

EXHIBIT 1

Federal Judge Scolds Justice Dept. Lawyers

By Carol D. Leonnig
Washington Post Staff Writer
Saturday, January 24, 2004; Page A04

A furious federal judge ordered Justice Department lawyers yesterday to explain why they should not be held in contempt of court for telling subpoenaed witnesses not to testify before him in a class-action discrimination lawsuit.

Three Department of Agriculture employees were subpoenaed and scheduled to answer questions yesterday in court about whether top USDA officials had acknowledged any discrimination against Native American farmers when providing loans and assistance. A group of Native American farmers sued the USDA in 1999, but the case has been bogged down as the Justice Department unsuccessfully sought to appeal U.S. District Judge Emmet G. Sullivan's rulings that the farmer group qualified to file the broader class-action case.

Justice Department lawyers representing the Agriculture Department acknowledged to Sullivan that they told employees they did not have to come to court because they believed such testimony was improper.

"What gives you the authority to instruct witnesses not to comply with a subpoena of this court?" Sullivan asked Justice Department lawyer Carol Federighi. "You put yourself at significant risk of being held in contempt."

Federighi explained that the subpoenas appeared to be "a misuse of the court process."

"I'll tell you what: You nor anyone else better ever instruct a witness not to appear," Sullivan said. "You understand me?"

Sullivan told the parties that in his 20 years as a judge he had never heard of government lawyers obstructing the testimony of witnesses, and he gave the department 30 days to defend its actions in writing. Justice Department lawyers declined to comment yesterday.

EXHIBIT 2

**Assistant Secretary for Civil Rights
US Department of Agriculture
Fiscal Year 2004
Civil Rights Initiatives**

November 24, 2003

Introduction

Civil Rights Initiatives

Shortly after his appointment as the first Assistant Secretary for Civil Rights at the United States Department of Agriculture (USDA), Vernon B. Parker, Esq., and his senior advisors began the challenging task of implementing institutional changes within USDA's civil rights organization. During a four-month period, Mr. Parker met with key management officials, employee organizations, constituency based organizations and Departmental and agency civil rights staffs. Following these meetings, Mr. Parker and his team identified major challenges facing USDA and developed an action plan to institute changes. The challenges to be addressed can be classified in the areas of: Structure, Systems, Procedure, Operations and Accountability.

Structural Challenges encompass organizational factors that impede the efficient delivery of civil rights services. In seeking solutions to these challenges the focus is to consolidate like functions, eliminate overlap of responsibilities, prevent mission creep, and create a unified voice and line of authority.

There are two Civil Rights Initiatives under Structural Challenges:

1. Consolidation of staff offices with civil rights focus.
2. Realignment of personnel and functions within the Office of Civil Rights.

Systems Challenges are those linked with disassociated and outdated information management systems among USDA agencies. These systems are unable to communicate with each other and, consequently, require Herculean efforts to reconcile. Solutions focus on identification of an information management tool that stakeholders can agree upon and timely implementation of a systems solution.

The single Civil Rights Initiative under Systems Challenges calls for a Civil Rights Enterprise System that will integrate civil rights information management throughout USDA.

Procedural Challenges include development of standard operating procedures to improve the relationship between the Office of Civil Rights and other USDA units. A key need is to include clear language on the roles and responsibilities of the various agencies within USDA pertaining to civil rights.

EXHIBIT 3

Table 17. Selected Characteristics of Farms by Specified Racial Groups, Sex of Operators, and Persons of Spanish, Hispanic, or Latino Origin: 1997 and 1992

[For meaning of abbreviations and symbols, see introductory text]

Characteristics	Farms operated by specified racial groups					Operators by sex		Operators of Spanish, Hispanic, or Latino origin ¹	
	Total	Black	American Indian	Asian or Pacific Islander	Other (see text)	Female	Male		
FARMS AND LAND IN FARMS									
Farms	number, 1997..	47 658	18 451	10 638	8 731	9 838	165 102	1 746 757	27 717
	1992..	43 487	18 816	8 346	8 096	8 229	145 156	1 780 144	20 956
Land in farms	acres, 1997..	58 738 557	2 384 868	52 002 745	1 330 581	3 020 363	47 465 132	884 330 123	16 406 119
	1992..	55 241 024	2 310 349	48 335 111	1 130 665	3 464 899	44 907 772	900 623 734	12 394 690
Harvested cropland	farms, 1997..	31 112	11 005	6 216	7 690	6 201	94 001	1 316 605	18 003
	1992..	29 821	12 196	5 093	7 313	5 219	91 072	1 400 714	13 554
	acres, 1997..	3 031 847	807 740	1 100 350	579 283	544 474	8 166 953	301 228 522	2 652 951
	1992..	2 579 292	761 281	813 316	561 162	443 533	7 759 850	288 177 126	1 836 951
1997 FARMS BY SIZE									
1 to 9 acres		8 663	2 012	987	3 675	1 989	23 800	129 715	4 382
10 to 49 acres		14 601	6 053	2 566	2 802	3 180	46 978	363 855	7 673
50 to 139 acres		11 578	6 137	2 531	1 055	1 855	41 651	415 042	5 447
140 to 219 acres		4 180	1 911	1 174	359	736	18 164	209 170	2 417
220 to 499 acres		4 455	1 586	1 479	430	960	19 323	292 391	3 234
500 acres or more		4 181	752	1 901	410	1 118	15 186	336 584	4 564
1997 OWNED AND RENTED LAND IN FARMS									
Owned land in farms	farms..	40 869	16 560	9 406	6 502	8 401	154 111	1 566 619	24 365
	acres..	52 021 859	1 499 083	48 043 003	786 248	1 693 525	35 513 951	518 191 319	10 461 612
Rented or leased land in farms	farms..	18 261	7 259	4 194	3 353	3 455	33 442	731 526	10 238
	acres..	6 716 698	885 785	3 959 742	544 333	1 326 838	11 951 181	366 138 804	5 944 507
TENURE OF OPERATOR									
Full owners	farms, 1997..	29 397	11 192	6 444	5 378	6 383	131 660	1 015 231	17 479
	1992..	26 665	11 578	5 039	5 011	5 037	112 920	988 818	12 933
	acres, 1997..	46 435 092	1 095 093	43 612 758	504 089	1 223 152	25 821 592	290 222 956	6 977 534
	1992..	44 657 705	973 282	42 188 376	385 892	1 110 155	22 382 862	273 855 214	3 964 787
Part owners	farms, 1997..	11 472	5 368	2 962	1 124	2 019	22 451	551 388	6 886
	1992..	10 593	5 194	2 329	1 123	1 957	21 750	574 907	5 254
	acres, 1997..	10 110 740	1 068 343	7 236 975	603 889	1 201 533	17 492 063	490 181 281	7 432 855
	1992..	7 840 760	1 087 491	4 476 112	433 727	1 843 430	18 324 877	508 287 135	6 285 987
Tenants	farms, 1997..	6 789	1 891	1 232	2 229	1 437	10 991	180 138	3 352
	1992..	6 229	2 054	978	1 962	1 235	10 486	206 419	2 769
	acres, 1997..	2 192 725	221 432	1 153 012	222 603	595 678	4 151 477	103 925 886	1 995 730
	1992..	2 742 559	249 576	1 670 623	311 046	511 314	4 200 033	118 477 385	2 143 916
1997 FARMS BY TYPE OF ORGANIZATION									
Individual or family (sole proprietorship)		41 512	16 858	9 394	6 736	8 524	143 115	1 500 309	23 588
Partnership		3 458	1 156	614	885	803	12 816	156 646	2 487
Family held corporation		1 612	203	155	899	355	5 904	70 199	1 161
Other than family held corporation		305	59	30	137	79	662	7 237	245
Other—cooperative, estate or trust, institutional, etc.		771	175	445	74	77	2 605	12 366	236
1997 MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD									
Total sales	farms..	47 658	18 451	10 638	8 731	9 838	165 102	1 746 757	27 717
	\$1,000..	4 231 325	476 509	662 374	1 822 886	1 269 556	6 857 306	190 007 343	3 263 067
Crops, including nursery and greenhouse crops	farms..	22 342	7 275	3 520	7 047	4 500	63 255	973 781	13 176
	\$1,000..	2 985 962	259 857	281 356	1 628 675	816 074	2 682 355	95 373 302	2 003 639
Livestock, poultry, and their products	farms..	26 388	12 201	7 575	1 389	5 223	94 755	1 081 299	16 062
	\$1,000..	1 245 363	216 652	381 018	194 211	453 482	4 174 951	94 634 041	1 259 428
Farms by value of sales:									
Less than \$1,000		9 048	3 797	2 158	971	2 122	42 373	234 875	5 082
\$1,000 to \$2,499		8 288	3 972	1 835	813	1 668	24 661	194 605	4 113
\$2,500 to \$9,999		13 874	6 381	3 102	1 766	2 625	46 000	420 452	7 151
\$10,000 to \$19,999		4 865	1 797	1 172	984	912	17 412	194 708	2 739
\$20,000 to \$24,999		1 280	400	318	305	257	4 512	57 408	739
\$25,000 or more		10 303	2 104	2 053	3 892	2 254	30 144	644 709	7 893
1997 FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM									
Oilseed and grain farming (1111)		4 540	2 728	991	296	525	27 678	435 199	2 547
Vegetable and melon farming (1112)		2 817	767	149	1 386	515	2 622	28 408	1 017
Fruit and tree nut farming (1113)		6 119	358	357	3 500	1 904	8 953	73 003	3 859
Greenhouse, nursery, and floriculture production (1114)		2 397	170	183	1 640	404	8 256	48 936	1 216
Other crop farming (1119)		6 048	2 925	1 284	603	1 236	20 334	248 983	3 758
Tobacco farming (11191)		1 554	1 330	192	11	21	5 282	60 473	405
Cotton farming (11192)		641	358	35	20	228	747	18 247	524
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)		3 853	1 237	1 057	572	987	14 305	170 263	2 829
Beef cattle ranching and farming (11211)		19 434	8 966	5 786	662	4 020	55 196	600 985	11 227
Cattle feedlots (11212)		625	292	165	46	122	2 649	40 820	428
Dairy cattle and milk production (11212)		341	112	107	25	97	3 249	82 773	637
Hog and pig farming (1122)		1 685	1 213	192	137	143	2 066	44 287	445
Poultry and egg production (1123)		738	221	205	181	131	4 674	32 270	411
Sheep and goat farming (1124)		688	111	265	58	254	5 330	24 608	622
Animal aquaculture and other animal production (1125, 1129)		2 226	588	954	197	487	24 095	86 485	1 550

See footnotes at end of table.

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al.)	
Plaintiffs)	
v.)	Civil Action No. 1:00CV02445
ANN VENEMAN, Secretary)	Judge Robertson
United States Department of Agriculture)	
Defendants.)	

SECOND DECLARATION OF KARL RICHARD PAVLOVIC

Karl Richard Pavlovic, being first duly sworn, upon his oath, deposes and states as follows:

1. I am President of DOXA, Inc. with offices at 1100 Wayne Avenue, Suite 720, Silver Spring, Maryland 20910-5622. DOXA is a private firm providing consulting services on economic and regulatory matters. I am the same Karl Richard Pavlovic who previously submitted a declaration in this proceeding, Exhibit 19 to Plaintiffs' December 5, 2003 Memorandum in Response to the Court's July 15, 2003 Order with Respect to Commonality.

2. My formal academic training is in philosophy, philosophy of science, epistemology and logic. By professional experience I have expertise in statistics, economics, financial analysis, econometrics, and computer modeling and simulation. A statement of my professional qualifications and experience is attached as Exhibit 1 to my December 5, 2003 Declaration. I have testified as an expert in a number of proceedings, including the Trans Alaska Pipeline System Quality Bank proceedings,¹ the All American Pipeline Quality Bank proceeding,² and Washington Gas rate case proceedings³ in which my testimony concerned the results of

¹ Federal Energy Regulatory Commission., Docket Nos. OR89-7-000, IS89-7-000, OR94-14-000.

² Federal Energy Regulatory Commission. Docket No. IS94-4-000.

³ Public Service Commission of the District of Columbia, Formal Case Nos. 921, 922 and 929.

statistical analyses I had performed. In addition, virtually every project listed in Exhibit 1 to my initial declaration involved statistical and/or econometric analyses performed by me. I would also note that I was employed by USDA's Forest Service in 1986 to develop fixed and variable cost equations for the Forest Service's road system, to which end I performed a complex regression analysis of the Forest Service's road construction, maintenance, operating, and financial accounts.

3. I have been asked by plaintiffs' counsel to examine and respond to the Third Report of David A. Freedman ("3rd Freedman") submitted with Defendant's January 16, 2004 Opposition to Class Certification and Response to Plaintiffs' December 5, 2003 Memorandum Regarding Commonality ("January 16 Opposition"), in which Dr. Freedman criticizes the analyses described in my initial declaration.

4. At the outset I note that Dr. Freedman does not question (a) my statistical methodology, (b) my application of the methodology, or (c) my conclusions. Specifically, Dr. Freedman does not question the reliability of the statistical tests I utilized. He also does not question either the data to which I applied those statistical tests or the appropriateness of applying those specific statistical tests to that data. Finally, he does not question my specific conclusions regarding the disparities between Hispanic and white applicants regarding loan application disposition, loan amount, and loan processing time. Instead, Dr. Freedman questions the relevance of my analyses to "the questions at issue," because the analyses are not related to the loan criteria used by USDA and do not take into account the geographical location of loan applications and differences between Hispanic and non-Hispanic farmers. 3rd Freedman at ¶¶ 2 and 8.

5. Dr. Freedman does not explicitly state what he understands "the questions at issue" to

be. The question addressed by my analyses was whether the two databases produced by USDA provide evidence of disparate treatment of Hispanic loan applicants. I did not undertake a sophisticated analysis to answer all the questions that might be asked about the disparities between Hispanic and white applicants because the data produced by USDA do not permit such analysis.

7. Dr. Freedman criticizes my analyses for not relating to any specific criteria employed by USDA. As I pointed out in my initial declaration, the downloads received from the two USDA databases contained no information on either the process or the criteria used to evaluate loan applications – in particular, no data concerning reasons why loan applications were either rejected or withdrawn. My analyses do not relate to specific factors or criteria precisely because USDA did not produce data that would allow the analyses to establish such a relation.

8. Dr. Freedman criticizes my analysis for not taking account of geography. I did not disaggregate my analyses geographically because doing so would not add anything meaningful to my analyses. In particular, geographical disaggregation cannot make the observed disparities between Hispanic and white applicants ‘disappear.’ It can only show the geographical distribution of the disparities.

9. Finally, Dr. Freedman speculates that “if Hispanics are less likely to be citizens than non-Hispanics this would affect approval rates” and “[i]f documentation is harder to check for Hispanics, this would affect processing time.” 3rd Freedman at ¶ 5. However, as Dr. Freedman must know, if he is at all familiar with the databases produced by USDA, the data in those databases do not indicate the applicant’s citizenship status or which applications were rejected/withdrawn because the applicant was not a US citizen. The deficiencies in the databases produced make a sophisticated investigation of the observed disparities impossible. Had the

databases allowed me to address the citizenship issue, the analyses would still be subject to a host of further speculative criticisms based on the long list of relevant data that USDA did not include in the databases. Dr. Freedman is simply using the myriad deficiencies in the databases produced by USDA to play a game of speculative “gotcha” against the simple analyses that can be performed with the limited data produced. USDA produced some boards and a few nails. Dr. Freedman then criticizes my analyses for being a serviceable raft and not the Queen Mary.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 30, 2004.


Karl Richard Pavlovic