

Most Americans would applaud the regents for their prudent decision. But not Cantu and Winston. They are using their civil rights positions at the Department of Education to launch a Federal taxpayer-funded investigation to determine whether schools are discriminating by refusing to discriminate.

The Los Angeles Times reported that Winston has asserted that:

The University of California may have violated federal civil rights law by dropping its affirmative action rules and relying on test scores and grades as a basis for selecting new students.

This baseless investigation turns the principle of nondiscrimination on its head by threatening schools that use race-blind admissions policies and objective measures of merit. This investigation has provoked criticism even from those who typically defend race preferences. For example, University of Texas Law School professor Samuel Issacharoff, recently stated that "[Ms. Winston] is voicing a theory that does not have support in the courts." Professor Issacharoff went on to explain that he was "not aware of any legal support for the idea that would say the Harvard Law School, for example, cannot accept only the cream of the crop if doing so would have an impact on a minority group."

And in an editorial, the Sacramento Bee, a newspaper I might add that supports race preferences, referred to the administration's legal theory as "an Orwellian misreading of the law." "Equally important," the Bee concluded, "the investigation is an abuse of federal power, designed to punish California and its citizens for [its] decision on affirmative action. * * *"

So where did this investigation originate? Who could muster the contorted legal arguments to justify these threats and these expenditures of taxpayer dollars?

Were these complaints filed by a student who alleged discrimination? A student organization? A family in California? No. I'll tell you who filed the complaint that launched this Federal investigation: Bill Lann Lee, as head of the Western Office of the NAACP Legal Defense and Education Fund.

And, it does not end there. The Labor Department has also joined the pile-on to punish California for its decision to push for a colorblind society. DOL is investigating the charge that U.C. graduate schools are committing employment discrimination against the minorities who are not accepted into U.C. graduate schools, and thus, not able to apply for campus jobs.

And where did this complaint originate? Again, it wasn't a student. It was Bill Lann Lee and his legal defense fund filing another complaint launching yet another federally funded investigation of race-neutral policies based on yet another legal theory that is outside the boundaries of both the Commission and the courts.

And, what is the administration's threatened sanction against the Uni-

versity of California for its race-neutral approach? The termination of hundreds of thousands of dollars in Federal funds.

And what does this pattern and practice tell us that Mr. Lee will do with an army of lawyers at the Justice Department? He will bring down the power of the Federal Government upon State and local governments that refuse to mandate racial preferences. This, Mr. President, is simply unacceptable.

Mr. Lee's views are neither moderate nor mainstream. And, his views are not isolated incidents. They are not glib, off-handed statements made during his youth. They are not dusty law review articles written by a starry-eyed graduate student. And, they are not creative theories espoused in the ivory tower of academia.

Mr. Lee's well-documented views are the voice of a man who exhibits an alarming allegiance to racial preferences and a disturbing disregard for the Constitution. This voice—this man—should not be entrusted with the noble task of upholding the equal protection clause of the U.S. Constitution.

Several days ago, I placed a hold on Mr. Lee's nomination, and today, I respectfully announce my formal opposition to his nomination. We must end the divisive practice of awarding Government jobs and contracts and opportunities based on the immutable trait of skin color and ethnicity. Respect for our Constitution, our courts, and—most importantly—our individual citizens, demands no less.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Kentucky for the excellent treatise he just made.

Mr. AKAKA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 1376 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. AKAKA. I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Alabama.

NOMINATION OF BILL LANN LEE

Mr. SESSIONS. Mr. President, the position of Assistant Attorney General for Civil Rights is important to our Nation. The most important reason is what it signals about the direction the President plans to take on key civil rights issues of the day.

In my opinion, this Nation is moving in the right direction on civil rights. We have gone through a turbulent period where legal segregation has now been ended, and we are now ending a period during which the courts have used racial preferences and remedies to cure certain aspects of past discrimination.

While this procedure can be defended perhaps in the short run, particularly

when it is directly attached to a specific prior discriminatory act, such a policy cannot be a part of a permanent legal and political system.

Our Supreme Court, which has led the drive to eliminate legal discrimination on a variety of fronts, is wisely taking a long-term view of the impact of racial preferences in America. After thoughtfully considering our future, the Supreme Court, in the Adarand case and in rejecting just this week the idea that California's civil rights initiative is unconstitutional and in other cases has clearly stated that this Nation must not establish a governmental system which attempts to allocate goods, services and wealth of this Nation on the basis of one's race, on the basis of the color of their skin. The result will be contrary to the equal protection clause of the great 14th amendment to our Constitution, and contrary to our goal of a unified America in which people are judged on the contents of their character and not on the color of their skin.

Mr. President, with regard to the nomination of Bill Lann Lee of California to be Assistant Attorney General for Civil Rights, I want to say with confidence that he is a skilled and able attorney, an honest man, a man who appears to have integrity and the kind of characteristics that make for a good attorney.

His entire career has been spent in skilled advocacy in the civil rights arena. He is a Columbia Law School graduate who could have practiced on Wall Street but chose public interest law instead, and he should be commended for that. Sadly, however, I must join the chairman of the Judiciary Committee, Senator Orrin HATCH, and the former chairman of that committee, Senator THURMOND, who is here tonight and just made an excellent series of comments on this issue, to announce my opposition to Mr. Lee. Simply put, Bill Lee, like President Clinton, is outside the mainstream of American civil rights law, the very laws he would be charged with enforcing.

While the American people and the Federal judiciary have steadily moved toward a color-blind ideal, Bill Lee has clung to a policy of racial preferences and spoils. Bill Lann Lee strongly advocates racial and gender preferences which are, in effect, virtually quotas in virtually every area of our society, including college admissions, congressional voting districts and employment.

I believe a nation that draws voting districts on the basis of race, that uses race as a factor in college admissions and hiring and promotion decisions is, in fact, destined to have unnecessary racial strife and hostility and it does not bind us together as a nation.

In my opinion, it would be unwise for the Senate to confirm Mr. Lee as Assistant Attorney General for Civil Rights. The Assistant Attorney General for Civil Rights is one of the most

important law enforcement positions in the Federal Government. If confirmed, Mr. Lee would have a powerful arsenal of more than 250 lawyers at his disposal.

After our hearings that I participated in and participated in his questioning, and after review of his record, I have concluded that Mr. Lee will continue to push for lawsuits, consent decrees and other legal actions that are outside the mainstream of current American legal thought. He sets the civil rights policy for the United States, and since his views are not in accord with the people, the Congress and the courts, he should not be confirmed in that position.

Let me give you several examples. Last fall, the people of California, after full debate, passed proposition 209, California's civil rights initiative, which simply prohibits the State from discriminating against or granting preferences to anyone on the basis of race or gender.

The very day after—he opposed that referendum—he lost that issue at the ballot box, Mr. Lee and his organization, the legal defense fund, filed suit arguing that proposition 209 was unconstitutional. This is a curious, even bizarre argument, because proposition 209 mirrors the language of the Civil Rights Act of 1964, one of the great civil rights acts that changed race relations in America. It also mirrors the 14th amendment.

Even the ninth circuit, the most liberal circuit in America, unanimously rejected Mr. Lee's position. Moreover, on request for a rehearing, the full ninth circuit voted to deny a rehearing en banc. But even the most liberal circuit—it is considered the most liberal circuit in the country—rejected Mr. Lee's argument that proposition 209, passed by the people of California to eliminate racial preferences, was unconstitutional. This is what the court said:

As a matter of conventional equal protection analysis —

That is the 14th amendment, the equal protection clause they are referring to—

As a matter of conventional equal protection analysis, there is simply no doubt that Proposition 209 is constitutional . . . After all, the goal of the Fourteenth Amendment to which this Nation continues to aspire, is a political system in which race no longer matters. The Fourteenth Amendment, lest we lose sight of the forest for the trees, does not require what it barely permits.

That means that the 14th amendment certainly does not require quotas and preferences and it certainly, if anything, will only permit them if they meet the strict test of scrutiny.

A lawsuit against proposition 209 is another example of those who, when they lose their issue at the ballot box, have taken to the habit of going to Federal courts to ask the courts to overrule the will of the people through the elected representatives or through the initiative process.

At his confirmation hearing, Lee again stated his odd argument that proposition 209 is unconstitutional. As Senator HATCH said, this is not an itty-bitty issue whether or not proposition 209 is constitutional.

This initiative was a good initiative, carefully drawn, fully considered by the people of California. And Mr. Lee continues to assert to this day that it is violative of the Constitution of the United States. This is not fair to California, and we should not subject this Nation to those kinds of views.

Not surprising, just this week the Supreme Court of the United States rejected his position on proposition 209 when it denied certiorari. It refused to review the ruling of the California court, the ninth circuit court, and held the ninth circuit opinion intact.

It is important to note, I think, for the Members of this body, that this is the position of President Clinton. He adheres to the same view about proposition 209 being unconstitutional. And his Justice Department joined the ACLU and Bill Lee's legal defense fund and filed an appeal arguing that 209 was unconstitutional. In effect, the President of the United States is asking the unelected judiciary to overrule the well-debated and well-considered initiative of the people of California.

So I think it is important for this body, as we consider this nomination, to consider what kind of message we are sending when we either confirm or reject Mr. Lee.

I think we need to send a message that this body stands with the people and the courts and not this strained view of proposition 209.

There are a couple of other examples that I think point out the position of Mr. Lee on racial preferences that indicate that he would not be a fit nominee for this position.

In recent years, the Supreme Court, in the Croson decision and the Adarand decision clearly held that racial preferences are unconstitutional. The Supreme Court now subjects all Government racial preferences to what is called strict judicial scrutiny. As you know, it is very difficult, Mr. President, for a government program to withstand strict scrutiny.

At his confirmation hearing however, Mr. Lee badly mischaracterized the spirit of these cases. He stated that the Croson and Adarand decisions stand for the proposition that "affirmative action programs are appropriate if they are conducted in a limited and measured way."

This is not the position that the Supreme Court stated in Adarand. It greatly undermines that important decision. And it would be unwise for this body to confirm a nominee who would not faithfully follow the Adarand decision.

As Senator HATCH, who chaired the committee, said so eloquently yesterday on the Senate floor, Bill Lee's description of Adarand purposely misses the mark of the Court's fundamental

holding that such programs are presumptively unconstitutional.

Moreover, Bill Lann Lee testified in his confirmation hearings that he was opposed personally to the holding in Adarand. I asked him what his personal view was. He said he personally opposed that ruling. Senator John ASHCROFT asked Mr. Lee whether the set-aside program at issue in Adarand is unconstitutional, where a set-aside was given to a contractor simply because of their race or sex.

In response, Mr. Lee noted that the Supreme Court in Adarand had remanded the case to the district court, which promptly, by the way, ruled the program unconstitutional. And in so doing, the district court stated:

I find it difficult to envisage a race-based classification that is narrowly tailored.

But despite the district court's strong holding, Lee, like the Clinton Department of Justice, continues to state and continues to believe that "this program is sufficiently narrowly tailored to satisfy the strict scrutiny test."

Mr. Lee simply refuses to accept the fact that strict scrutiny is an exceedingly difficult and high standard for a government agent to meet before it can establish racial preferences, that is, before it can give preferences to somebody for no other reason than their race.

Under Mr. Lee's interpretation, all of the approximately 160 Federal racial preference programs that now exist would continue to be constitutional, although most scholars would say that under the Adarand decision, many of them, if not most of them, would fail to meet constitutional muster.

So, Mr. Lee's interpretation of Croson and Adarand would make these seminal decisions virtually irrelevant. Almost any program could survive his definition of the strict scrutiny standard.

Mr. President, America needs an Assistant Attorney General for Civil Rights who will honestly, soberly, and accurately read and apply the law—even when he disagrees with it.

Unfortunately, as his confirmation hearing and followup answers indicate, he has been unable to shed his role as an activist, a partisan civil rights litigator. If confirmed, Lee would support the constitutionality of racial preferences and use his team of some 250 lawyers to further an agenda that is not in keeping with the current state of American law.

Let me talk about another example that is important for us to consider.

Forced busing. Mr. Lee sued extensively over the years on issues involving busing. And once, for example, in *Brown versus Califano*, in 1980, a Supreme Court case, Lee challenged the constitutionality of a congressionally passed statute, passed by this Senate and the House, that prohibited the Department of Health, Education, and Welfare from requiring States to bus children for racial purposes.

Of course, under the statute, States could adopt forced busing if they wanted, and the Federal courts could still order busing. The statute merely prohibited the Department of HEW from forcing States to bus children on its own motion.

In his brief challenging that law, Mr. Lee stated that the congressional amendments "demonstrate discriminatory intent to interfere with desegregation."

Of course, that is an unfounded and unfair charge to make. Many people—I know Senator BYRD, on the other side of the aisle, had led the fight for that statute. He was not trying to undue and return to segregation. He simply was concerned, as millions of Americans have been, that the experiment with busing was not working. And he did not want the Department of Education, on its own, requiring it, and since, as years have gone by, it has been well-recognized that the experiment with busing has not achieved the goals that were intended, and is, in essence, for all practical purposes, a failure.

Parents of all races oppose mandatory busing, and the law in *Brown versus Califano* reflected this. Again, the Federal courts rejected Lee's argument and upheld the statute. But that is just another example of where Mr. Lee has sued to implement a political agenda that he lost during the democratic process. That is, he lost it in the hearts and minds of the people and through their elected representatives. And he, therefore, sought to have the courts overturn that.

In another forced busing case, Mr. Lee wrote the following in his brief. This is what he wrote:

The term "forced busing" is a misnomer. School districts do not force children to ride a bus, but only to arrive on time at their assigned schools.

I think many people feel that that is the kind of comment that shows arrogance and insensitivity to those who are concerned about children who have no way to go to school but by bus, to be told, "Well, you don't have to ride a bus. You just have to show up at a certain school on time."

In conclusion, Mr. President, America is at a crossroads in the civil rights debate. The American people believe overwhelmingly that government services and benefits should be administered in a color-blind fashion. As a nation we have made tremendous progress toward racial harmony, and though our work to eradicate racism is not finished and much bias and prejudice still exists in our land that we should not tolerate and should seek to eliminate, we should be proud of the great progress that has been made in the past 30 years.

Mr. President, it gives me no pleasure to announce this vote against Mr. Lee. He is an admirable person, a fine lawyer. Please make no mistake, my opposition to him is in no way an attack on his integrity and character.

However, his positions, particularly his tendency to file lawsuits to promote his agenda and his misreading of Supreme Court precedents, simply make him the wrong person at the wrong time to be the Assistant Attorney General for Civil Rights.

I yield the floor.

Mr. THURMOND. Will the Senator yield?

Mr. SESSIONS. I do.

Mr. THURMOND. I wish to commend the able Senator from Alabama for the excellent remarks he has made on this subject.

Mr. SESSIONS. I thank the Senator from South Carolina for his leadership as chairman of the Judiciary Committee and his comments earlier this afternoon.

I yield the floor.

REACTION TO LEACH/MCKINNEY LOGGING PROPOSAL

Mr. GORTON. Mr. President, legislation was recently introduced in the House of Representatives that would ban all commercial logging on Federal lands. This legislation would be devastating not only for the Pacific Northwest, which is highly dependent on its forest products industries, but disastrous for the entire Nation as well.

I'm appalled. Let me state that the bill introduced by Representatives MCKINNEY, LEACH, McDERMOTT, and others has absolutely no chance of passage. None. Yet, it's another confirmation of the radical nature of our opponents in this debate about managing our national resources. After years of talking about compromise and balance, it's clear by the introduction of this bill that their view is that one of our greatest renewable natural resources shouldn't be used for any constructive economic purpose. The sponsors of this bill are clearly indifferent to human costs and economic disruption this radical policy would impose on our Nation's economy, and particularly on our timber dependent communities.

Support for this bill—which I repeat, has no chance of passage—comes from the Sierra Club and other environmental organizations that earlier this year endorsed a policy of zero cut of timber on public lands. More recently, during debate on the Interior appropriations bill, many of these same groups supported an amendment substantially reducing the budget for Forest Service roads. Had these groups succeeded, the Federal Timber Sale Program, which already has been reduced by two-thirds over the past decade, would have been reduced by another 50 percent. This was clearly a tactic employed by radical environmental groups with the ultimate goal of eliminating all Federal timber harvests.

Proponents of a zero cut policy on Federal lands lead an effort to further erode the economic backbone of rural Americans. It is an effort by mostly urban environmentalists—armchair en-

vironmentalists—who have forgotten, or who never knew, what it takes to produce fiber and shelter, and are indifferent to the communities and jobs that produce these commodities.

Published reports about this legislation fail to mention that Federal timber sales are already in severe decline, primarily from the limitations placed on the Forest Service by the Clinton administration's environmental considerations and species protection efforts. In 1987, the Federal Timber Sale Program provided nearly 12 billion board feet of timber. Now, 10 years later, less than 4 billion board feet were sold. This translates to double-digit unemployment in Washington State's timber dependent communities. I cannot imagine how terrible it would be for these already depressed communities if timber harvests were banned on public lands.

For the record, I would like to note that 23 of Washington's 39 counties have been designated as "distressed" counties under State guidelines, meaning that their unemployment rates have been 20 percent above the State average for 3 years and median household incomes less than 75 percent of the State median. This is, to a great extent, the direct result of economic devastation in our timber dependent communities.

These are counties with towns like Port Angeles. A pulp mill closure in February resulted in about \$17 million in direct payroll losses and hundreds of jobs. As I speak today, representatives from the Port Angeles community are hosting a summit for similarly distressed communities that are finding it hard to survive in an era of declining timber sales.

These areas of the State do not share the wealth of the booming Seattle economy. In 1996, 75 percent of the timber sold by the U.S. Forest Service was to small businesses. These small operations are predominately headquartered in rural areas; in places such as Forks, WA, where jobs and the community's stability are dependent upon the timber industry. These are communities struggling under existing environmental restrictions and species protection efforts. The recent House proposal would serve as a death blow to these struggling communities.

Proponents of the zero-cut scheme also erroneously claim it will benefit the Federal Treasury. Nothing could be further from the truth. Despite the fact that annual timber sale revenues dropped by over \$462 million due to logging restrictions, the Forest Service Federal Timber Sale Program generates annual net revenues of \$59 million to the U.S. Treasury.

In addition, due to declining timber harvests, imports of softwood lumber between 1992 and 1995 increased by 4 billion board feet. As a result, the average price of an 1,800 square foot new home has gone up \$2,000. The environmentalists don't like to talk about the