians against state and private forces. The project is a symbol of threats to the native culture, says critic Palikapu Dedman (above).

Henry Giugni, also a former Honolulu policeman, went on to Capitol Hill as an aide to Inouye. In 1973, while working as Inouye's administrative assistant, Giugni accepted a $5,000 under-the-table contribution from a Gulf Oil lobbyist, some of which he passed along to his boss, who later said he thought the money came from his campaign account. *The Washington Post* reported that the Senate Ethics Committee pressured Inouye to fire Giugni, but he refused. Giugni, now Senate sergeant-at-arms, came under further scrutiny last year for using congressional funds for apparently personal trips to Hawaii. He returned part of the money.

Several Democratic politicians were convicted on election fraud charges a few years ago, and this summer the



FBI sent a newly organized team of public corruption and fraud investigators to the state. A Republican member of the legislature recently complained publicly about the "intolerable environment of fear" created by decades of control by one party, which businesses and other potential campaign contributors are afraid to offend.

If it's difficult for Republicans, it's next to impossible for Hawaiians, who "have never been able to buy their way in through Democratic campaign contributions," says Trask. And many of them worry that as the state becomes an economic, financial and tourist hub of the Pacific, they will lose even the tenuous progress they have made. A recent ad in *The Wall Street Journal* solicits tenants for a high-tech industrial park which has been designated a free foreign trade zone. The park is a project of a subsidiary of Castle & Cooke — one of Hawaii's original Big Five, which still play a large, though diminished, role. Most have diversified from agriculture to land and resort development and other ventures; three of them — Alexander & Baldwin, Amfac and Castle & Cooke — are still among the state's top five companies in revenues. They're also still involved in politics and have formed national political action committees.

A Breach of Trust

Some native Hawaiians have looked to the federal bureaucracy for relief, but the Department of Interior has repeatedly made it clear that it washed its hands of responsibility when Hawaii achieved statehood in 1959. In 1971, for example, a young state legislator, Diana Hansen, wrote to Secretary of Interior Rogers C.B. Morton, begging for help "to straighten out the chaotic, horrifying mess that has become the Department of Hawaiian Home Lands."

Hansen got a brushoff. "[T]he Secretary of the Interior has no authority in the areas of your concern," wrote Assistant Secretary Harrison Loesch. Hansen says Sen. Inouye told her he could do nothing and suggested she find a lawyer. Sen. Spark Matsunaga, then in the House, referred her to the Justice Department, where she wound up talking to an unsympathetic former attorney general of Hawaii. A letter soon after from an Interior official to DHHL described the federal role as "an anachronism."

In fact, the U.S., a major Hawaiian landowner, has a critical watchdog mission as the only party that can sue for the nonenforcement of the home lands act — a function it has clearly avoided. The upshot has been a lack of federal oversight and accountability. When Hawaiians have tried to bring lawsuits, they have been kicked out of court on technicalities of standing. "We're the only class of Americans prevented from going into federal court to protect our property rights," says Trask.

More than any other issue, the hollow promise of the home lands program fueled a surge of activism among Hawaiians beginning in the 1970s. One group, Aboriginal Lands of Hawaiian Ancestry, or ALOHA, was instrumental in the development of the first Hawaiian reparations bill, introduced in 1974 by then-Reps. Matsunaga and Patsy Mink (D). The bill, decrying the "lawless, fraudulent and forceful acts of agents of the United States" in the 1893 overthrow, would have provided Hawaiians $100 million annually for 10 years, to be managed by a corporation.

The proposal died, but in large part because of the activist rumblings, various federal panels began looking at the Hawaiian predicament in the 1980s. All but one have concluded that the Hawaiians have been wronged and something must be done. The sole exception, the 1983 report of the controversial Native Hawaiian Study Commission, said native Hawaiians have no legal basis for claiming reparations from the U.S. The three Hawaiian members of the commission vigorously dissented, and the majority report has been roundly discredited as politically slanted, in part because its panelists were appointed by former President Ronald Reagan only after he tried to kill the commission.

The conclusions of the other proceedings were damning. A 1980 U.S. Civil Rights Commission report, *Breach of Trust?*, recorded the almost universally negative reviews of the home lands program given in a forum it sponsored. In 1982 the Department of Interior's Office of Inspector General issued a blistering critique of the Department of Hawaiian Home Lands, calling its accounting system "inauditable" and citing "inadequate maintenance of land inventory records." The report outlined dubious land exchanges, including one in which the acreage DHHL received was next to a

county dump and landfill, and other questionable actions.

A 1980 lawsuit by native Hawaiians against the federal government to compel distribution of the home lands forced then-Secretary of Interior Cecil Andrus to attention. In December of that year he wrote to then-Gov. George Ariyoshi denouncing federal and state conduct. "It appears that over the last two decades this department and the state have either neglected or misinterpreted many of their responsibilities under the [home lands act]," Andrus wrote. "[S]erious violations of a number of aspects of the act have occurred."

The letter led to the formation of a state-federal task force, whose 1983 report detailed an exhaustive litany of abuses, including illegal conveyances of land through executive orders and land exchanges, slowness in distributing homesteads, funding crises and discrepancies in land inventories. Among the report's 131 recommendations: That the state and federal governments provide more money to the program; that homesteads be given out on an expedited basis; that beneficiaries be given a right to sue under the law; and that the federal government exercise more diligent oversight.

The reports' validation of Hawaiian frustrations, along with the state and federal governments' slow response, has only increased Hawaiian insistence on a greater degree of self-determination. Though a small group advocates actual secession from the U.S., most native Hawaiians are lobbying for something more akin to Indian sovereignty.

Among the rival factions competing for converts to their particular visions of sovereignty, two are dominant. One is the 4,000-member Ka Lahui Hawaii, or "the gathering of Hawaii," which has a constitution providing for four branches of government, including an advisory body based on Hawaiian tradition. Trask, who established the group, is its interim governor.

The other is the controversial Office of Hawaiian Affairs (OHA), created by the state's 1978 Constitutional Convention to coordinate government programs affecting Hawaiians and to act as an advocate for them. Though OHA is more independent than most state agencies, many native Hawaiians view it as a government vehicle for diluting political activism.

Both groups say that a land base is essential and should include not only the designated home lands — less than 200,000 acres — but part of a larger collection of lands referred to as the ceded lands trust. The U.S. took these lands when it annexed Hawaii in 1898, then in 1959 returned 1.35 million acres to the state with the proviso that it be used for five public purposes, including "the betterment of native Hawaiians."

Much like mainland native Americans, many Hawaiians want a direct relationship with the federal government and as few dealings as possible with the state. "State governments are controlled by local interests," says Steven Moore, an attorney with the Native American Rights Fund in Colorado. "Those are always inimical to the interests of native people in all ways, shapes and forms."

Organized Opposition

Perhaps the clearest picture of the state and private interests the Hawaiians are up against comes from an ongoing conflict over geothermal energy generation on the Big Island, site of two highly active volcanoes. The development, which is being done privately in segments, was conceived by the state as a way to escape its 90 percent dependence on foreign oil for electricity. The plan is to send 500 megawatts from the Big Island to Oahu via a never-before-tried cable that would plumb ocean depths up to 7,000 feet.

Native Hawaiians, allied as the Pele Defense Fund, have fought the plan in court and in the media. The drilling, they say, defiles Pele, the powerful volcano goddess in traditional Hawaiian belief. PDF lost a bid to stop the project on religious grounds in Hawaii's highest court and was refused a hearing by the U.S. Supreme Court.

It is now challenging an exchange of ceded trust lands that makes the project possible. The Campbell Estate, a large landowner leasing acreage to a would-be developer of a 100-megawatt part of the project, picked a site that was deemed unsuitable after, uncannily, Kilauea erupted and spread lava up to 300 feet thick over some of the proposed wells in 1983. In 1985 Campbell and the state swapped adjacent tracts of land in part to shift the project to more solid ground. But the 28,000 acres the state gave up were part of the ceded lands trust. PDF says the trade is illegal, claiming in a federal lawsuit that the state ignored the interests of the trust's beneficiaries. Further, the exchange is unfair, say the plaintiffs, since much of the land Campbell traded to the state is covered with fresh lava and part of it was already promised to the National Park Service.

Additionally, most of the land the state gave up was designated as natural reserve — a classification that is supposed to last for "perpetuity" under land use law. The area, part of which is in the last lowland rain forest in the U.S., has several listed and potential endangered species.

"In many ways, this project symbolizes the sort of activity that's destroying our lifestyle and our culture," says Palikapu Dedman, president of PDF.

But the state and private interests who want the project have marshaled powerful resources to smooth the way. The state has spent millions on research and planning contracts, speeded the permitting process and mounted an extensive publicity campaign to try to allay opposition. It has also hinted that it may provide tax breaks and other incentives to lure more private sector participants, which are weighing the project's heavy development costs — officially forecast at $1.5 billion but privately estimated at $4 billion or more.

A key player, Pirelli Cable, the company angling to build the sub-marine transmission line, has gathered congressional support for a demonstration project with the help of lobbying firm Cassidy and Associates. Over several years federal legislators have given the project $26 million (only some of which goes to Pirelli). Pirelli has kept up its end of the romance with honoraria, trips and campaign contributions. In 1987-88 the company gave $15,000 in honoraria to members of the House — all but two of them on the Appropriations Committee. Since 1983 Pirelli has contributed $108,000 to legislators, more than half of them members of the House or Senate Appropriations Committee. Gerald Cassidy, whose firm has many clients besides Pirelli, and his wife contributed at least $115,000 to congressional and presidential candidates from 1985 through 1988.

continued on page 27

HAWAII

continued from page 16

Inouye, who has pressed for appropriations for the project, has received special attention. At the Democratic National Convention in 1988, Pirelli feted the senator at an exclusive luncheon in Atlanta's High Museum. "We have been working closely with the senator," says Pirelli's John Barteld, noting that Inouye was running for Senate majority leader at the time. "We thought that a luncheon in his honor might be appropriate."

Last year *The Washington Post* detailed other Pirelli Congress-courting ploys — like donating $25,000 to a University of Massachusetts chair named for Rep. Silvio Conte (R-Mass.), ranking minority member on the House Appropriations Committee. Then-Rep. Don Fuqua (D-Fla.), who was chairman of the House Science and Technology Committee, and his wife were treated to a seven-day trip to Hawaii, travel and lodging included, by Pirelli and the University of Hawaii, with Fuqua picking up a $2,000 honorarium from Pirelli.

Another private interest favoring the project, the Campbell Estate, is no stranger to politics. Fred Trotter, a longtime estate trustee, has raised money for Inouye and chaired his 1980 campaign. Trotter also frequently turns up on the disclosure reports of state candidates.

All of Hawaii's delegation to Congress and many in the statehouse support the state's geothermal goals. Inouye is defensive when asked about his views in the face of so much native opposition, at first even denying he backs the project. But when asked about his votes in favor of the deep-water cable demonstration project, he admits his support, saying that Hawaii must find alternative energy sources.

While Inouye and others in the delegation have sponsored bills to fund native Hawaiian health and education programs, most Hawaiians say that's not enough. "Everybody sees Dan as one of the most powerful senators; you would think after 30 years he could have done something to help Hawaiians," says Charles Maxwell, a member of the Civil Rights Commission's state advisory committee. "We are a land-based people; that's our culture," says Maxwell, "and that's what we don't have."

Hardening Resistance

Six years after the landmark 1983 task force report on the home lands, many of the recommendations have yet to be addressed, though the state has tried to take some action. Since 1987, it has appropriated an unprecedented $80.6 million for the program. DHHL gave out 2,500 lots between 1983 and 1986 — though most can't be occupied because they don't have water and other improvements, which will cost another $74 million to provide. The governor rescinded a handful of illegal executive orders that had transferred land to other interests — though most of that land has not been transferred back. DHHL sued the Navy over the military lands on Oahu — but the suit was thrown out last year because, the judge ruled, the statute of limitations had run out.

The state also passed a weak Hawaiian right-to-sue bill in 1988 after five years of lobbying by Trask and others. Hawaiians can sue the state for breaching the home lands law, but all damages must go to the Office of Hawaiian Affairs, the agency many Hawaiians distrust. No punitive damages may be awarded, and there's no way to bring claims for abuses that occurred before 1990. (The governor is supposed to come up with a plan to settle back claims.)

At the federal level only $1.2 million has been allocated for the home lands program, and no federal right-to-sue legislation has been introduced. Interior officials indicate a confused approach even now. One Interior official, Cecil Hoffman, says that the department has "a continuing role, but a tiny little role, a laid back role."

Much rides on Inouye, who since 1987 has chaired the Senate Select Committee on Indian Affairs and openly empathizes with mainland native Americans. Some say this experience has helped open him to native Hawaiian concerns as well. "I think the parallel between native Americans and Hawaiians is too clear for him not to see it," says attorney Alan Murakami. Five 10-hour days of emotional testimony at the August field hearings provided ample evidence, Inouye says, that there are substantial wrongs to be corrected. He says that in the past he has not acted in part because of a fear that drawing attention to the Hawaiian Homes Commission Act could cause opponents to challenge it as an unconstitutional racial classification. Many Hawaiians are dubious of this defense.

Inouye says he is planning to act on the federal right to sue, money for the home lands program and the Oahu lands held by the military. But he is still hedging on issues such as sovereignty. "I think it would be well if they had somewhere they could put their flag," he says — but asked if he envisioned the Hawaiian home lands as a land base, he is guarded. "Perhaps a small part of it, not all of it," he says. Inouye says that next year he will arrange a series of seminars for native Hawaiians, led by legal experts, on sovereignty options.

Increasingly bitter native Hawaiians have been taking matters into their own hands in a widening range of disputes. Last year, for example, they fought development of a Maui beachfront hotel at a site known to be an ancient burial ground. The developers' bulldozers eventually unearthed more than 900 ancient skeletons. Activists staged a Christmastime vigil at the home of Gov. Waihee, who finally ordered the digging to stop. In the end, the parties agreed that the hotel would shift locale, the state would purchase the site, the skeletons would go back to their sandy graves and a panel that includes natives will devise a protocol for future projects that risk disturbing sacred Hawaiian bones.

More worrisome are the hints of possible violence. A few years ago a group of Hawaiians squatted on their ancestral lands — then owned by others, though vacant. A SWAT team was dispatched to evict them, and some in the group took up arms. "We were able to avoid violence then," says Trask, describing the incident, "but I am concerned that we will not be successful again."

Mainland visitors to the islands are sometimes surprised by visible hostility from Hawaiian natives — something far from the image the state wants to project. "For them, revolution is an option," says Washington lawyer Joseph Gebhardt. "As long as we don't treat them like good Americans, why should they act like they are? It's a shocking injustice." ♦

THE WHITE HOUSE

June 27, 1994

Mr. James M. Lyons
1200 17th Street
Suite 3000
Denver, Colorado 80202

Dear Jim:

Thank you for your recent letter recommending Jim Robertson to the U.S. District Court for the District of Columbia. I appreciate hearing from you and have forwarded your letter to Victoria Radd and the Office of Presidential Personnel for consideration.

Thanks for the generous invitation and I look forward to seeing you again soon.

With warm personal regards, I remain

Sincerely yours,

Hillary

Hillary Rodham Clinton

cc: Vickie Radd

bcc: Anne Bartley

JAMES M. LYONS
1200 17TH STREET, SUITE 3000
DENVER, COLORADO 80202
(303) 628-9546

June 16, 1994

Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500-2000

Dear Hillary:

Jim Robertson, a senior trial attorney at Wilmer, Cutler & Pickering and former D.C. bar president, is under consideration for appointment to the United States District Court for the District of Columbia. My understanding is that he has the support of Eleanor Holmes Norton's selection committee and the enthusiastic endorsement of the likes of Vernon Jordan. I'd certainly like to throw in my two cents on Jim's behalf.

I have known Jim for almost 15 years and have had the opportunity to work closely with him in major and complex litigation. He is simply world class and would be an outstanding federal trial judge. He was active in our campaign during the primaries and provided a useful resource to our lawyers group.

I am also told that you favor a competing candidate, Ronna Beck, for this vacancy. Ronna and her husband worked with me and Jim Hamilton briefly during the campaign in early 1992. She certainly appeared to me to be a capable and experienced lawyer; however, I truly believe that she doesn't yet have the experience and stature of Robertson.

I hope you don't find this note presumptuous, but I do feel strongly about Jim's talents.

I hope all is well with you and the family and that you'll get some time away this summer. We'd always love to have you here--anytime--Mi casa esta su casa.

Best regards.

Sincerely,

James M. Lyons

JML:dm

P.S. Please don't feel you need to acknowledge or respond to this note.

THE WHITE HOUSE

June 27, 1994

Mr. Glee S. Smith
Smith, Burnett & Larson
Post Office Box 360
Larned, Kansas 67550

Dear Glee:

Thank you for your recent letter recommending David J. Waxse to the U. S. Court of Appeals. I appreciate hearing from you and have forwarded your letter to the Office of Presidential Personnel for consideration.

With warm regards, I remain

Sincerely yours,

Hillary

Hillary Rodham Clinton

cc: Office of Presidential Personnel

bcc: Vicky Radd

Smith, Burnett & Larson

ATTORNEYS AT LAW

GLEE S. SMITH
DONALD L. BURNETT
JERRY G. LARSON

III EAST EIGHTH STREET • POST OFFICE BOX 360
LARNED, KANSAS 67550
TELEPHONE 316/285-3157
FAX 316/285-3159

May 17, 1994

Hillary Clinton
ATTENTION: Pam Barnett
2nd Floor, West Wing
The White House
Washington, DC 20500

Re: David J. Waxse, proposed nominee for Judge of the U.S. Court of Appeals.

Dear Hillary:

I haven't contacted you for a few months but I wanted to write to you, at this time, concerning a friend of mine who is being considered for appointment as a Judge of the U.S. Court of Appeals to take the place of Judge James Logan who will soon be taking senior status.

I have known Dave Waxse for more than twenty years and have found him to be an outstanding legal scholar and a person of impeccable integrity. He has the judgment and wisdom to make an outstanding Judge.

I have served with him in matters involving our Kansas University School of Law and on the governing board of the Kansas Bar Association so, I have had an opportunity to see him in action and to observe the manner in which he approaches the solution of problems.

Victoria Radd has a full and detailed resume' of his career and I am sure that you will find it to be very impressive. I am writing to her, also, but wanted to call your attention to this particular fellow because of my great admiration for his scholarship and his judicious manner.

His appointment would be a well deserved recognition of outstanding ability.

Respectfully,

Glee S. Smith

GSS:jv

file
judicial

THE WHITE HOUSE

September 8, 1994

Mr. James R. Greenfield
Greenfield & Murphy
234 Church Street
P. O. Box 1103
New Haven, Connecticut 06504-1103

Dear Jim,

Thank you for your letter endorsing the candidacy of Joan F. Kessler for a position on the Seventh Circuit. I appreciate your personal recommendation and have forwarded your letter to the Office of Presidential Personnel, and to Vicky Radd who is handling judicial appointments in the Office of White House Counsel.

Letters from friends like you have been an enormous source of strength and encouragement. Thank you for being our friend and for sharing the goals of this presidency. It means so much to me.

With warm regards to you and Joyce, I remain

Sincerely yours,

Hillary

Hillary Rodham Clinton

cc: Office of Presidential Personnel
Vicky Radd

I met a friend of yours on the Vineyard and sent greetings

GREENFIELD & MURPHY
COUNSELORS AT LAW
234 CHURCH STREET
P. O. BOX 1103
NEW HAVEN, CONNECTICUT 06504-1103
(203) 787-6711

JAMES R. GREENFIELD
HELEN D. MURPHY
MAUREEN M. MURPHY

FAX (203) 777-6442

August 19, 1994

Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Hillary:

I am enclosing a letter in support of the candidacy of Joan F. Kessler of Milwaukee for a position on the Seventh Circuit. She really is a fine candidate and I hope that there is a possibility that she will receive the appointment.

Joyce and I have been so appalled and frustrated with the treatment of you and the President in the press and in the Congress and with the absolutely cynically political machinations of Dole, Gramm, D'Amato and company.

I have been wanting to write a long letter to you to tell you how much we admire the way you have been handling all of these problems and one of these days, I will.

In the meantime, I am sure you know, and I hope it is of some comfort to you, that you have dedicated friends and supporters who admire and respect the wonderful job that you have been doing.

Joyce joins me in sending our love.

Sincerely,

James R. Greenfield

JRG/cca

GREENFIELD & MURPHY
COUNSELORS AT LAW
234 CHURCH STREET
P. O. BOX 1103
NEW HAVEN, CONNECTICUT 06504-1103

(203) 787-6711

JAMES R. GREENFIELD
HELEN D. MURPHY
MAUREEN M. MURPHY

FAX (203) 777-6442

August 19, 1994

Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: Joan F. Kessler, Esquire

Dear Hillary:

I have just learned that my friend, Joan Kessler, who is a partner in the firm of Foley & Lardner in Milwaukee, Wisconsin, is a candidate for appointment to the Seventh Circuit Court of Appeals.

I have known Joan for a number of years and have worked with her on the Gender Bias Committee of the American Academy of Matrimonial Lawyers. She is a first rate lawyer with impressive credentials and just the sort of person whom the Commission on the status of women would consider qualified for the Margaret Brent Awards.

In her 26 years at the Bar, she has done it all, not only for herself and her family but in her dedication to the public at large and as a mentor for younger lawyers, both male and female, in bringing them along in the profession.

I am enclosing a copy of her resume which attests to her outstanding career.

If you concur, I hope that you can join in supporting her candidacy.

Sincerely,

James R. Greenfield

JRG/cca
Enclosure

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. resume	Re: Joan F. Kessler (partial) (1 page)	07/1994	b(6)

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First Lady's Office
Melanne Verveer
OA/Box Number: 20039

FOLDER TITLE:

Judicial Candidates

2013-0534-S
ry1594

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Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RESUME

July 1994

JOAN F. KESSLER
[redacted] (b)(6)
Telephone: 414/332-6688

Office:
Foley & Lardner
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Telephone: 414/289-3516

[001]

Personal

Married: September 1966 to Frederick P. Kessler -- former State Legislator and former Circuit Court Judge; current labor arbitrator and re-apportionment consultant

Children: Two adult daughters

Status: D/O/B [redacted] (b)(6)
Health -- excellent

Education

University of Kansas, B.A. 1965
Honors in French and German
University of Wisconsin Law School - 1965-1966
(Transferred due to marriage)
Marquette University Law School - 1966-68
Degree - J.D.; cum laude; Law Review
Class rank - 4th

Admitted to Practice:

Wisconsin Supreme Court, June 1968
United States District Court, Eastern and Western Districts of Wisconsin, June 4, 1968 and July 9, 1969
United States Court of Appeals, Seventh Circuit, May 2, 1977
United States Supreme Court, March 20, 1978

Free Legal Services [Pro Bono Activity]

Migrant Workers Legal Services
-Part of a group of volunteer lawyers who provided free legal services to migrant workers in central Wisconsin and to *Obreros Unidos*, the union organizing them.

Attorney for Cross Lutheran Church
- Member, and the volunteer attorney for, this central city African-American majority church for 25 years

Civil Rights
- During Milwaukee NAACP Commandos Fair Housing marches in the late 1960's, served with a group of lawyers who

volunteered to get arrested marchers out of jail and represent them in subsequent court proceedings.

Voting Rights

- Represented the League of Women Voters in successful re-apportionment litigation against Waukesha County Board

- Represented disenfranchised U.W.- Whitewater students on behalf of the American Civil Liberties Union.

Women's Rights

- Appeal to the Wisconsin Supreme Court which established the right of a married woman to retain her own name

Emily's List

-Organized first Wisconsin event for Emily's List

-Continuing to develop women as political force for liberals in Wisconsin legislative and judicial races

Legal Career

Government Service:

United States Attorney, Eastern District of Wisconsin Appointed by President Carter; April, 1978 to March 1981

Law Clerk, Honorable John W. Reynolds, U.S. District Court Eastern District of Wisconsin, May 1968 to September 1969

Private Practice:

Warshafsky, Rotter & Tarnoff: December 1969 -- Plaintiff's personal injury trial firm

Kessler & Kessler; Joan F. Kessler, S.C. General practice with spouse, then sole practitioner:

Cook & Franke, S.C. June, 1974 -- April, 1978 Personal, criminal defense, business and commercial litigation:

Foley & Lardner, March 1981 -- present Litigation partner ; State, national and international commercial, personal and criminal litigation

Academic Activities:

Lecturer, Professional Responsibility:

University of Wisconsin Law School (Fall 1993 - Spring 1994)

Marquette University Law School (Fall 1994, oral offer accepted)

Lecturer, UWM, School of Welfare - Graduate School "Social Welfare and The Law" (Fall Semester 1974 and 1975)

Lecturer, UWM, School of Social Welfare and Department of Criminal Justice - Criminal Law (Fall Semester 1973)

Bar Activities

General Membership:
American Law Institute, American Bar Association, Seventh Circuit Bar Association, Wisconsin Bar Association, Milwaukee Bar Association, Lawyers Association for Women, and Milwaukee Young Lawyers

State Bar of Wisconsin
Distinguished Service Award - 1994
Chair, Board of Governors - 1992-1993
Co-Chair, Policy Review Committee - 1993-1994
Board of Governors - 1985-1989; 1990-1992; 1993-
Government Lawyers Committee - 1980

Milwaukee Junior Bar Association (now Milwaukee Young Lawyers)
President - 1975-1976
Vice President - 1974-1975
Secretary - 1973-1974
Board of Directors - 1972-1977

Judicial Council of Wisconsin, State Bar Representative
1989-1991

Board of Attorneys Professional Responsibility,
Ex Officio Member, State Board - 1993-1994
Milwaukee District Committee - 1979-1985
Referee (hearing officer), appointed by Wisconsin Supreme Court 1994

Supreme Court Decorum Committee - 1992-1993

Political Activity

Wisconsin Democratic Party, Member
-Active in numerous senatorial, congressional, gubernatorial, legislative and local races for the past 28 years

Carter Presidential Campaign
-Pre-primary campaign activist and fund raiser
-Shared our home with Milwaukee County campaign coordinator

Babbitt for President
-Organized Wisconsin Babbitt presidential effort
-Coordinated raising matching funds in Wisconsin

Kessler for Congress
- January 1992 - September, 1992; primary fund raiser (after candidate) in husbands congressional campaign
- Surrogate for candidate forums and debates as needed

Clinton Presidential Campaign
-Housed two Wisconsin staffers (on loan from Mayor Flynn in Boston) in our home during the final months of the campaign

Voters for Choice in Wisconsin , 1990
-Organized this pro-choice PAC for Wisconsin legislative races

Civic Activities

Chair, Wisconsin Department of Industry, Labor and Human Relations Labor Standards Advisory Commission - 1976-1978

Legal Aid Society
-Board of Directors - 1974-1978
-Vice President - 1978

Michael's Community School
-Board of Directors - 1970-1973
-An alternative parent controlled school formed as a result of the Milwaukee public school system's refusal to desegregate the schools.

Selective Service Appeals Board, Eastern District of Wisconsin - 1971-1976

Metropolitan Milwaukee Criminal Justice Council - 1972-1975
-Appointed by Governor Patrick J. Lucey
-Allocated Safe Streets funds in the metropolitan area

Wisconsin Civil Liberties Union,
-Board of Directors 1982-1986;
-Cooperating attorney and member

Urban League
Board of Directors - 1980-1982

Planned Parenthood of Wisconsin
Board of Advocates
Development Committee, 1990 - 1993

Publications

Criminal Law: A New Approach To The Defense Of Insanity, 50 Marquette Law Review 688 (1966)

'Specific Portion' Trusts: the Marital Deduction, 51 Marquette Law Review 171 (1967)

The Erie Rule and Long-Arm Statutes, 52 Marquette Law Review 116 (1968)

Transmutation: Finding Extra Property to Divide in Divorce; Wisconsin Lawyer, Vol. 63, No. 8, p. 13, August, 1990

Can You Choose The Law to Govern Your Marital Agreement?; Journal of the American Academy of Matrimonial Lawyers, Vol. 8, p. 107, Spring, 1992

File
Judges

Ron Klain

PRESIDENTIAL
PERSONNEL

Pam Walker
"ND"

CONTACT NAME: Anne Bartley EXT.: 6266

SPONSOR NAME(S): HRC Office

DATE SUBMITTED: April 8/93

Pam Walker

SPECIAL HANDLING INSTRUCTIONS: for Judgeship in U.S. District Court, Eastern District in Arkansas

Ron -

Please add to the list -
When it's time, we can look at everyone who is on the list for each position + talk again.
I know you're busy - Hope you're well - Anne

THE WHITE HOUSE

March 29, 1993

Carolyn B. Witherspoon, Esquire
McGlinchey Stafford Lang
425 West Capitol Street, Suite 3900
Little Rock, Arkansas 72201

Dear Carolyn:

Thank you for your letter in strong support of Pam Walker for judgeship in the United States District Court, Eastern District of Arkansas. I value your personal recommendation and have passed along your positive comments and her résumé for consideration in the decision process.

Your continued support will be greatly appreciated as the new Administration focuses on the enormous challenges and responsibilities ahead and implements its agenda for change to get our country headed in the right direction again. The President and I are filled with hope and enthusiasm as solutions are developed for the complex issues we face.

Sincerely yours,

Hillary

Hillary Rodham Clinton

cc: Anne Bartley

Personnel Routing Memo from HRC

Name of Person: Pam Walker

If we do not have information on this person, do you want us to solicit their resume and desired positions ? ____Yes ____No

Telephone Number 501/372-1964 (h) 501/372-3363 (w)

Do you want this person considered for

* a board or commission ____Yes ____No
  Please mark area of interest, if known

* Agency/Department

___Agriculture
___Arts/Humanities
___Education
___Commerce
___Defense
___Energy
___Environtal Protect.
___EEOC
___FDIC
___Health/Human Services
___Housing/Urban Dev.
___Other (please describe)
___Interior
___Justice
___Labor
___NASA
___Office/Mgmt & Budget
___Office/Personnel Mgmt
___Science/Space/Tech.
___State
___Transportation
___Treasury
___Veteran's Affairs

Job Level

___Sub-cabinet ___Senior Level ___Entry Level ___Other

Do you wish to sponsor ? ✓ Yes ____No

Is this person

____Very Important OFL Clinton, H

✓ Important HRC Office

____To Be Considered No Sponsor

Comment:

Please send to Anne Bartley, OEOB, room 100, x6266

McGLINCHEY STAFFORD LANG
A LAW CORPORATION

NEW ORLEANS
DALLAS
HOUSTON
FORT SMITH
LAKE PROVIDENCE

425 WEST CAPITOL STREET
SUITE 3900
LITTLE ROCK, ARKANSAS 72201

MAILING ADDRESS
P.O. BOX 3178
LITTLE ROCK, AR 72203
TELEPHONE (501) 371-9999
FAX (501) 371-0035

February 17, 1993

First Lady Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Re: Pamela Dean Walker

Dear Hillary:

I am delighted to be writing you on behalf of Pam Walker for the vacancy for a judgeship in the United States District Court, Eastern District of Arkansas. I know that you have known Pam for a number of years, but I have enclosed a copy of her résumé to familiarize you with her credentials.

It goes without saying that Pam did well in law school and has done extremely well in private practice. She has gained a reputation in the legal community for excellence in her work. I feel certain that she will be compassionate and fair to all litigants in federal court without regard to their gender or to their race. I know she believes in the integrity of the federal court system.

I have written both Senator Bumpers and Senator Pryor urging them to support her nomination. I would appreciate any help that you can give her in this regard.

Keep up your good work. We are all proud of you.

Sincerely,

Carolyn

Carolyn B. Witherspoon

CBW:jcd
Enclosure

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. resume	Re: Pamela Dean Walker (partial) (1 page)	03/1993	b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 20039

FOLDER TITLE:

Judicial Candidates

2013-0534-S
ry1594

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]
- C. Closed in accordance with restrictions contained in donor's deed of gift.
- PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

February, 1993

RESUME

PAMELA DEAN WALKER

ADDRESS: Home: [redacted] (b)(6)

Business: 1700 First Commercial Building
400 W. Capitol
Little Rock, Arkansas 72201 [002]

PHONE: Home: (501) 372-1964

Business: (501) 372-3363

PLACE OF BIRTH: El Dorado, Arkansas

DATE OF BIRTH: [redacted] (b)(6)

FAMILY STATUS: Divorced, no children

COLLEGE: Sweet Briar College, Sweet Briar, Virginia
1970 Graduate, B.A. degree in English

LAW SCHOOL: University of Arkansas, Fayetteville, Arkansas, 1974 Graduate, Cum Laude

Activities: Law Review, Editorial Board; Student Government Senator; University Committee on Academic Standards; University Honor Council; Law Students' Civil Rights Research Council; Speaker for Women's Symposium 1972; Arkansas State Prison Project; Legal Aid Clinic

Honors: Dean's List; American Jurisprudence Awards in Contract Law and Evidence; Smith, Williams & Friday Scholarship Award.

ADMITTED TO PRACTICE BEFORE THE FOLLOWING COURTS:

Supreme Court of Arkansas, 1974

United States District Courts:

Eastern & Western Districts of Arkansas, 1974
Western District of Louisiana, 1975
Eastern District of Texas, 1982

ADMITTED TO PRACTICE BEFORE THE FOLLOWING COURTS: (Cont.)

United States Courts of Appeal:

4th Circuit, 1985
5th Circuit, 1989
7th Circuit, 1987
8th Circuit, 1975
10th Circuit, 1986
D.C. Circuit, 1987

Supreme Court of the United States, 1988

PRACTICE BY PRO HOC VICE BEFORE THE FOLLOWING FEDERAL COURTS:

Southern District of Mississippi
District of Kansas
Eastern District of Louisiana
Central District of Illinois
Southern District of Illinois

EXPERIENCE BEFORE THE FOLLOWING AGENCIES:

National Labor Relations Board
Equal Employment Opportunity Commission
Arkansas Workers Compensation Commission

EMPLOYMENT:

January 1979 to Present

Private practitioner engaged in civil trial practice; 90% of practice involves complex litigation in Federal Courts. Areas of Concentration: Labor Law and Employment Discrimination including Title VII, §1981, National Labor Relations Act, Railway Labor Act, Fair Labor Standards Act, Labor Arbitration. Administrative Law Judge for Local Police and Fire Retirement System, 1987.

Other Areas: Workers Compensation, Laborers' & Materialmen's Liens, Foreclosure, Collection

Representative Clients:
United Transportation Union
American Train Dispatchers Association
United Paperworkers International Union
Office & Professional Employees Intl. Union
American Postal Workers Union
Monarch Mill & Lumber Co.
May Supply Co.

May 1974 - January 1979

Associate with the law firm of Youngdahl, Larrison and Agee. Practice concentrated in employment discrimination and labor law, complex litigation in Federal Courts and National Labor Relations Board.

Spring & Summer 1973:

Legal Intern for the Office of the Staff Judge Advocate, Fort Bragg, North Carolina.

Two months with defense counsel and two months with the prosecution in the Criminal Justice division. Special assignments in Legal Assistance Division.

Wrote three major memoranda in the criminal field concerning search and seizure using marijuana dogs. All subsequent decisions at the trial level at Ft. Bragg were decided in accordance with these memoranda. Copies also sent to the Court of Military Appeals for use in other cases. Another brief was instrumental in invalidating several Army regulations. Subsequently helped redraft the Army regulation concerning the possession of gambling and drug related paraphernalia.

Main project in Legal Assistance: Interstate land sales fraud. With HUD's help, obtained refunds for several local military personnel and shut down one land company's activities in the state of North Carolina. Investigation report was turned over to HUD for use in national investigation of the company. Since the company's operations involved a retired general and were aimed at military personnel, copies of the investigation report were also sent to other military bases around the country and to the Department of the Army.

Summer 1971:

Legal intern for Margie Pitts Hames, Atlanta, Georgia, via the Law Students' Civil Rights Research Council and American Civil Liberties Union Foundation, Inc.

Primary assignment - research and editing U.S. Supreme Court brief of Doe v. Bolton, 410 U.S. 179 (1979)(companion case to Roe v. Wade, 410 U.S. 113 (1979)), that struck down the Georgia abortion statute.

Summer 1970:

Public Information Assistant
Community Relations Service
Department of Justice - Washington, D.C.

Intern in the office of the Director writing speeches and news releases and doing research. Major research project: American Indian problems. Part of the project was a program of cross-cultural orientation for teachers in Bureau of Indian Affairs boarding schools.

PUBLISHED CASES:

Volkman v. United Transportation Union, 724 F.Supp. 1282 (D. Kan. 1989)

Harvey v. United Transportation Union, 878 F.2d 1235, 51 FEP Cases 394 (10th Cir. 1989)

Smith v. Southern Starr, 49 FEP Cases 846 (E.D. Ark. 1989)

Frazier v. Conrail & UTU, 47 FEP Cases 720 (D.C. Cir. 1988)

Antrim v. Burlington Northern & UTU, 847 F.2d 375 (7th Cir. 1988)

Ashley, Drew & Northern v. UTU, 625 F.2d 1357, 104 LRRM 3105 (8th Cir. 1980)

Waters v. Olinkraft, 475 F. Supp. 743, 21 FEP Cases 420 (W.D. Ark. 1979)

Broadnax v. Missouri Pacific Railroad Co., 27 FEP Cases 669 (E.D. Ark. 1978)

Johnson v. Nekoosa-Edwards Paper Co., 558 F.2d 841, 14 FEP Cases 1658 (8th Cir. 1977)

Stevenson v. I.P., 432 F. Supp. 390, 14 FEP Cases 1279 (W.D. La. 1977)

Wallace v. I.P., 426 F. Supp. 352, 14 FEP Cases 718 (W.D. La. 1977)

Hines v. Olinkraft, 413 F. Supp. 1360, 13 FEP Cases 1673 (W.D. La. 1976)

Mills v. I.P., 14 FEP Cases 926 (W.D. La. 1976)

Johnson v. Vancouver Plywood Co., Inc., 16 FEP Cases 1537 (W.D. La. 1976)

Walker v. Jackson, 391 F. Supp. 1395 (E.D. Ark. 1975)

PUBLICATIONS:

The Legal Status of Homemakers in Arkansas
National Commission on the Observance of International Women's Year, Dept. of State (1977)

Note, "Equal Protection v. Political Question," 26 Ark. L. Rev. 75 (1972)

LEGAL & PROFESSIONAL SOCIETIES:

Arkansas Bar Association, Labor Law Section, Chair 1981-82, Workers Compensation Section

American Bar Association, Labor Law Section, Railway Labor Committee

Arkansas Association of Women Lawyers, Program Chair 1985-86, President 1987-88

Pulaski County Bar Association

American Trial Lawyers Association

Arkansas Trial Lawyers Association

SPEAKER OR COURSE INSTRUCTOR IN THE FOLLOWING SEMINARS:

Labor Law Institute, Arkansas Bar Association Labor Law Section - 1990

Professional Seminar Associates - 2 day seminar on Equal Employment Law for Personnel and EEO Officers - 1986

Louisiana Bar Association and Loyola Law School Labor Law Seminar - 1984

National Women's Law Center Seminar on Sex Discrimination in Education - 1984

Forum for Association of Women Educational Supervisors, State Department of Education - 1983

Louisiana Building and Construction Trades Council - 1980, 1981, and 1982

Annual Management Seminar, American Society for Personnel Administration, Northeast Louisiana Chapter - 1982

EEOC-Lawyers Committee for Civil Rights Seminar - 1980

Governor's Conference on Equal Employment Opportunity - 1979

University of Central Arkansas Seminar on Pregnancy in the Workplace - 1979

University of Arkansas Labor Education Program Seminar on Employment Discrimination Remedies - 1979

University of Arkansas Seminar for Public Health Nurses

3/16

Bob Raymar

201-621-9020

B.L. → fed exp discussed documents
↳ top 25 Yale people / status
timely call indicating
↳ agencies Positively

→ Marshal informants on friends — top 25 ascertained desires

In Play

federal Judge

File -
Judges

JOHN L. RICHARDSON

Home Address:

5121 Tilden Street, NW
Washington, D.C. 20016
202/244-0516

Business Address:

801 Pennsylvania Avenue, NW
Suite 650
Washington, D.C. 20004
202/508-4500

EMPLOYMENT:

1987-Present	Partner Richardson, Berlin & Morvillo Washington, D.C.
1967-1987	Associate/Partner/Shareholder Verner, Liipfert, Bernhard, McPherson and Hand, Chartered Washington, D.C.

EDUCATION:

University of Virginia Law School
Charlottesville, Virginia
J.D., 1967

University of Michigan
Ann Arbor, Michigan
B.A., 1962

BAR ADMISSIONS:

Virginia
District of Columbia
U.S. District Court for the District of Columbia
U.S. District Court for the Eastern District of Virginia
United States Court of Appeals for the District of Columbia
United States Supreme Court

MILITARY SERVICE:

Commissioned Officer
United States Army, 1962-1964

PROFESSIONAL ACTIVITIES

Member:

Virginia State Bar
District of Columbia Bar
American Bar Association

PERSONAL:

Date of Birth - October 31, 1940
Married, One Daughter

John Pagan

3/22 talked w/ J.P.

on DC bar taught law in Va.

4-5 vacancies dist ct /

on list, reviews requests, will let him know what's up –

File, Judges

Ron Klain
room 129

PRESIDENTIAL PERSONNEL

CONTACT NAME: ANNE BARTLEY **EXT.:** 6266

SPONSOR NAME(S): HRC Office

DATE SUBMITTED: 3/23

SPECIAL HANDLING INSTRUCTIONS:

John Pagan

Arkansas or D.C.
district courts
DC Circuit
federal circuit

Ron –
any questions, please
call or have someone
contact me – I
know you are very
busy –
Anne

Personnel Routing Memo from HRC

Name of Person: JOHN PAGAN

If we do not have information on this person, do you want us to solicit their resume and desired positions ? _____Yes _____No

Telephone Number ____________________

Do you want this person considered for

* a board or commission _____Yes _____No
  Please mark area of interest, if known

* Agency/Department

___Agriculture
___Arts/Humanities
___Education
___Commerce
___Defense
___Energy
___Environtal Protect.
___EEOC
___FDIC
___Health/Human Services
___Housing/Urban Dev.
___Other (please describe)
___Interior
___Justice
___Labor
___NASA
___Office/Mgmt & Budget
___Office/Personnel Mgmt
___Science/Space/Tech.
___State
___Transportation
___Treasury
___Veteran's Affairs

Job Level

___Sub-cabinet ___Senior Level ___Entry Level __Other

Do you wish to sponsor ? __✓__Yes _____No

Is this person

_______Very Important OFL Clinton, H

___✓___Important HRC Office

_______To Be Considered No Sponsor

Comment:

Please send to Anne Bartley, OEOB, room 100, x6266

3/5 in r

STATE OF ARKANSAS

Arkansas Senate

GENERAL ASSEMBLY

LITTLE ROCK, ARKANSAS 72201

JOHN PAGAN
Senator, 22nd District
Pt. Pulaski
6907 Lucerne Drive
LITTLE ROCK, ARKANSAS 72205
Off. 324-9444
H—663-5156

COMMITTEES
MEMBER
Revenue and Taxation
City, County and Local Affairs

Dec. 15, 1992

Dear Hillary:

My life's ambition is to serve as a federal judge. After teaching Federal Jurisdiction and Constitutional Law for almost fourteen years, I think I appreciate the magnitude of the challenges that federal judges face. I would love to have an opportunity to meet those challenges.

I enclose a copy of my résumé along with a list of current judicial vacancies. I would welcome an opportunity to serve either here in Arkansas or in Washington. (I'm a member of both the Arkansas and the DC bars.) Vacancies exist on the district courts in Ark. and DC, on the DC Circuit, and on the Federal Circuit. The Federal Circuit vacancy is classified as an "emergency" because the seat has remained unfilled for over 18 months.

I would be greatly appreciative if you

would help me get considered for a judicial appointment.

Thanks and best of luck in Washington. If there's ever anything I can do to help you and Bill, all you have to do is call me.

Warm regards,

John

John Ruston Pagan

Home Address:	6907 Lucerne Dr. Little Rock, AR 72205
Home Telephone:	501-663-5156
Office Address:	School of Law University of Arkansas at Little Rock 1201 McAlmont St. Little Rock, AR 72202-5142
Office Telephone:	501-324-9936

Date of Birth:	August 4, 1951
Place of Birth:	Little Rock, Arkansas
Marital Status:	Married to Dr. Cheryl Clark Pagan

Employment:

1. Professor of Law (with tenure), University of Arkansas at Little Rock School of Law (July 1986 -)
2. Associate Professor of Law, University of Arkansas at Little Rock School of Law (Sept. 1984 - June 1986)
3. Associate Professor of Law, Marshall-Wythe School of Law, College of William and Mary (Sept. 1983 - Aug. 1984)
4. Assistant Professor of Law, Marshall-Wythe School of Law, College of William and Mary (Sept. 1979 - Aug. 1983)
5. Law Clerk to Circuit Judge Ozell M. Trask, United States Court of Appeals for the Ninth Circuit (Sept. 1978 - Aug. 1979)

Education:

1. Juris Doctor (J.D.) - Harvard University (1978)
   a. *Cum laude*
   b. Winner of Ames Moot Court Competition
2. Master of Letters (M.Litt.) - Oxford University (1975)
   a. Marshall Scholar
   b. Winner of Sara Norton University History Prize

3. Bachelor of Arts (A.B.) - College of William and Mary (1973)

    a. Highest honors in history

    b. Phi Beta Kappa

    c. Omicron Delta Kappa Outstanding Leadership Award

    d. James Frederick Carr Memorial Cup (outstanding graduate--character, scholarship, and leadership)

    e. William Elbert Fraley American History Prize

Professional Honors:

1. University of Arkansas at Little Rock School of Law, Faculty Excellence Award for Public Service, 1990

2. UALR School of Law, "Teacher of the Year" Award, 1988-89

3. UALR School of Law, "Professor of the Year" Award, 1986-87

Bar Admissions:

1. Supreme Court of Arkansas (admitted April 9, 1979)

    -- highest score on February 1979 bar exam

2. United States District Court for the Eastern District of Arkansas (admitted May 19, 1979)

3. United States Court of Appeals for the Eighth Circuit (admitted June 7, 1979)

4. United States Court of Appeals for the Ninth Circuit (admitted August 14, 1979)

5. Supreme Court of the United States (admitted May 17, 1982)

6. Supreme Court of Virginia (admitted June 14, 1982)

7. United States Court of Appeals for the Fourth Circuit (admitted August 25, 1982)

8. United States District Court for the Eastern District of Virginia (admitted September 13, 1982)

9. District of Columbia Court of Appeals (admitted November 15, 1984)

Bar Memberships:

1. Arkansas Bar Association

(Bar Memberships continued)

2. Virginia State Bar

3. District of Columbia Bar

Public Service:

1. Senator, State of Arkansas, 1991-92

   a. Lead sponsor of Senate Bill 468, the Arkansas Civil Rights Act of 1991 (endorsed by President-elect Clinton; bill prohibited discrimination based on race, religion, ancestry, gender, or disability and provided for injunctive relief, damages, and attorney's fees; passed Senate 34-1; died in House)

   b. Lead sponsor of Senate Bill 278, now Act 781, which prohibits governmental entities from entering into secrecy agreements

   c. Lead sponsor of Senate Bill 279, now Act 470, which prohibits private secrecy agreements that conceal environmental hazards

   d. Lead sponsor of Senate Bill 475, now Act 516, which authorizes the state attorney general's office to take legal action against polluters

   e. Lead sponsor of Senate Bill 517, now Act 1076, which strengthens the authority of the Pollution Control and Ecology Department to investigate violations of clean air and clean water laws

   f. Lead sponsor of Senate Bill 476, now Act 1172, the Public Employees' Chemical Right to Know Act, a workplace safety law that protects workers from having to handle hazardous materials without adequate training

   g. Lead sponsor of Senate Bill 342, now Act 506, which increases the accountability of public facilities boards

   h. Lead sponsor of Senate Bill 696, now Act 1225, the Retail Pet Store Consumer Protection Act

   i. Cosponsor of Senate Bill 309, now Act 1057, which increases the civil and criminal penalties for violating pollution control laws

   j. Cosponsor of Senate Bill 299, now Act 352, which created the Academic Challenge Scholarship program

2. Member of Pulaski County Quorum Court (county legislature), 1987-90

   a. Sponsored more than 70 county laws; attended 130 Quorum Court sessions; cast over 1,500 legislative votes

(Public Service continued)

b. Chairman, intergovernmental Jail Construction Committee, 1990

3. Member of Governor's Task Force on Civil Rights, 1991-92

4. Chairman, AIDS Advisory Committee, Arkansas Department of Education, 1987 -

5. Special Chancery Judge, Pulaski County Chancery Court, third and fourth divisions, 1987

Law School Courses Taught, 1979-93:

1. Federal Jurisdiction

2. Constitutional Law

3. Civil Liberties

4. Civil Rights Legislation

5. Torts

6. Products Liability

7. Constitutional Litigation

8. Appellate Advocacy

9. Legal History

Special Lectures Given, 1988-92:

1. "The Legislative Process," Arkansas Department of Human Services, Office for Deaf-Blind Programs, Forum on Consumer and Family Support for Individuals with Disabilities, May 16, 1992

2. "Influencing Legislation," Labor Education Program, Arkansas Institute for Economic Advancement, Grass Roots Lobbying Conference, February 21, 1992

3. "Section 1983 Litigation," W. Harold Flowers Law Society annual meeting, June 24, 1989

4. "42 U.S.C. § 1983 and Habeas Corpus," Pulaski County Bar Association Continuing Legal Education program, April 13, 1988

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