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articles re:
DOJ switching
sides in NJ
school case

The New York Times

August 14, 1994, Sunday, Late Edition - Final

SECTION: Section 1; Page 37; Column 5; Metropolitan Desk; Second Front

LENGTH: 1477 words

HEADLINE: Justice Dept. Switches Sides In Racial Case

BYLINE: By IVER PETERSON

BODY:

After winning a court victory last year on behalf of a white New Jersey high school teacher who lost her job so that a black teacher could be retained, the Clinton Administration is seeking to switch sides.

If the Administration succeeds, employers will be allowed for the first time to take race into consideration in deciding whom to lay off. Courts have upheld hiring or promotion on that basis, but have rejected its use in letting employees go.

Legal experts and private lawyers on both sides of the New Jersey case could not recall another civil case in which the Government acted as plaintiff in Federal District Court, and then, without any change in the law, sought to appeal against its own victory. The New Jersey case was begun by the Justice Department under the Bush Administration, but it was won by the Clinton Administration last September.

Also at issue is a simpler question, some lawyers said: Can the Government work closely with an individual to argue her case as a matter of public interest, and then turn around and argue against her victory in the same case on appeal?

Which of 2 Teachers to Lay Off?

"It would be an absolutely extraordinary situation for the court to say that is allowed," said Alfred W. Blumrosen, an expert in employment discrimination law at Rutgers Law School.

The case arose in 1989 when the Piscataway Board of Education, to reduce the staff of its high school business education department, had to decide which of two equally tenured, experienced and qualified teachers to let go.

Citing a need to maintain racial diversity, the board laid off Sharon Taxman, the white teacher, and kept Debra Williams, a black woman and the only minority teacher in the department. The board had previously drawn lots to resolve similar dilemmas.

Mrs. Taxman took her case to the Equal Employment Opportunity Commission's office in Newark, which alerted the Justice Department's Civil Rights Division.

In September 1991, the Government filed suit as the principal plaintiff, joined by Mrs. Taxman. By that time she had been rehired to fill a vacancy but was seeking a ruling on the merits of the board's action as well as lost pay and damages. Government lawyers argued that staff diversity was not a valid reason without a record of discrimination under Title VII of the 1964 Civil Rights Act, which bars public and private job discrimination.

Mrs. Taxman maintains that she and her lawyer, Stephen E. Klausner, worked closely with the Government during preparation of the case and while it was pending, a matter that may prove crucial to the Government's attempt to change sides and argue against her.

Both sides agreed to all the facts of the case, including that Mrs. Williams had not been subject to past discrimination that might have required a remedy, and that the school system's faculty was not racially imbalanced.

Because the facts were not in dispute, there was no trial, and Judge Maryanne Trump Barry of Federal District Court in Newark ruled for the Government last Sept. 10.

Fairer to Draw Lots

Judge Barry maintained that race may be a consideration in voluntary affirmative action by an employer only if it is used to either remedy past discrimination by the employer or to correct manifest underrepresentation by minorities in a traditionally segregated job category.

Piscataway High School did not meet either condition, Judge Barry ruled, and even if it had, taking away someone's job was too extreme a remedy. A random method of choosing which teacher to let go, like drawing lots, would have met the law, Judge Barry ruled.

This January, at a trial for damages, the Justice Department, now under the Clinton Administration, again argued on Mrs. Taxman's behalf, winning her a year's back pay and interest. Mrs. Taxman lost a suit for compensation for emotional distress under New Jersey law. The Government did not join that effort.

This spring, the Board of Education appealed Judge Barry's ruling. On July 29, the day the Government was scheduled to file its own brief in support of the ruling, Deval L. Patrick, who heads the Justice Department's Civil Rights Division, filed a motion stating that the Government had changed its mind and disagreed with the ruling, and asked for time until Sept. 12 to file a brief "as appellant."

No Undue Disadvantage

"Upon further review," wrote Mr. Patrick, who joined the Justice Department in March, "the United States believes that the District Court announced an unduly narrow interpretation of the permissible bases for affirmative action under Title VII."

Mrs. Taxman would "not be unduly disadvantaged" by the Government's switching sides, Mr. Patrick added, because she is already represented by her own lawyer, her layoff was temporary and she remains free to pursue her appeal for punitive damages for emotional distress.

Mr. Patrick did not cite a precedent for such a switch, and he declined to be interviewed about the case.

Lawyers on both sides of the case said the Government may drop cases before trial for many reasons, or even change its mind after a trial if the law has changed in the meantime. But no expert could be found to cite a change from plaintiff to appellant in a civil case where no new law had emerged.

No Precedent Found

"I've never seen it before, but that doesn't mean anything," said David Rubin of Piscataway, the Board of Education's lawyer. "But I asked the Government's trial lawyer, and he couldn't recall it either."

Kathleen Sullivan, an employment discrimination specialist at Stanford Law School, was also unaware of a precedent for the Government's trying to change from plaintiff to appellant in a case after a judgment had been entered by the district court.

In any case, Ms. Sullivan said, the Piscataway school board's diversity argument had already been rejected by the Supreme Court in the 1986 Wygant case, which the Government relied on heavily in its suit against the Piscataway board. In that case, the school board in Jackson, Mich., tried to lay off white teachers with greater seniority than black teachers who were retained, in an effort to maintain the racial makeup.

"This is an attempt to make new law in the face of Wygant," Ms. Sullivan said.

Ethical Rule for Lawyers

Mr. Klausner, Mrs. Taxman's lawyer, angrily denounced the Justice Department's switch, claiming among other things that the department had in effect acted as Mrs. Taxman's lawyer, had intimately taken part in her case and was therefore disqualified under ethics rules from appearing against her on the same matter.

If the Government had simply dropped out of the case and filed a friend-of-the-court brief in support of the school board, Mr. Klausner would not have objected, he said. Instead, he is contesting the Government's right to change its mind and be a principal litigant against its former ally.

Mr. Blumrosen, of the Rutgers Law School, said the Government's biggest problem in making the switch was not which side the Civil Rights Act was written to defend, but reconciling its obligations to Mrs. Taxman.

"Certainly the Government can confess error; they can say they were wrong and tell that to the court," Professor Blumrosen said in an interview from the Virgin Islands, where he was on vacation.

Policy Switches Are Common

"It's not so much what Title VII allows but about a much simpler question, which is, can a lawyer change sides and proceed against its own side? I have serious doubts about that."

Mr. Blumrosen said it was not unusual for a new administration to try to discard a predecessor's policies, and cited the Reagan Administration's attempt, in the mid-1980's, to undo consent decrees entered into by 51 municipalities during the Carter Administration to increase minority hiring and promotion.

The effort failed because the municipalities themselves did not want to be let off the hook, he said.

Mr. Blumrosen is considered a liberal on affirmative action issues; not so Charles G. Fried, President Reagan's last Solicitor General, who now teaches at Harvard Law School. He reproached the Administration for its change of heart.

Feeling Abandoned

"It strikes me as naked politics and transparent and wrong. Just wrong," Mr. Fried said from Boston.

Both Mrs. Williams and Mrs. Taxman are on summer leave, and neither would speak directly about the case. But Mrs. Taxman said through Mr. Klausner that she was angry at what she called her abandonment by the Justice Department.

"The United States Government's action is both bizarre and outrageous," Mr. Klausner quoted Mrs. Taxman as saying. "After two years of hard work and at extraordinary taxpayer expense, to attempt to become a defendant at this stage makes no sense. The Justice Department should be thrilled with the victory that was won."

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 14, 1994

The Boston Globe

October 23, 1994, Sunday, City Edition

SECTION: NATIONAL/FOREIGN; Pg. 26

LENGTH: 1091 words

HEADLINE: Affirmative action reversal;
Patrick has Justice Dept. switch sides in N.J. school case

BYLINE: By Ana Puga, Globe Staff

DATELINE: WASHINGTON

BODY:

A controversial New Jersey case of racial preference in teacher staffing has pushed Boston lawyer Deval L. Patrick into the spotlight as the Clinton administration's defender of affirmative action programs.

Patrick, head of the Justice Department's civil rights division, said that based on the law but with mixed feelings, he decided to reverse the department's course, set during the Bush administration, of siding with a white teacher who sued the Piscataway, N.J., School Board in federal court for racial discrimination.

The school board, following affirmative action guidelines, had retained a black teacher instead of the white teacher when a position was eliminated.

"I have very mixed feelings about affirmative action myself," Patrick said in an interview, noting that "well-intentioned, serious people," not only "bigots," are concerned that resulting racial hiring preferences constitute reverse discrimination.

"But my feelings don't matter," he said. "I owe the public, just like I owe my conscience. I can't make a decision based on people's feelings. I must make a decision in accordance with the law."

Patrick said the Justice Department erred in its reading of the 1964 Civil Rights Law when it went into federal court on behalf of Sharon Taxman, the white teacher who was let go in 1989. Taxman won her suit and a $ 144,000 judgment.

Now the Piscataway school board is appealing that decision, and the Clinton Justice Department has filed a friend-of-the-court brief, this time supporting the board.

Patrick, formerly with the Boston law firm Hill and Barlow, denies that in switching sides the Clinton administration is advancing a liberal political agenda or pushing to expand the legal reach of affirmative action programs designed to increase minority representation in schools and workplaces. The administration is simply following the law, he said.

"We could not honestly report to any court that the existing precedent held that the Piscataway school district violated any federal statute," he said.

At a news conference Friday, President Clinton said he endorsed the Justice Department decision but carefully avoided a policy statement on affirmative action. He called Piscataway a "very narrow case" in which racial diversity had rightly been fostered in a situation in which all other conditions, including the teachers' qualifications and tenure, were equal. He stressed that if a majority black workplace had chosen to promote diversity by laying off an African-American, he would have supported that move as well.

Some critics, however, question the Clinton administration's motives in the Piscataway reversal.

"The administration is trying to adopt a much broader rationale for using racial preference," said Richard Komer, an attorney with the Institute for Justice, a public interest law firm here. "The Justice Department is trying to expand the situations where it is appropriate to take race into account - expanding it from hiring to firing and expanding it from formal affirmative action plans to seat-of-the-pants types of decisions."

Patrick said: "The whole topic of affirmative action is very, very hard. There are very strong feelings on both sides. And I fully appreciate that Mrs. Taxman may feel there was some injustice."

In 1989, the school board needed to eliminate a teaching slot in Piscataway High School's business department. The two most junior teachers were Taxman and Debra Williams, a black teacher in the same department who was hired on the same day nine years earlier - Sept. 1, 1980.

According to court documents, the board members first tried to evaluate Taxman and Williams based on qualifications. But both taught nearly identical courses in the business department. Both received good evaluations. And both were awarded tenure in 1983.

If Williams and Taxman had been the same race, officials would have flipped a coin. But since Williams was African-American, the school board followed its guidelines: "When candidates appear to be of equal qualification, candidates meeting the criteria of the affirmative action program will be recommended."

Taxman was let go and, with the backing of the Bush Justice Department, sued the school board. In September 1993, a federal district court in Newark ruled in Taxman's favor and awarded her $ 144,000 in back pay and damages. The judge, Maryanne Trump Barry, agreed with the Justice Department's argument that employers should not use race as a consideration in layoffs, unless that employer has previously discriminated on the basis of race.

The school board appealed to the 3d US Circuit Court of Appeals. Last month, at Patrick's initiative, the Justice Department filed a friend-of-the-court brief on behalf of the school board. The brief argues that the lower court's decision was incorrect, and implies that the Justice Department's earlier arguments were incorrect as well.

Taxman, a 47-year-old mother of two, has refused all requests for interviews. But her attorney, Stephen Klausner, said Taxman feels betrayed. And Klausner is furious at the Justice Department lawyers. "We worked intimately," he said from New Jersey. "I gave them access to my client. They called her at her house. We exchanged thoughts, ideas, tactics. Then they flipped. And I went after them with both guns, in motions and affidavits and briefs."

Klausner, who calls Patrick "the politico," said he will argue before the appeals court that because Justice Department attorneys received confidential information from Taxman, it was unethical for the department to change its stance. The department says that the attorneys received no such information.

It may be months before the court rules on the technicalities and considers the merits of the case. Klausner said that he will argue that the Piscataway School Board's rationale for keeping the black teacher was "ludicrous," because the board was going to the extreme of trying to promote diversity within a statistically insignificant group of four business teachers qualified to teach typing.

The school board argues it wanted to promote diversity within the school's business department. Of the department's 10 teachers, Williams was the only black. "Race was the last of many factors considered by the board, not the first," said an amicus brief filed by the National School Boards Association and other professional associations.

Meanwhile, Taxman has been rehired by Piscataway High School and is teaching in the business department along with Williams.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: October 25, 1994

LEVEL 1 - 19 OF 85 STORIES

The Washington Post

September 7, 1994, Wednesday, Final Edition

SECTION: FIRST SECTION; PAGE A5

LENGTH: 696 words

HEADLINE: Justice Dept. Changes Stance in Bias Suit;
Government Now Opposing White Teacher Who Challenged Firing

SERIES: Occasional

BYLINE: Pierre Thomas, Washington Post Staff Writer

BODY:

The Justice Department has reversed its decision to support a white New Jersey teacher who claimed discrimination when her school district fired her for the sake of racial diversity in 1989, a move that underscores the difference in civil rights philosophy between President Clinton and his Republican predecessors.

Under the Bush administration, the Justice Department had filed a suit supporting Sharon Taxman, declaring that her raced-based firing was illegal. The department successfully litigated its position in federal district court and maintained that position through July.

But in papers filed yesterday with the 3rd U.S. Circuit Court of Appeals in Philadelphia, Deval L. Patrick, who took over the civil rights division in April, concludes that the department's earlier view on affirmative action was mistaken and takes a position that counters Taxman's stance.

"They are turning 180 degrees," said Stephen Klausner, Taxman's attorney. "Now they are diametrically opposed. She [Taxman] is very bitter and very angry. She viewed them as co-counsel. Ethically, I think this is reprehensible. Legally, I don't think they can do it."

Klausner complained that his client is being unfairly treated because the Justice Department had many opportunities to alter its position, but only recently opted to do so.

Patrick, assistant attorney general for civil rights, said the case was initiated under the previous administration, was litigated and underwent the normal process. When the case was appealed, the department had to outline its position again. In late July the department "had to make a decision," Patrick said, noting that such changes are not unusual.

The position taken by the Bush administration "was wrong," said Associate Attorney General John R. Schmidt.

Taxman and a black woman were both hired in 1980 to teach in the business education department at the Piscataway High School in New Jersey. The two "taught nearly identical courses at the high school, volunteered in school activities, performed similarly in the classroom, and received good evaluations," the Justice brief said.

In 1989, faced with declining enrollment in business education courses, the Board of Education for the township of Piscataway eliminated a teaching position. The business education department had 10 positions, with only one filled by an African American.

The board, which "had never before faced a situation where two teachers -- one white, the other black -- were tied in seniority and all other respects," decided to follow its affirmative action policy to maintain diversity in the department. Klausner said that his client was better qualified than the black teacher. He also noted that Taxman was the only Jewish teacher in the business education department and wondered why the board did not consider that.

The Justice Department initially held that race-conscious, voluntary affirmative action is permissible only if "it is designed to remedy the effects of past discrimination or eliminate a manifest imbalance in traditionally segregated job categories." The department also argued that the board unnecessarily "trammeled the interests of non-minority employees."

A federal district judge sided with Taxman and the Justice Department.

The brief filed yesterday concludes that both the court and Justice's earlier stance were too "limited in scope" and could have a "harmful effect upon the ability of employers to voluntarily adopt and implement affirmative action provisions."

The change was a "naked example of racial preference" that had no legal precedent and could lead to quotas, said Clint Bolick, a civil rights division attorney during the Reagan administration who now is litigation director of the Institute for Justice. He called the decision "outrageous."

Charles J. Cooper, also a Reagan administration civil rights official, said, "Of course they're changing position, they are Democrats."

Patrick acknowledged that changes in leadership sometimes result in policy changes, but he emphasized that the current Justice Department does "not support quotas." "Affirmative action is an entirely different animal," he said.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 5, 1994

LEVEL 1 - 14 OF 85 STORIES

Rocky Mountain News

September 9, 1994, Friday

SECTION: BUSINESS; Ed. F; Pg. 55A

LENGTH: 334 words

HEADLINE: Reno defends switch in bias case
Attorney general says racial diversity can be considered in decisions on laying off workers

BYLINE: Reuter

DATELINE: WASHINGTON

BODY:

Attorney General Janet Reno said Thursday that employers should be allowed to consider racial diversity in layoff decisions and defended the Justice Department's switch in a white teacher's discrimination case.

''We believe . . . it is important to make clear that diversity should be a factor that employers can consider in developing voluntary affirmative action plans,'' she said at her weekly news briefing.

The Justice Department Tuesday filed court papers arguing that an employer should be free to use racial diversity as a determining factor in deciding between two employees with the same qualifications and seniority.

Under the Bush administration, the Justice Department had supported a discrimination lawsuit brought by a white high school teacher in New Jersey who was laid off in 1989 so that a black teacher could be retained.

But in the court papers filed with a federal appeals court in Philadelphia, the Justice Department took the unusual step of switching sides and now supports the school board in the case.

''I approved the position taken in the brief that we have filed,'' Reno said, adding that the Justice Department also had ''regular consultations'' and had notified the White House.

''I consulted with the solicitor general to make sure that there was an appropriate authority for our taking our action, and that it was done in a proper and ethical manner,'' she said.

Reno said the department decided to switch sides after the case was brought to the attention of Assistant Attorney General Deval Patrick, who heads the civils rights division.

LANGUAGE: English

LOAD-DATE-MDC: September 10, 1994

LEVEL 1 - 15 OF 85 STORIES

Chicago Tribune

September 8, 1994 Thursday, EVENING UPDATE EDITION

SECTION: NEWS; Pg. 1; ZONE: C

LENGTH: 264 words

HEADLINE: RENO ASSERTS JUSTICE DEPARTMENT SWITCHED SIDES IN DISCRIMINATION CASE TO SUPPORT RACIAL DIVERSITY

BYLINE: Reuters.

DATELINE: Washington

BODY:

Atty. Gen. Janet Reno said Thursday that employers should be allowed to consider racial diversity when laying off workers and defended the Justice Department's switch in a discrimination case.

"We believe . . . it is important to make clear that diversity should be a factor that employers can consider in developing voluntary affirmative-action plans," she said at her weekly news briefing.

The Justice Department Tuesday filed court papers arguing that an employer should be free to use racial diversity as a determining factor in deciding between two employees with the same qualifications and seniority.

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"I consulted with the solicitor general to make sure that there was an appropriate authority for our taking our action and that it was done in a proper and ethical manner," she said.

Reno said the department decided to switch sides after the case was brought to the attention of Assistant Atty. Gen. Deval Patrick, who heads the civils rights division.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 9, 1994

The Atlanta Journal and Constitution

September 7, 1994

SECTION: NATIONAL NEWS; Section A; Page 8

LENGTH: 548 words

HEADLINE: Feds switch sides in racial case Fired white teacher 'very bitter, angry'

BYLINE: By Pierre Thomas WASHINGTON POST

BODY:

Washington - The Justice Department has reversed its decision to support a white New Jersey teacher who claimed discrimination when her school district fired her for the sake of racial diversity in 1989, a move that underscores the difference in civil rights philosophy between President Clinton and his Republican predecessors.

Under the Bush administration, the Justice Department had filed a lawsuit supporting Sharon Taxman, declaring that her raced-based firing was illegal. The department successfully litigated its position in federal district court and maintained that position through July.

But in papers filed Tuesday with the 3rd U.S. Circuit Court of Appeals in Philadelphia, Assistant Attorney General Deval Patrick, who took over the Civil Rights Division in April, concludes that the department's earlier view was mistaken and takes a position counter to Taxman's.

"They are turning 180 degrees," said Stephen Klausner, Taxman's attorney. "She [Taxman] is very bitter and very angry. . . . Ethically, I think this is reprehensible. Legally, I don't think they can do it."

Patrick said the case was initiated under the previous administration and litigated normally. When it was appealed, the department had to outline its position again. In late July, the department "had to make a decision," Patrick said, noting that such changes are not unusual.

Taxman and a black woman were hired in 1980 to teach in the business education department at Piscataway High School in New Jersey.

In 1989, faced with declining enrollment in business education courses, the Board of Education for the township of Piscataway eliminated a teaching position. The business education department had 10 positions, only one of them filled by an African-American.

The board, which "had never before faced a situation where two teachers - one white, the other black - were tied in seniority and all other respects," decided to follow its affirmative action policy to maintain diversity in the department. Klausner said his client was better qualified and the only Jewish teacher in the department.

The Justice Department initially held that race-conscious, voluntary affirmative action is permissible only if "it is designed to remedy the effects of past discrimination or eliminate a manifest imbalance in traditionally segregated job categories." The department also argued that the board unnecessarily "trammeled the interests of non-minority employees."

A federal district judge sided with Taxman and the Justice Department.

The brief filed Tuesday concludes that the court and Justice's earlier stance were too "limited in scope" and could have a "harmful effect upon the ability of employers to voluntarily adopt and implement affirmative action provisions."

The change was a "naked example of racial preference," that had no legal precedent and could lead to quotas, said Clint Bolick, a civil- rights-division attorney during the Reagan administration who now is litigation director of the Institute for Justice. He called the decision "outrageous."

Patrick acknowledged that changes in leadership sometime result in policy changes, but he emphasized the current Justice Department does "not support quotas." "Affirmative action is an entirely different animal," he said.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 9, 1994

Newsday

September 7, 1994, Wednesday, NASSAU AND SUFFOLK EDITION

SECTION: NEWS; Pg. A16

LENGTH: 174 words

HEADLINE: U.S. Has Switched Sides in Lawsuit

BYLINE: COMPILED FROM NEWS DISPATCHES

BODY:

The Justice Department switched sides in a civil rights case yesterday, filing a brief against a furloughed white New Jersey schoolteacher two years after suing a school board on her behalf.

The brief, filed in the Third Circuit U.S. Court of Appeals, argues that the U.S. District Court in New Jersey erred when it found the Piscataway school board used race as a factor in deciding to furlough a white teacher and retain a black teacher, Debra Williams.

The New Jersey court ruled in 1992, after the Justice Department under President George Bush filed a suit on behalf of the white teacher, Sharon Taxman. She was awarded $ 133,300 in back pay and $ 10,000 for "pain and humiliation."

Deval L. Patrick, assistant attorney general for civil rights in the Clinton administration, said yesterday that the case does not involve quotas but that where all else is equal, as both sides have stipulated in the New Jersey case, voluntary affirmative-action plans must allow workplace diversity to be considered.

PD:NATION BRIEF

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 08, 1994

LEVEL 1 - 18 OF 85 STORIES

Rocky Mountain News

September 7, 1994, Wednesday

SECTION: NEWS/NATIONAL/INTERNATIONAL; Ed. F; Pg. 31A

LENGTH: 267 words

HEADLINE: U.S. switches sides in civil rights case
Justice Dept. now backs furlough of N.J. teacher

BYLINE: Associated Press

DATELINE: WASHINGTON

BODY:

The Justice Department switched sides in a civil rights case Tuesday, arguing against a furloughed white New Jersey school teacher two years after suing a school board on her behalf.

In a brief filed with the Third Circuit U.S. Court of Appeals, the department said a lower court erred when it ruled that the Piscataway, N.J., school board could not consider race a factor in deciding to furlough the white teacher and retain a black teacher of equal qualification.

The U.S. District Court in New Jersey ruled in 1992 in favor of the furloughed white teacher, Sharon Taxman, after the Justice Department under President Bush filed a lawsuit on her behalf. She was awarded $ 133,300 in back pay and $ 10,000 for ''pain and humiliation.''

Deval Patrick, assistant attorney general for civil rights in the Clinton administration, said Tuesday that the Justice Department switched sides when the case came up on appeal because, ''The (court's) position was wrong.''

He said the case does not involve quotas. Referring to President Clinton, Attorney General Janet Reno and himself, he said, ''We do not support quotas (but) affirmative action is a different animal.''

Taxman and Debra Williams were both hired on the same day in 1980, and the school board said both had equal qualifications. Williams was retained because she was the only black teacher in the business education department.

LANGUAGE: English

LOAD-DATE-MDC: September 8, 1994

The New York Times

September 19, 1994, Monday, Late Edition - Final

SECTION: Section A; Page 16; Column 1; Editorial Desk

LENGTH: 649 words

HEADLINE: Affirmative Action Without Fear

BODY:

Two schoolteachers are equally qualified and equally experienced. One must be laid off. One is the only minority teacher in an otherwise all-white department; the other is white. Is it permissible to make race the deciding factor, laying off the white teacher and retaining the minority teacher?

In a dramatic switch, the Clinton Administration's Justice Department is saying yes, arguing that in these circumstances, under the principles of affirmative action, a school system may lawfully decide which employee to retain on the basis of race. The shift comes awkwardly in the middle of a court case, but it is a welcome correction of Federal job discrimination policy.

The Bush and Reagan Administrations, taking a starkly narrower view of affirmative action, had contended that favoring the black teacher -- even to foster racial diversity on a faculty -- was illegal race discrimination. They attacked most voluntary affirmative action plans, approving only those designed to remedy proven or admitted past discrimination.

The Clinton Administration illustrated its abandonment of the Reagan-Bush policy in a teacher layoff case in Piscataway Township, N.J. In this truly rare case, all parties and a Federal judge agree that the two contesting teachers, who started work the same day in 1980, were absolutely equal in ability and seniority for the same slot on the high school's business education faculty.

Although Piscataway's schools were never found guilty of discrimination, the 10-member business faculty had only one black teacher, Debra Williams. Forced to lay off one teacher in 1989, the school system kept Ms. Williams and bumped the equally qualified Sharon Taxman, who is white.

That choice, made pursuant to a state affirmative action policy, kept the business faculty from reverting to all-white. If officials had not invoked the policy, they probably would have flipped a coin. After her dismissal, Ms. Taxman hired a lawyer and, joined by the Bush Administration's Justice Department, sued the township's school board.

In Federal District Court in Newark, Judge Maryanne Trump Barry ruled for Ms. Taxman in broad agreement with the Justice Department.

After President Clinton took office, his new Assistant Attorney General for Civil Rights, Deval Patrick, told the U.S. Court of Appeals in Philadelphia that the Government no longer agreed with the lower court judgment. Mr. Patrick said that in the new Administration's view, the ruling misinterpreted the civil rights law and unduly obstructed voluntary affirmative action programs. The Justice Department withdrew as a party in the case and asked permission to file a friend-of-the-court brief in support of the Piscataway board.

For this action Mr. Patrick has been attacked by conservative commentators. The criticism is unfair. Some critics have charged inaccurately that the case involves racial quotas even though Judge Barry specifically said it did not. Other critics ignore the significance of the central fact that the two teachers are equally qualified. Last week Representative James Sensenbrenner, Republican of Wisconsin, charged in a letter to his colleagues that Ms. Taxman "was fired so that the school could retain a less experienced black woman." He called on President Clinton to withdraw what he mislabeled as a brief "which would radically expand the use of racial quotas."

The Justice Department has often switched legal positions, most conspicuously in 1982 when the Reagan Administration -- in its final brief in a Supreme Court case -- sprang to the defense of segregated private schools claiming tax exemptions.

This time the reversal ran in the correct direction. It marked an end to the perverse Reagan-Bush practice of using civil rights laws to deny rights to minorities and to attack any effort to correct historic imbalances in employment as unfair to whites.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 19, 1994

Times Publishing Company
St. Petersburg Times

September 11, 1994, Sunday, City Edition

SECTION: PERSPECTIVE; Pg. 1D

LENGTH: 1017 words

HEADLINE: Hiring, firing and fairness

BYLINE: Bill Maxwell

BODY:

Affirmative action policies are controversial and underscore a not-so-obvious paradox in American democracy: Legislating fairness in the workplace is impossible. Policymakers and employers, therefore, should strive to make wise decisions that do as little personal harm as possible to all parties involved.

Often, however, even well-intentioned officials make bad decisions that have long-term, national implications. A good example is a 5-year-old case in New Jersey. There, the U.S. Department of Justice reversed itself by declaring that, to ensure "racial diversity" among the faculty, the Piscataway School Board could fire Sharon Taxman, a white teacher, and keep Debra Williams, an equally qualified black teacher.

Some background: Since 1975, Piscataway schools had followed a policy of hiring the best qualified person. But when two candidates were equally qualified, the board automatically chose the minority applicant. This policy worked so well that the district became a model for others statewide. By 1985, 10 percent of the instructors there were black, while only 7.4 percent of the state labor pool was black. During the same year, 9.5 percent of the district's administrators were black, while the local black labor pool was only 5.8 percent of the area's population.

Budget cuts in 1989 forced the School Board to dismiss one business education teacher, either Taxman, who had slightly superior certification and more experience, or Williams, who had been hired on the same day nine years earlier. Previously, officials had drawn lots in instances where candidates had equal seniority. This time, however, they gave more weight to race - thus firing Taxman.

The Justice Department under President Bush challenged Piscataway's action, contending that employers shouldn't use race in dismissals except to redress a pattern of discrimination or to eradicate a "manifest imbalance." A federal judge agreed and awarded Taxman $ 123,000 in back salary and $ 10,000 in damages for pain and suffering. Piscataway appealed, and last week in an unusual move, Deval L. Patrick, President Clinton's new assistant attorney general for civil rights, reversed the Taxman ruling. "The interest of the United States is integrating the work force," he said. "We do not support quotas, (but) affirmative action is a different animal."

Further complicating the case is that, until now, the Supreme Court let public employers use affirmative action for hirings and promotions, but not for firings and layoffs. Private employers, however, have more freedom at both ends of the employment pipeline.

As a black, I support affirmative action. Frankly, I owe much of my career as a teacher to affirmative action. I know of at least one instance in which I was hired over a more qualified white male. And I know of two cases in which I've been passed over in favor of less-qualified whites. Even so, I'm no affirmative action absolutist - one who sees only black and white, one who always opts for hiring the minority. To the contrary, I see myriad shades of gray in this ethical dilemma, and the Taxman case is a good example.

Initially, I agreed with Patrick and the Piscataway School Board. After becoming familiar with specifics of the district's exemplary minority hiring record, though, I became convinced that Taxman's firing was unconscionable. Having been a teacher for 20 years, I know that finding qualified black teachers is often daunting. Yet, through aggressive recruiting, Piscataway, a town of only 42,223, had done an impressive job long before the Taxman-Williams situation arose.

Obviously, Piscataway board members were not racists. They didn't have a pattern of systematically shutting out blacks. These folks didn't need to remedy gross injustices of the past.

Still, in its federal appeal, the board rationalized its race-based decision to keep the black teacher on the premise of maintaining racial diversity. One irony of this case, since diversity is the focus, is that Taxman was the only Jew on the faculty. But should mere diversity be a goal of affirmative action?

In trying to force fairness into the workplace, most public and private employers nationwide are relying on mere numbers. Fairness is more than bean-counting. It cannot be achieved when someone with an equal right to a job must be fired for the sake of retaining a minority. A semblance of fairness can be achieved only when an employer acts in good faith to recruit, train and nurture the careers of minority workers - while being wary of hurting whites at the same time.

Piscataway officials had satisfied these criteria. But they, along with the Clinton Justice Department, erred in not acknowledging their own excellent record. They had nothing useful to prove by firing the white teacher. How much more diversity did the system need? How many more blacks did they need to place in the classroom? Could they have drawn the line?

Can we ever draw a line in such matters? I think so. Albert Shanker, president of the American Federation of Teachers, had it right when he said that the original judge was correct in rejecting Piscataway's race-based decision to fire Taxman. And I agree with that judge, Maryanne Trump Barry: "An affirmative action plan which grants a preference based on race cannot be boundless, even under the farthest reaches of the law as it is today."

At some point, we must be able to determine that an employer has satisfied not only the letter but the spirit of the law, that - in case-by-case instances - fairness can be maintained if a white is chosen over a black. Otherwise, we'll continue to concoct bad solutions for problems that don't exist.

What action, then, should the Piscataway School Board members have taken? With a little thought, they could've used the same method that had served them well for so many years when employees had equal seniority: They should've excluded race as a factor and drawn lots.

GRAPHIC: COLOR CARTOON, CLAY BENNETT; A boat load of Cubans arrives in the U.S. as a boat load of Americans reading a Jeb Bush election result leaves.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 13, 1994

articles re:
recent Sup Ct
oral argument
re: race-based
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LEVEL 1 - 1 OF 85 STORIES

THE HARTFORD COURANT

January 18, 1995 Wednesday, STATEWIDE

SECTION: MAIN; Pg. A5

LENGTH: 450 words

HEADLINE: TOP COURT APPEARS DIVIDED ON RACE-BASED CONTRACTS

BYLINE: Combined Wire Services

DATELINE: WASHINGTON --

BODY:

Special federal help for companies owned by minorities unlawfully steals business from white-owned companies, the Supreme Court was told Tuesday in a key showdown on affirmative action.

But the Clinton administration's top-ranked courtroom lawyer defended the 13-year-old program, saying it's needed to fight "continuing effects of well-documented discrimination."

The potential stakes are enormous. The court's ruling, expected by July, could affect billions of dollars worth of federal contracts. Perhaps at stake, also, is the future of all government affirmative action, some of it proposed to make up for past societal bias against women.

The court hasn't handled a major affirmative-action dispute since 1990, and its membership today is far more conservative. Serving as a backdrop are the 1994 election results, a rightward turn many commentators attribute to the festering anger of one group of voters -- white men.

The court's conservative voice, Justice Antonin Scalia, asked attorneys whether the federal government could adopt a policy of preference for white applicants.

Scalia told the government's lawyer to suppose the space agency, because of a need for perfection, presumed that whites are more educated than blacks and would be better for the job. How would that differ from a contracting program that presumes blacks and Hispanics are economically disadvantaged?

The difference, said Solicitor General Drew S. Days III, is that the policy presuming minorities are disadvanteged, which he was defending Tuesday, is "attempting to remedy racial discrimination." Days emphasized Congress' "unique and comprehensive" power to help the victims of segregation's vestiges and continued prejudice.

Tuesday's arguments showed how divided the Supreme Court is on race-based preferences and how close the justices are to reversing the effects of a 1980 decision that first endorsed federal set-asides and prompted numerous states and local governments to give minority preferences in contracting.

Conflict over the validity of affirmative action has been building nationwide and the courtroom was packed Tuesday. Retired Justice William J. Brennan Jr., a liberal bulwark who had written a 1990 opinion upholding race preferences, was there.

The Department of Transportation practice at issue gives money bonuses to prime contractors on federal deals who subcontract with "disadvantaged" companies. The underlying policy presumes that blacks, Hispanics, American Indians and Asians are "disadvantaged." It was challenged by a white-owned construction firm that lost a guardrail project in the San Juan National Forest in southern Colorado.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 18, 1995

LEVEL 1 - 3 OF 85 STORIES

The Washington Post

January 18, 1995, Wednesday, Final Edition

SECTION: FIRST SECTION; PAGE A6

LENGTH: 859 words

HEADLINE: Justices Show Division On Race-Based Policies; Preferences for Minority Contractors Debated

SERIES: Occasional

BYLINE: Joan Biskupic, Washington Post Staff Writer

BODY:

Justice Antonin Scalia, playing the devil's advocate in a case yesterday on racial hiring, asked whether the federal government could adopt a policy of preference for white applicants.

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The difference, said Solicitor General Drew S. Days III, is that the policy presuming minorities are disadvantaged -- which he was defending yesterday -- is "attempting to remedy racial discrimination." He emphasized Congress's "unique and comprehensive" power to help the victims of segregation's vestiges and continued prejudice.

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Conflict over the validity of affirmative action has been building nationwide and the courtroom was packed yesterday. Retired Justice William J. Brennan Jr., a liberal bulwark who had written a 1990 opinion upholding race preferences, was there. In frail health and using a wheelchair, Brennan was stone still as he watched the give-and-take.

The Transportation Department practice at issue gives money bonuses to prime contractors on federal deals that subcontract with "disadvantaged" companies. The underlying policy presumes that blacks, Hispanics, American Indians and Asians are "disadvantaged." It was challenged by a white-owned construction firm that lost a guardrail project in the San Juan National Forest in southern Colorado.

The company, Adarand Constructors, submitted the low bid but was bypassed by the prime contractor in favor of a Hispanic firm. By hiring the minority-owned company, the prime contractor made an extra $ 10,000 from the government.

Adarand's lawyer, William Perry Pendley, told the justices yesterday the policy was based on an "impermissible racial stereotype" that violated the Constitution's guarantee of equal protection of the laws.

Days argued that the program, arising from a 1978 small-business law, is a constitutional effort to compensate for "well-documented discrimination." (As an assistant attorney general in the Carter administration, Days successfully argued the 1980 case that gave Congress broad latitude to use racial criteria to remedy discrimination.)

The court has changed dramatically since the 1980s, and a majority of the justices have made clear in various ways their abhorrence for racial classifications.

As he has done in recent cases, Justice David H. Souter, who succeeded Brennan in 1990, picked up the mantle for the more liberal minority. Souter questioned whether Adarand had adequately demonstrated that it lost the contract because of the presumption of minority disadvantage. Pendley insisted that was indisputable.

Souter also emphasized that the government's policy says the presumption can be overturned if proof emerges that the company has no economic disadvantage.

He favorably compared the transportation bonus to the public works program upheld in 1980. Pendley said it was hard for private firms like Adarand to collect data and evidence sufficient to challenge another company's "disadvantaged" status.

Days acknowledged under questioning that he did not know of any third party that had successfully challenged an award.

To Chief Justice William H. Rehnquist's questions about why the government did not target small, struggling companies, irrespective of race, Days said the reality was that federal procurement dollars were not getting to minority firms that historically had been subject to discrimination.

In 1990, when the Supreme Court last upheld a federal race preference, in broadcast licenses, it was by one vote. Only one member of that five-justice majority remains, John Paul Stevens. The four dissenters -- Rehnquist, Scalia, Sandra Day O'Connor and Anthony M. Kennedy, who said distinctions based on race are dangerous -- are still on the court. Clarence Thomas, who came onto the court in 1991, opposes affirmative action.

A decision in the case, Adarand Constructors v. Pen

a, is expected by late June.

Separately yesterday, the court without comment let stand a child-pornography conviction in a highly publicized case involving videotapes in which the subjects never appeared nude. The case attracted great congressional scrutiny and national attention after the Clinton administration twice amended its definition of hard-core pornography.

Yesterday's action in Knox v. United States left intact a Pennsylvania man's conviction for buying videos that focused on the genital areas of scantily clad young girls.

The Justice Department initially asserted that the standard used to convict Stephen V. Knox was impermissibly broad, but after great public uproar, it endorsed Knox's conviction.

GRAPHIC: PHOTO, AT THE COURT, FORMER CONGRESSMAN PARREN J. MITCHELL IS ASKED ABOUT CASE, WHICH GREW FROM LEGISLATION HE SPONSORED. KEITH JENKINS

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 18, 1995

LEVEL 1 - 1 OF 32 STORIES

The Baltimore Sun

January 18, 1995, Wednesday, FINAL EDITION

SECTION: TELEGRAPH (NEWS), Pg. 9A

LENGTH: 808 words

HEADLINE: Court hears case that could settle affirmative action's future

BYLINE: Lyle Denniston, Washington Bureau of The Sun

BODY:

WASHINGTON -- The future of federal affirmative action programs seemed to teeter on a constitutional brink yesterday as the Supreme Court, hearing a significant new test case, displayed fresh signs of a split.

Justice Sandra Day O'Connor, who may hold the decisive swing vote, skeptically quizzed the Clinton administration's top Supreme Court advocate as he tried to defend a federal highway contracts program that gives minority-owned subcontractors an advantage.

U.S. Solicitor General Drew S. Days III also ran into insistent questioning by Justice Anthony M. Kennedy, who has strongly criticized federal race-preference programs in the past but who nonetheless has not been considered a sure vote against them.

Mr. Days sought to persuade the court that the program, in effect since 1979, is a narrow one aimed more at helping "disadvantaged" subcontractors even if they are not owned by minorities or women. Those groups, however, get an advantage under the program.

Both Justices O'Connor and Kennedy ridiculed Mr. Days' argument that white-owned subcontracting firms had realistic opportunities to challenge the racial or gender preferences to make sure they do not become automatic guarantees of work.

A federal appeals court in Denver, upholding the program last February, ruled that Congress may go further than state and local governments in adopting race-conscious public programs.

That ruling is being challenged by a small highway guard-rail contractor in Colorado Springs, Adarand Constructors Inc. It submitted a low bid on a guard-rail project, but lost out on a subcontract to a firm with Hispanic owners. The main contractor on the job got a $ 30,000 bonus for using a Hispanic firm to install the guard rails.

The Colorado case came up in the court amid new political attacks on affirmative action, including plans by some Republicans in Congress to seek to repeal all federal programs that provide special advantages for minorities and women.

Anti-affirmative action sentiment has also spread to the states, most notably California, where a new citizen-initiative drive to wipe out all such plans was begun recently.

Although much of the questioning at yesterday's Supreme Court hearing focused on the specifics of the government's minority subcontractor program for highway projects, the Colorado Springs firm's appeal arises against a background of a much broader dispute among the justices over the constitutionality of federal affirmative action plans as a whole.

Civil rights groups have seen the Colorado case as a major threat to such plans, and nearly 1,000 demonstrators appeared outside the court on Monday -- when it was not in session -- to protest the court's willingness to reopen the constitutional question.

When the court last ruled in 1990 on affirmative action, it upheld a federal law that allows some advantage for minority-owned broadcasters in obtaining federal licenses. But that decision split the court 5-4, and only one member of the majority -- Justice John Paul Stevens -- remains on the bench. All four dissenters are still there.

The dissenters, in an opinion written by Justice O'Connor, said Congress should have no more authority than state and local governments to adopt affirmative action laws. In a ruling in 1989, also written by Justice O'Connor, the court declared that state and local governments may use race-conscious public programs only as a last resort, and only to cure specific past racial bias by government.

The O'Connor dissent four years ago was supported by Justice Kennedy and by Chief Justice William H. Rehnquist and Justice Antonin Scalia.

Yesterday, the chief justice and Justice Scalia were the most critical of the highway program and of the solicitor general's defense of it.

At one point, Mr. Days said Congress passed the law under its clear constitutional power to protect legal equality. The chief justice countered that Mr. Days actually was defending the use of that power to promote inequality in programs like the one used in Colorado.

Justice Clarence Thomas, a frequent critic of affirmative action when he was a government official and the author of a major ruling by a federal appeals court against one such program, said nothing during the one-hour hearing.

Among the other justices, the newest, Stephen G. Breyer, expressed concern to a Denver lawyer for the white-owned firm that the court might have to strike down a series of prior rulings favoring affirmative action if it were going to nullify the highway minority subcontractor plan.

Justices Ruth Bader Ginsburg and David H. Souter seemed sympathetic, in their questioning, to the disputed minority program. Justice Stevens asked few questions, and revealed little about his reaction to the new case.

A final decision is expected by early summer.

LOAD-DATE-MDC: January 19, 1995

Star Tribune

January 18, 1995, Metro Edition

SECTION: News; Pg. 2A

LENGTH: 551 words

HEADLINE: Two accounts of affirmative action;
Justices hear agruments on '80 decision

SOURCE: News Services

DATELINE: Washington, D.C.

BODY:

With the fate of federal affirmative action likely hanging in the balance, the U.S. Supreme Court on Tuesday heard two conflicting accounts of how those programs work in practice.

A lawyer for a white contractor said federal law creates "an impermissible racial stereotype" in its contracting rules. All whites are penalized and all minority entrepreneurs given an advantage solely because of their race or ethnic heritage, said Denver attorney William Pendley.

But the Clinton administration's top courtroom lawyer said federal law merely sets forth a presumption that blacks, Hispanics, Asians and American Indians have suffered an economic disadvantage because of their race and heritage. Minority entrepreneurs who are not disadvantaged are not entitled to preferences, U.S. Solicitor Drew Days III said.

Tuesday's arguments revealed how divided the Supreme Court is on race-based preferences and how close the justices are to reversing a 1980 decision that endorsed federal set-asides to give minority preferences in contracting.

The Department of Transportation practice at issue gives money bonuses to federal contractors who subcontract with disadvantaged companies. The underlying policy presumes that blacks, Hispanics, American Indians and Asians are "disadvantaged." It was challenged by a white-owned construction firm, Adarand Constructors, that submitted the low bid for a Colorado guardrail project but was bypassed in favor of a Hispanic-owned firm.

To Chief Justice William H. Rehnquist's questions about why the government did not target small, struggling companies, irrespective of race, Days said the reality was that federal dollars simply were not getting to minority firms that had been subject to historic discrimination.

In 1990, when the Supreme Court last upheld a federal race-preference, it was by one vote. Only one member of that five-justice majority remains, John Paul Stevens. The four dissenters - Rehnquist and Justices Antonin Scalia, Sandra Day O'Connor and Anthony Kennedy - are still on the court. Clarence Thomas, who came on the court in 1991, opposes affirmative action.

During the lively argument on affirmative action, Clinton appointees Stephen Breyer and Ruth Bader Ginsburg took the government's side.

"Isn't it a reasonable presumption . . . to say black people have suffered prejudice or cultural bias?" Breyer asked.

But Rehnquist, Scalia and Kennedy disputed the legality of a racial preference.

"Why couldn't Congress do without this presumption" and give preferences to entrepreneurs who have suffered some disadvantage regardless of their race, Rehnquist asked.

A ruling in the case is due by July.

Also Tuesday, the Supreme Court let stand a child-pornography conviction in a case that attracted national attention after the Clinton administration twice changed the government's definition of hard-core pornography.

The court's action left intact a Pennsylvania man's conviction for buying videos that focused on the clothed genital areas of girls aged 10 to 17.

Stephen Knox contended he could not be convicted of possessing child pornography because the girls were not nude. He had been prosecuted under a federal law banning "exhibition" of a child's pubic area.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 19, 1995

LEVEL 1 - 6 OF 32 STORIES

The Houston Chronicle

January 14, 1995, Saturday, 2 STAR Edition

SECTION: A; Pg. 5

LENGTH: 696 words

HEADLINE: Affirmative action on its heels in court;
New Congress also lining up against it

BYLINE: AARON EPSTEIN; Knight-Ridder Newspapers

DATELINE: WASHINGTON

BODY:

WASHINGTON -- On the last day of his remarkably long and fertile career on the Supreme Court, liberal Justice William Brennan Jr. pulled off a seeming miracle.

The court was veering rightward, yet Brennan managed to cobble together a bare majority to approve preferential treatment for minority businesses seeking broadcasting licenses. ""Scrape me off the floor,'' exclaimed a civil rights lawyer in disbelief.

But for the wide range of federal preferences for minorities and women known as affirmative action, that surprising day in June 1990 may have been the last hurrah.

Affirmative action, which has spawned resentment for years, is on the defensive. A campaign against state government preferences is under way in California, often an incubator of nationwide political and social trends.

At the Supreme Court, opposition to racial and sex preferences by government now commands a majority. The only question, observers say, is how far the justices will go in moving away from past endorsements of affirmative action.

Now, they are preparing for arguments Tuesday on the validity of a government program that benefits highway construction businesses owned by minorities or women.

White business partners Randy Pech and Steve Goeglein complain that their small firm, Adarand Constructors of Colorado Springs, Colo., submitted the lowest bid for a subcontract for highway guard rails -- but lost out to a Hispanic-owned company because of a federal law favoring minority-owned businesses.

""We don't discriminate, so why should we be punished? '' Pech has asked.

The reason for the preference, government officials respond, is that Congress determined in 1987 that persistent barriers still prevented minorities and women from competing successfully in the highway and mass transit construction industry.

""Congress' choice of a limited, race-based remedy was repeatedly debated and reaffirmed,'' U.S. Solicitor General Drew Days told the high court in a legal brief.

But Congress is different now. With the Republicans in charge, there is a real chance that anti-affirmative action legislation can be passed. Already, alumni of the Reagan and Bush administrations are drafting a bill that would prohibit racial and gender preferences in federal government jobs, contracts and programs.

If the bill passes, President Clinton would face a political dilemma. He could sign it and enrage much of his Democratic constituency -- or he could veto it and risk making affirmative action a major 1996 campaign controversy.

""It would be a brilliant strategy move on the part of Republicans,'' said Clint Bolick of the conservative Institute for Justice, who is working with the anti-affirmative action task force.

The legislation would be modeled after a proposed initiative for the 1996 state ballot in California, where voters recently approved a measure to cut off most state services to illegal immigrants.

The California proposition would knock out state preferences for minorities and women in the workplace, college admissions and government contracts.

Recent polls indicate most Americans oppose affirmative action. Civil rights advocates are worried.

""I'm afraid it may become a wave, just like other attacks on the poor and minorities and immigrants,'' lamented Elizabeth Schroeder of the ACLU of Southern California. ""Affirmative action is still one of the best means we have to correct historical discrimination. ''

To others, especially conservatives, affirmative action seeks to cure one type of discrimination with another.

Affirmative action programs, they say, often resort to quotas masquerading as goals, use a double standard in screening for jobs and promotions, reinforce racial hostility and exacerbate self-doubts among minorities.

""Racial preferences punish the blameless and stigmatize their beneficiaries,'' said Roger Clegg, general counsel to National Legal Center in the Public Interest.

""They foster resentment among nonminorities and a victim mentality among minorities: precisely the two mind-sets we don't need if our racial wounds are ever to heal. ''

GRAPHIC: Photo: Steve Goeglein; Associated Press

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 16, 1995

TO: Hillary Rodham Clinton
FROM: Jennifer Klein JK
DATE: 12/29/94
RE: Meeting with CDF

I met with CDF about their new report on child poverty and thought you might be interested in seeing it.

The report estimates that every year of child poverty at current levels will cost the economy between $36 billion and $177 billion in lower future productivity and employment among poor children. These costs to the economy do not include the billions of additional dollars that will be spent because of the greater incidence of special education, crime, foster care, or teenage childbearing resulting from child poverty.

The report also outlines the human costs for children of growing up in poverty. The report cites a variety of recent studies finding that the effects of poverty are as or more important than factors like race, parent education levels and family make-up in contributing to health problems, behavior problems, lower school achievement and a lifetime reduction in earning potential.

Finally, the report concludes that improving services for children is necessary but not sufficient. In her introduction, Marian Wright Edelman urges government leaders at all levels to work toward reducing family poverty by, for example, creating private and public sector job opportunities, assuring affordable child care, strengthening child support, and mounting strong parenting education, family support and family preservation initiatives. Without better jobs and adequate family income, she concludes, we are unlikely to remedy the complex effects of poverty and reduce the high costs that poverty now imposes on American society.

TO: Hillary Rodham Clinton
FROM: Jennifer Klein J.K.
DATE: 9/12/94

A short update on the two projects you mentioned this morning:

1. I spoke with Alice Pushkar about pulling together letters that you have answered from constituents of Members who are stalling health reform. She had already begun gathering letters from constituents of five Members who might vote for health reform, and she will be sending you samples of those letters in the next few days. She will also identify letters from individuals in areas where a Member is actively opposed to health reform. Alice noted that before any letter could be released, however, we would need permission from the letter writer.

2. I spoke with Arnold Bennett about Susie Whitman -- the woman in Texas who was so misled by Senator Gramm's office. He will think about powerful ways to tell the story about the misinformation and distortion coming from Republicans, and we will get more detail from Mrs. Whitman.

Jen - draft letter to
this guy asking him
what he meant by this - I'm
or call him -
curious

BC-SD--Lennox Health Care, Bjt,340
Year After Clinton Visit, Many in Lennox Concerned about Health Care
mksdsio

LENNOX, S.D. (AP) A year ago, physician's assistant Scott Rogers told first lady Hillary Clinton his concerns about the health care reform plan she helped develop.

Rogers says he is hopeful now that the Clinton health care plan is dead.

``What's made me optimistic is that the Clinton plan has fallen flat on its face,'' Rogers said. ``I'm very happy about that.''

Mrs. Clinton visited Lennox to talk to residents and host a public forum on the administration's health care plan. The stop was part of a nationwide tour designed to build support for the plan, which died in Congress.

Rogers said he worried the Clinton plan would restrict the options for both patients and health care providers. He said he hopes the new Republican-controlled Congress will come up with a better plan.

Lennox residents talked a lot about health care before and after the first lady's visit, said Boni White, manager of Meyer Drug Store. That talk has died down, but concerns about the issue remain, she said.

``I think some changes definitely need to be made, but I don't know if she had the answers,'' White said. ``A lot of things need to be looked at more in-depth.''

Lennox Mayor Floyd Beach said Mrs. Clinton's visit was good for the town, even if the health care plan she pitched is no more.

``Her visit had an entirely different flavor in Lennox than if she had stopped in Sioux Falls,'' Beach said. ``It was quite an event. We won't forget it for a long time.''

Beach said the visit still comes up in his conversations with residents.

``Health care has been a top news item and it filters down to this area,'' Beach said. ``We have a lot of senior citizens in this community. I think they're more receptive to the Clinton plan than some others are.''

**** filed by:APW-(SD) on 02/20/95 at 14:24EST ****
**** printed by:WHPR(JEL) on 02/21/95 at 09:50EST ****

July 11, 1994

To: Mrs. Hillary Rodham Clinton
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

RE: Breast Cancer and Health Insurance
PLEASE HELP!!

Dear Mrs. Clinton,

I have had insurance with **Bankers Life and Casualty Company of Chicago, Illinois** since 1977. Fortunately, I never had a claim and had been in excellent health for those 14 years, prior to **September 24, 1991** when I was diagnosed with **Breast Cancer**.

Since **January 1991** (2½ years) my health insurance premium has risen from:

$225.16 per month to $1,242.85 PER MONTH!!

Below is an example of the **RATE INCREASES** I am experiencing:

DATE	MONTHLY PREMIUM COST	INCREASE
December 1992	$ 416.59	up in one month
Jan. - June 1993	$ 537.97	up $121.38
July - Dec. 1993	$ 753.42	up $215.45
Jan. - June 1994	$ 932.59	up $179.17
July 1, 1994	$1,242.85	up $310.26

When I phoned Bankers Life to complain of the preposterously high increases, I was informed that Bankers had paid out $49,000.00 in claims on me since my Breast Cancer. I have paid **20% of those claims myself** which would be in excess of $9,800.00. PLUS, I have paid **$19,936.60 in Premiums since my Breast Cancer in September of 1991**!!

MY COST IN 2½ YEARS HAS BEEN AT LEAST $29,736.60!

For **14 YEARS** I have paid monthly premiums with **no claims and no health problems**. With the assumption that there have been some **interest income payments** paid to Bankers Life on my monthly premium payments for those 14 years, the figures indicated in the following paragraph may be considerably higher.

According to my mathematics, from 1977 to 1991 I have paid approximately **$33,901.92 in Premiums**. Add that to the $19,936.60 paid *since* my Breast Cancer and the **total is** $53,838.52. Keeping in mind the **$49,000.00** total *reportedly* paid out, these figures do not justify the rate increases.

It is my opinion that Bankers Life and Casualty Co. is trying to **force** me to drop my health insurance. My policy is an **individual Major Medical Plan.** The deductible was **$250.00** originally. I had been instructed by their agents to increase my deductible and the premiums would not be as high. I raised my deductible to **$500.00** and the next month they increased the premiums again! Now, in order to get my premium rates to a ***somewhat*** affordable price, I must raise my deductible to **$2,500.00** and the premium will still be **$696.05 per month**!!

There is no assurance that in 6 months they will not raise my premiums again and in another 6 months raise it again and again, etc., thus, forcing me to raise my deductible, this time to **$5,000.00**. I was told by the Texas Board of Insurance that increases up 99.99% annually were allowed by law. At that rate, by **July 1995** my premium will be **$1,392.03**.

A representative of the insurance company told me that I was in an age group that was beginning to experience health problems and the ***entire age group*** is receiving these increases. I was told my Cancer has nothing to do with the increases. I have had a few other **minor** health problems and have been filing claims on all of my medical expenses to take advantage of the high cost of my premiums. I cannot afford **not to** file them. I expressed to Bankers Life & Casualty Co. that "if you are going to continue to raise my premium rates every 6 months I will be forced to file on all claims!" This only exacerbates an already extremely sensitive and tedious problem.

My Cancer is considered to be in remission and my Oncologist said "If you have to have Cancer, you had the best kind". Shouldn't these facts be considered by the Health Insurance carrier? I am not suggesting that the more severe the illness, the higher the premium but there should be some other facts considered. An entire group of people should not have to pay higher premiums just because a few are ill.

It appears to me that the insurance companies can make their own set of rules. On March 8, 1994 I fell and fractured my left wrist. X-rays were taken and it was determined by my Physician, whom I trust, that the fracture would require a metal plate screwed into the bone to allow proper alignment of the hand and the arm. The fee for this surgery was $1,300.00. Bankers Life only paid **$91.50** on those charges because they said the procedure was not listed. **When a procedure is not listed they use 1974 RATES**! This is 1994!

I am a self-employed, divorced female, age 52. My 73 year old mother and I live together and we are finding it increasingly more difficult to cope with the "system"! No one seems to "care" and no one is "taking action" against the insurance companies nor the hospitals for the flagrant abuse of the ***"middle class"!*** I have always taken pride in the fact that I am independent, capable of earning a living for myself and my daughter, whom I reared alone. Now after all these years I am concerned for the welfare of myself, my daughter and my mother. If current trends continue I may have to declare bankruptcy. Not only will I lose everything I have worked **so** diligently to accomplish in life, but I will also be stripped of my self-esteem!

With health-care reform legislation at a critical juncture in Congress, I am urging lawmakers to vote **only** for a bill **providing comprehensive reform**. Include everyone in affordable health coverage and also support long-term care in the home and prescription drug coverage for all! Do not allow "riders" on health policies for "pre-existing" conditions! Do **not** allow the insurance provider to increase the cost of the premiums on an individual who has **never** had a claim in the past (10 to 15 years), simply because they are now getting to "an age" where health problems may arise.

Every man, woman and child deserves the right to good health and good health care! Please make this possible!

Thank you for your time and cosideration regarding this national problem. We will greatly appreciate your assistance in resolving this issue as soon as possible. May God be with you and may you be blessed with good health.

Respectfully,

DewAnn W. Cotten

DewAnn Wharton Cotten
5426 Rutherglenn Drive
Houston, Texas 77096

THE WHITE HOUSE

WASHINGTON

July 22, 1994

Ms. DewAnn Wharton Cotten
5426 Rutherglenn Drive
Houston, Texas 77096

Dear Ms. Wharton:

Thank you for your thoughtful letter. I am touched that you chose to share your personal experiences with me.

The hardship and frustration you described illustrate exactly why this nation needs health care reform. At some point during the year 58 million Americans go without insurance, and each month two million Americans lose their insurance.

The President's plan for health care reform will guarantee every American private health insurance that can never be taken away. It will be illegal for insurance companies to drop coverage or cut benefits, charge higher premiums based on health condition, or apply lifetime limits on coverage.

This nation now has an historic opportunity to achieve meaningful health care reform. Your support can be invaluable to the President as the Administration works to make health security a reality for all Americans.

Sincerely yours,

Hillary Rodham Clinton

Hillary Rodham Clinton

Please share your concerns with your members of Congress.

May 16, 1994

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

Dear Mrs. Clinton:

I am a 27 year old full-time college student. I am married and have a daughter who will be 8 years old at the end of this month. I am not working, but my husband has a good job (he made about $36,000 last year). The reason I am writing this letter is because I feel frustrated and I know you are working to try and change this situation.

My husband's company offers a health care plan (I believe it's through Samaritan) to it's employees. Coverage for my husband, myself, and our daughter would cost about $450.00 A MONTH. His employer does not pay any of this.

Today, I had to cancel the health care my daughter and I had through an FHP Individual plan because we simply can't afford it anymore. We were paying $237.20 per month. My husband was still uninsured. The FHP insurance was excellent health care. $10 office visits, $10 prescriptions, and it covered maternity-which few individual plans do. That was one of the reasons we decided to get this particular plan--we wanted to have another baby.

I am very frustrated with the whole health care system. We make too much money to be considered for state programs such as ACCHSS--and I would rather those programs help those who are truly poor and in need--but, we can't afford the alternative.

I know you are working very hard to try and make sure everyone has affordable health care, and I commend you. I don't think a lot of people realize just how serious this problem is. I am very interested in the details of your health care plan. I feel it should be our right as American Citizens to be able to afford to go to the doctor when we're sick, have regular checkups, and have another child (provided we are not poverty-sticken with 7 other children already!). I also feel that as a "middle-class citizen" we are hit the hardest. My husband works extremely hard for his money and I'm working hard in school so that I can get a good job and take some of the pressure off of him.

Don't get me wrong. I've never written a letter like this before, and I'm not the type who would do this to complain about my life. We are good people. My husband works 40-60 hour weeks as a mechanic and I just finished the semester with a 4.0 GPA. Our daughter has been accepted into the Honor's program at school (she is in second grade), and we always pay our taxes. I consider myself a fairly intelligent person, but I have a real hard time understanding why people like us have to be without health insurance, but someone with no job and six kids is taken care of. I don't feel I'm prejudiced, I'm just stating the facts.

I know you probably get hundreds of letters a day, but I hope you'll take the time to read mine and try and understand my frustration. I wish there was something I could do to help you in your quest for a great health care plan we can all afford.

Thank you for taking the time to read my letter. I know you're a very busy woman.

Sincerely,

Tracy L. Trunick

Tracy Trunick
12231 N. 19th St. #265
Phoenix, AZ 85022

THE WHITE HOUSE

WASHINGTON

July 22, 1994

Ms. Tracy Trunick
Apartment 265
12231 North 19th Street
Phoenix, Arizona 85022

Dear Ms. Trunick:

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Sincerely,

Tracy L. Trunick

Tracy Trunick
12231 N. 19th St. #265
Phoenix, AZ 85022

THE WHITE HOUSE

WASHINGTON

July 22, 1994

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Apartment 265
12231 North 19th Street
Phoenix, Arizona 85022

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Sincerely yours,

Hillary Rodham Clinton

Hillary Rodham Clinton

Please share your concerns with your members of Congress.

THE WHITE HOUSE

WASHINGTON

August 22, 1994

Ms. Tracy Trunick
12231 N. 19th Street
Apartment 265
Phoenix, Arizona 85022

Dear Ms. Trunick:

The First Lady was extremely touched by the letter you sent to her in May. She asked me to contact you to talk further about your experiences and frustrations with the health care system.

I was unable to reach you by phone. If you would like to speak with me, please feel free to contact me at (202) 456-2599.

Sincerely yours,

Jennifer Klein

Jennifer Klein
Senior Policy Analyst

TO: Hillary Rodham Clinton
FROM: Jennifer Klein J Klein
DATE: 11/23/94
RE: Blackmun Tribute

Last spring, David Dreyer and I adapted the President's remarks at Justice Blackmun's retirement for publication in The Yale Law Journal. I thought you might like to see a copy of the finished product.

Jen –
Good idea.
Thanks.

PHOTOCOPY
HRC HANDWRITING

TO: Hillary Rodham Clinton
FROM: Jennifer Klein J.K.
DATE: 9/21/94
RE: Letter From Patricia Peters About Problems with the FDA

You asked me to look into the problem described in the attached letter. According to the writer, Patricia Peters, the Food and Drug Administration (FDA) has prevented her son from getting a drug that he needs for severe juvenile rheumatoid arthritis. The drug does not seem to be approved by the FDA.

The FDA permits individuals to bring unapproved drugs into the U.S. for personal use. However, the FDA may issue "import alerts" to detain imported drugs that appear to be fraudulent or dangerous. Because Ms. Peters does not specify the name of the drug, the FDA is not able to tell me why the agency may be preventing the drug from entering the country. It seems likely though -- since Ms. Peters says that the drug is listed with illegal substances like heroine and cocaine -- that an import alert has been issued for this drug.

If you would like, I can ask the FDA to send Patricia Peters the guidelines on the personal use policy and import alerts.

Jen – I would like you to facilitate contact between her and the FDA to see if there is a way to help.

~~Fax~~ to Jennifer Klein 9/8/94

Dear Jen -
Can you look into this and advise me. Thanks,
love

August 31, 1994

Dear Hillary,

I am a 42 year old, Special Education teacher and mother of four children. One of my children has had severe systemic juvenile rheumatoid arthritis since he was a toddler. He's ten now.

After five years of treatment at Children's and Tufts, the only form of treatment they could offer was an experimental program of methotrexate (a form of chemotherapy.) At age seven Nate was already having severe side effects to his liver, kidneys and stomach lining from the five different medications. Even with hot tubs morning and night Nate still had to be carried most of the time. It had also become obvious that his adrenal cortex was shutting down as he was becoming dependent on prednisone.

After a year's investigation of an enzyme treatment used successfully for the past forty years throughout Germany and Europe, we decided to try it. We had tried many alternative treaments here in the States in the earlier stages of Nate's illness; forms of energy work and meditation, Ayurvedic medicine, homeopathy, Chinese medicine and acupuncture, all out of pocket expenses. We have spent tens of thousands of dollars taking Nathan out of the country every six months for treatment. He still has two more years of treatment.

What has really set my son back is that the F.D.A.

has not allowed an enzyme serum (made especially for Nathan) to enter the country on two occasions. The first summer Nathan curled up into a fetal position, so we flew to Germany, he had another treatment and I took it home with us. This serum was miraculous! Within three days my son's little body straightened out and he saw great relief. Why does he have to suffer for the F.D.A.? That summer it was sent to us by mail from Germany and customs pulled it out and turned it over to the F.D.A.. Why?

This summer no one would carry it back in their suitcase for fear of reprisal. I don't blame them. My son is once again suffering. Although he's out of a wheelchair now and off of all the drugs his body had become addicted to, he still has to suffer for the F.D.A. and perhaps the hospitals and drug companies here who can't make a profit anymore on this little boy's devestating illness(?) Who's controlling this country anyhow?

So once again we must leave the country to secure this serum for my son!

Hillary, we are 113,000 dollars in debt. I'm not complaining, I'm stating a fact. I've since learned if money's a problem there is no problem, but when you see your child slipping away, now there's a problem! I just don't understand when there is finally something out there that can help heal my son and it is all natural why he has to suffer. And these enzymes are listed under the heading of illegal drugs like heroine and cocaine! It's insane!

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	Patricia Peters to FLOTUS (partial) (1 page)	08/31/1994	b(6)

COLLECTION:

Clinton Presidential Records
Office of the First Lady
Jennifer Klein
OA/Box Number: 12509

FOLDER TITLE:

HRC Memos [3]

2014-0536-F
kc1352

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]
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- 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]

[001a]

My insurance company would have paid for my son's plastic knees, hips, wrist operations, hospitalizations and all the various medications had, we taken that path. But, in deciding this line of treatment and the quality of his life for him(his optimistic life expectancy projection of 30) were unacceptable, we're on our own expenses. Since we have left the country for his treatment, doctors here have been less than sympathetic, as well. It seems their belief is, if it's not here it can't possibly be anywhere else.

Although many of my family members and friends are fearful of my relating this story to you, I feel that as a mother and First Lady you can make the difference. And, perhaps you can let me know what I can do to make a difference as well. Thank you.

Wishing you and yours well!

Sincerely,

Patricia McKinstry Peters

Patricia McKinstry Peters

(b)(6) [redacted]

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. envelope	Peters to FLOTUS (1 page)	nd	b(6)

COLLECTION:
Clinton Presidential Records
Office of the First Lady
Jennifer Klein
OA/Box Number: 12509

FOLDER TITLE:
HRC Memos [3]

2014-0536-F
kc1352

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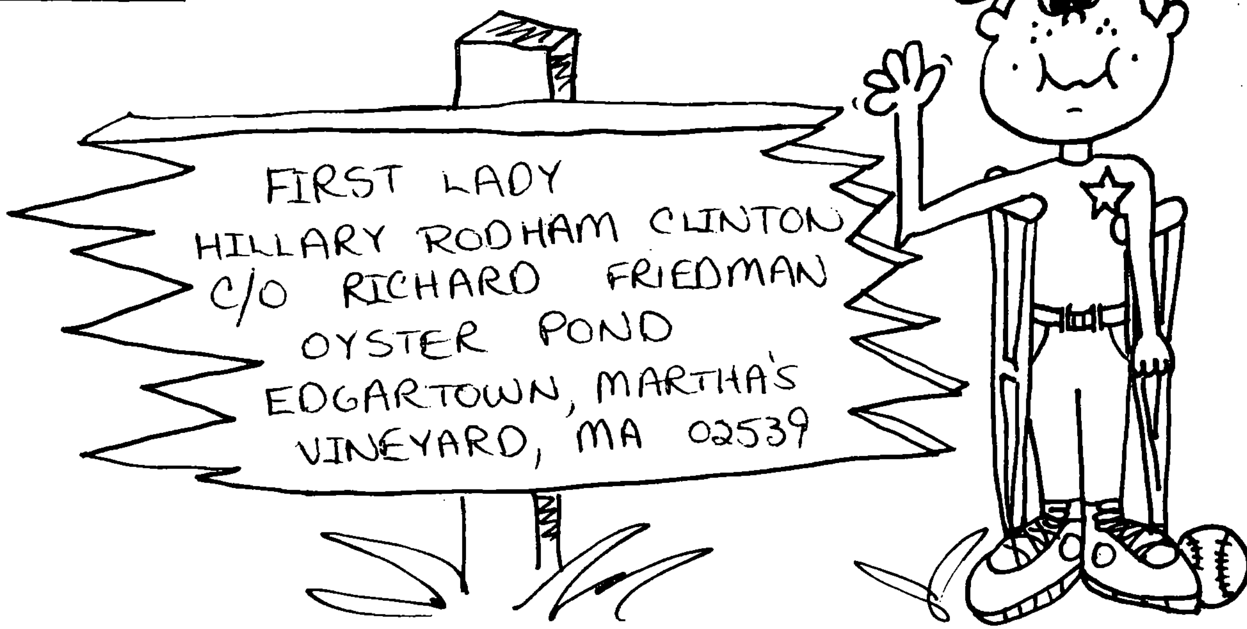
[0016]

PATRICIA McKINSTRY PETERS
[redacted] (b)(6)



checked TS

TELEFAX TRANSMITTAL SHEET

FDA

FOOD AND DRUG ADMINISTRATION
Office of Legislative Affairs

5600 Fishers Lane
Parklawn Bldg./Room 15-55
Rockville, MD 20857
Telephone: 301-443-3793

FAX: 301-443-2567
301-227-6778

faxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

DATE: 9/26

TO: Jennifer

TELEFAX NUMBER:

FROM: JoAnn Marrone

COMMENTS:

Per conversation

NUMBER OF PAGES, EXCLUDING COVER: 8

If you do not receive the number of pages indicated above, please call immediately.

IMPORT ALERT

ORO/DFI (HFC-131)
IMPORT OPERATIONS

Automatic Detention of Unapproved New Drugs Promoted by Dr. Hans Nieper of West Germany

No.: 66 - 28 Revision
Date: December 10, 1987

BACKGROUND

Dr. Hans A. Nieper is an internist practicing "eumetabolic therapy" operating from the Paracelsus Silbersee Hospital, Hannover-Langenhagen, Federal Republic of Germany. He claims to have treated thousands of Americans—those who cannot be helped by orthodox medicine for conditions including cancer, heart disease, and multiple sclerosis (MS). Almost always, drugs promoted by Hans Nieper are labeled in German with no English language labeling, and seldom do they contain directions for use.

Dr. Nieper attracts patients by using promotional material distributed by the Cancer Control Society in Los Angeles, California, and the A. Keith Brewer Science Library in Richland Center, Wisconsin, and by periodically making speaking visits to the United States. In June 1986, we were informed of the establishment of the HANS NIEPER FOUNDATION in San Juan Capistrano, California. While we have no current information on this organization, it is possible it too will be used to attract patients and promote Dr. Nieper's treatments.

The agency's enforcement strategy regarding the handling of unapproved new drugs promoted by Dr. Nieper has included advising Dr. Nieper, the West German shippers of these drugs, and domestic promoters of Nieper's treatment regimen of the illegal status of these drugs in the U.S.; contacting the U.S. embassy in Bonn, Germany, and the West German government to determine what assistance they can provide in stopping the shipments of these products at their source; developing public information and educational materials in conjunction with major national and international health organizations; and requesting the U.S. Customs Service and other government agencies to include information about foreign fraudulent health schemes and the importation of misbranded and unapproved new drugs and devices in their travelers' information pamphlets.

The majority of the initiatives in the enforcement strategy have now been completed. We have received a response from Dr. Nieper in which he stated that he believes that World Health Organization regulations or international law permit the importation of drugs that have been prescribed in another country if treatment was begun in that country. This, however, has been refuted by the World Health Organization.

GUIDANCE

Automatically detain all entries of Hans A. Nieper drugs charging "The article is violative within the meaning of 801(a)(3) in that the article(s) appears to be a new drug without an effective new drug application as required by section 505(a), and appears to be misbranded within the meaning of section 502."

Districts have reported that in some cases medical devices (e.g. syringes) lableled in German are included as part of Nieper entries. When such medical devices are encountered automatically detain citing the appropriate charge.

In most cases, neither Hans A. Nieper, nor the Paracelsus Silbersee Hospital (hospital/clinic affiliated with Dr. Nieper), are identified as the shippers of these drugs. In some cases, a prescription or other statement from Dr. Nieper is packed inside the shipping carton.

See Attachment A for a list firms/individuals from the Federal Republic of Germany that have previously shipped Nieper drugs. See Attachment B for a list of currently known Nieper products. Most of the products are manufactured by West German drug firms; a few are compounded by West German pharmacies. Advise HFC-131 of additional shippers or products.

Attachment A - Import Alert # 66-28 Revised 01/22/93

KNOWN SHIPPERS OF NIEPER PRODUCTS

Alte Apotheke
P.O. Box 1829
Walsroder Street 150
3012 Langenhagen 1
Federal Republic of Germany
Attention: Klaus Gritzmann

Arcis Apotheke
Arcisstrasse 40
8000 Muenchen 40
West Germany

B. Lubke
Rosenwegg 3051
Suthfield
Federal Republic of Germany

Dieter Harmel
Walsroderstrasse 150
3012 Langenhagen 1
Federal Republic of Germany

Erma weigand
8710 KitzFengen
Goethe - St.
W. Germany

Erna Eisenhofer
Donnergerferetr 51
8000 Mumchen 19
Federal Republic of Germany

Flora Apotheke
Friesenstrasse,
Ecke Eichstrasse
Postfach 2003
3000 Hanover 1
Federal Republic of Germany
Attention: F.R. Domhardt

Frieda Verstandig
Hemmendirfer Str.4
3216 Salzhemmendorf 1
Federal Republic of Germany

KNOWN SHIPPERS OF NIEPER PRODUCTS

Herr Tews
Gevelsberg, 5820
Federal Republic of Germany
(4/20/92)

Horst Matzek
Bussenstrasse 8
3008 Garbsen 4
Federal Republic of Germany

Horst Matzek
Holcherstrasse 7,
3000 Hanover 1
West Germany

Internistische Klinik, Dr. Muller
Isartalstrabe 84
8000 Munchen 70
West Germany

Jochen Domhardt
Tollenbrink 24
3000 Hanover 51
Federal Republic of Germany

L. M. Reiter
Marienheim
Germany
Martina Rhienlander
Basen Bastles St. 38
3008 Garbsen
Federal Republic of Germany

Mastina Coiese
Hebbelweg 2
3016 Seelze 5
Federal Republic of Germany

Medalfa, A.G., Prattelen
Krummeneichstr 34 A, CH
Prattein, Switzerland

Mucos Pharma GMBH Co. 3/11/92
Postfach B80
Gerestried 1
German Democratic Republic

KNOWN SHIPPERS OF NIEPER PRODUCTS

Rolf Lorenz
Schwanstr. 8
7600 Offenburg
Federal Republic of Germany

Ulrich Weissgerber (may be spelled Weibgerber)
Blumhardthof 1 (old address)
J Schwanenring 26 (new address)
3000 Hanover 61
Federal Republic of Germany

Waldschmidt
Bernauer Str 17
8 Munchen 80
Federal Republic of Germany

NIEPER REPORT

We are aware that alternative medical treatments, both drug therapy and dietary regimens, have been tried by individual physicians and by various groups, and also that there are treatments available in other countries that are not approved for use in the United States. Individual patients have also provided testimony regarding their experiences with nonconventional therapies. Perhaps an explanation of the drug approval process in the United States will provide some clarification regarding the use of alternative therapies, particularly with respect to the Food and Drug Administration (FDA).

The Federal Food, Drug, and Cosmetic Act (Act), which the FDA administers, defines a new drug as one not generally recognized by qualified experts as safe and effective for the recommended uses. A new unapproved use for an older drug also would cause that drug to be regarded as "new" under the FDC Act. A new drug may not be distributed interstate (except for clinical study) until we have approved a new drug application (NDA) containing substantial scientific evidence of safety and effectiveness for use of the drug as labeled.

Toxicity and other data contained in an investigational new drug application (IND) acceptable to the FDA is required of a sponsor (e.g., a drug manufacturer or a clinical investigator) to study the safety and effectiveness of an unapproved new drug. When the sponsor determines that adequate and well-controlled studies have been performed, which reflect favorably on a new drug's safety and effectiveness, the sponsor then submits that information, together with adequate information on manufacturing procedures and controls, in a new drug application to FDA. After a comprehensive review by the FDA, the NDA is either approved or not approved; upon approval the drug may be marketed.

Dr. Nieper, according to information we have seen, has been promoting his therapies for over twenty years. He is aware of the unapproved new drug status of many of the drugs he is prescribing, and that most of the drugs promoted by him may not be legally imported in this country. And, although he has been informed that it is the responsibility of the sponsor of a drug to conduct clinical studies and seek FDA approval of the drug, he has never sought FDA acceptance or approval by submitting either an IND or NDA to this Agency.

Not simply one drug, his therapies consist of many unapproved drugs and other substances which we know little or nothing, and include Laetrile, a substance which years ago was studied and not shown to be effective. He also prescribes vitamins, minerals, and herbals. Dr. Nieper's patients claim success in using his therapies to treat a number of ailments including arthritis, cancer, coronary heart disease, and multiple sclerosis. According to literature, again submitted by patient advocates, Dr. Nieper incorrectly informs his patients that they are legally entitled to bring back into the United States supplies of the medications prescribed by him. The literature also states that his regimens are approved by the West German Government and the World Health Organization, which is not accurate.

Enclosed is an August 15, 1986 <u>FDA Talk Paper</u> that provides other background information.

We deeply sympathize with the victims of cancer, multiple sclerosis, and other diseases who await, often with life itself at stake, any new breakthrough that promises hope in those cases where no effective treatment is now available. The Department of Health and Human Services actively encourages and supports the research and marketing of new and effective medical treatments. We have a duty--legally as well as morally--to be sure that safe, effective new discoveries are made available without delay. However, we also have a responsibility to enforce the laws and regulations with respect to importation and movement in interstate commerce of unapproved drugs, and to assure that individuals and physicians are not misled regarding therapies offered for medical treatment whether from the United States or abroad.

Although no legislation has been enacted on the subject of importation of unapproved drugs, FDA does have a policy permitting unapproved drugs to be imported for personal use. This is a policy that we have followed for many years. An announcement a few years ago, however, established some ground rules that enables our field personnel to implement the policy more uniformly. We are enclosing a copy of a July 20, 1988 mail Import-Alert entitled, "Pilot Guidance for Release of Mail Importations," which applies to all products for the treatment of serious and life-threatening conditions. Also enclosed is a copy of a July 27, 1988 <u>FDA Talk Paper</u> on the policy. Although the Talk Paper may suggest to some readers that the policy is limited to AIDS products, it is not.

No forms are necessary in order to import drugs for personal use. The importer/patient must find a source of the drug (we cannot be helpful in this regard) and place an order. In the event the shipment is detained upon importation, the importer/patient may have to supply a statement that the importer/patient is under the care of a physician (this statement is described in the enclosures).

However, please note on page three of the Talk Paper that products promoted by Dr. Nieper are restricted from entry into the United States. The enclosed December 10, 1987, Import-Alert (#66-28), on new drugs promoted by Dr. Hans A. Nieper of West Germany, provides more specific information.

4 Enclosures
FDA Talk Paper:8/15/86
FDA Talk Paper:7/27/88
Mail Import-Alert:7/20/88
Mail Import-Alert:12/10/87

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