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decisions (which are not), a hopeless endeavor. . . . Unfortunately, the price of all this has been descent into a Serbonian bog wherein judges are forced to don logical blinders and split the linguistic atom to decide even the most routine cases."

At press time, oral arguments in *Davila* had not been scheduled, but Young said he expected they would be set for some time in March. ■

—JEAN HELLWEGE

USDA faces series of discrimination lawsuits

Forget floods, drought, or mad cow disease. What's really worrying the U.S. Department of Agriculture (USDA) these days are the new lawsuits it's facing.

The lawsuits—at press time, four—allege rampant discrimination at the USDA against African-American, Latino, Native American, female, and elderly farmers. The chief defendant is the USDA's Farm Services Agency (FSA), which makes or guarantees loans to small farmers (those with less than \$250,000 in annual sales) who cannot get conventional loans.

Minorities have long alleged that the FSA discriminates against them. This mistrust was exacerbated when the USDA shut down its civil rights enforcement program in the 1980s. For almost 15 years, discrimination complaints were simply ignored. In the late 1990s, the civil rights office was reopened with Vernon Parker as its head, and Congress passed a law extending the statute of limitations for complaints filed under the Equal Credit Opportunity Act. These actions opened the way for the current lawsuits.

The first was *Pigford v. Glickman*, a class action settled with African-American farmers in 1999. (185 F.R.D. 82 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000).) With a certified class of over 15,000, *Pigford* is one of the largest class actions ever filed. Three new suits in litigation are *Love v. Veneman*, filed by women and elderly farmers (No. 00-2502 (D.D.C. filed Oct. 19, 2000));

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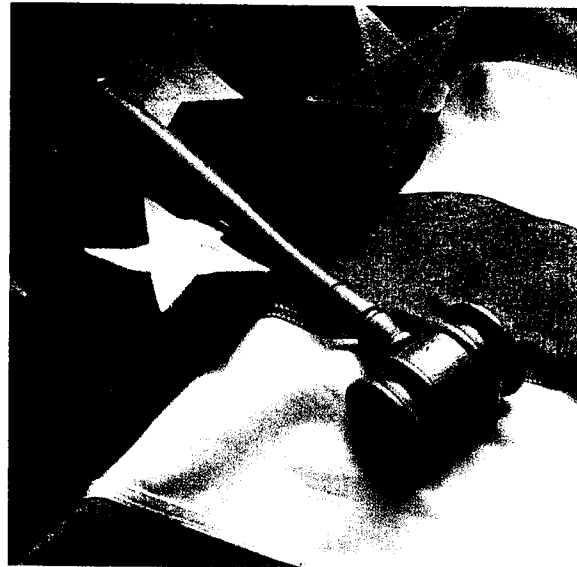
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Keepseagle v. Veneman, filed by Native American farmers (No. 99-03119 (D.D.C., filed Dec. 12, 2001)); and *Garcia v. Veneman*, filed by Latino farmers (211 F.R.D. 15 (D.D.C. 2002)).

"They closed down the civil rights office without telling anyone," said Joseph Sellers of Washington, D.C., lead counsel in *Keepseagle*. "What's most striking is that [the] USDA did a self-evaluation in the 1990s, and their own published studies document extensively that they were denying civil rights and credit opportunities to Native Americans."

Plaintiff attorneys say the USDA has a systemic discrimination problem and point to several class actions by its own employees.

The lawsuits allege that FSA loan officers refused to help women and minorities fill out loan applications, demanded exorbitant collateral and credit terms, told applicants there was no money for loans, took excessive time processing the loans, made payments to minority farmers after planting season had passed, and turned down loan applications even when the applicants qualified on the bases of income and credit.

"These are all behaviors that are proscribed by both the USDA's own rules and by the Equal Credit Opportunity Act," said Washington, D.C., lawyer Stephen Hill, lead counsel in *Garcia*.

The suits take issue with the FSA's requirement that loan applicants meet with a county committee of three to five local farmers who have input into the loan decision. Marc Fleischaker of Washington, D.C., lead counsel in *Love*, said committee members are elected by people who already have FSA loans, "so it was a self-perpetuating cycle" that operated without any oversight. "A lot of them seemed to feel that women shouldn't be farmers, [that] they can't be farmers, and their decisions reflected that attitude," he said.

"The idea [of the committees] was probably well-intentioned," said Hill.

"After all, they are local, and who knows better the lay of the land?" But he added that "there are questions about just how open that election process was" and noted that most of the committees are all white and all male.

Skeptical observers point out that minority farmers constitute less than 4 percent of all U.S. farmers, yet they make up 10 percent of FSA borrowers. And according to the USDA Web site, "racial minorities tend to be located in riskier farming regions" and are "more susceptible to economic downturns brought on by weather-related disasters

or low commodity prices. Credit enhancement alone may not be sufficient to enable these farms to survive."

But plaintiff attorneys say the agency has a systemic discrimination problem and point to several class actions by its own employees: In November, the USDA settled a class action brought by 2,100 Asian and Pacific Islander workers who said they had faced discrimination in hiring and promotions. Two years ago, it settled with over 5,000 female employees in a class action alleging sex discrimination.

"This is a serious, entrenched problem," Fleischaker said. "It isn't just about money. The question becomes, how do you compensate someone for 30 years of mistreatment?"

Pigford, meanwhile, is the case that refuses to die. Its overly complicated settlement structure and the slow pace of payouts have been criticized by legal observers and the plaintiffs themselves—to the point that African-American farmers now want to reopen the case. Hill said that *Pigford* didn't lead to fundamental changes at the USDA, and that *Garcia* will avert similar problems by placing an emphasis on remedial injunctive relief.

He noted that systemic changes at the

USDA will benefit all farmers: "If you fix it right, you fix it for everybody." ■

—CARMEL SILEO

Third Circuit upholds faith-based peremptory challenges

Using strong religious involvement as a basis for striking jurors is not discriminatory and therefore survives a *Batson* challenge, the Third Circuit has ruled. "Even assuming that the exercise of a peremptory strike on the basis of religious affiliation is unconstitutional, the exercise of a strike based on religious beliefs is not." (*United States v. DeJesus*, 347 F.3d 500 (3d Cir. 2003).)

"What the court is saying is that potential jurors can be excluded based on beliefs, even if the beliefs are based on religion—though they cannot, presumably, be excluded because they belong to a specific religion," said Erwin Chemerinsky, a professor at the University of Southern California School of Law.

In the trial of Jerry DeJesus, a convicted felon who was charged with illegal possession of a firearm, the juror questionnaire asked potential jurors about their interests, activities, and hobbies. Ronald McBride and James Bates discussed their strong involvement in church activities and the importance of religion in their lives. McBride also said he'd been able to forgive the person accused of murdering his cousin. The prosecutor used peremptory challenges to strike both men from the panel.

In response to the defense's *Batson* challenge, the prosecutor explained that the two men's answers and demeanors during questioning led the government to believe they might be unwilling to judge another human being and therefore reluctant to convict. The district court upheld the strikes: "The reasons stated by the government in this case point to the prosecutor's concerns about inclination of these potential jurors manifested by their unusual degree of involvement in church activities and religious readings, but not directly associated with a specific religion, that may affect the jurors' judgment of others."

Both men are African-American; a