

# CenterPage

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## Office of Equal Opportunity and Civil Rights

Centers for Medicare & Medicaid Services



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### 2003 MARTIN LUTHER KING, JR. COMMEMORATION



Leslie Norwalk, Judge Robert M. Bell, Tom Scully and Ramón Surís-Fernández

This year marks the 74<sup>th</sup> birthday of the late Dr. Martin Luther King, Jr., and the Centers for Medicare & Medicaid Services (CMS) continued the tradition of paying tribute to this great American.

On Tuesday, January 21, CMS Administrator, Thomas Scully and Leslie Norwalk, Policy Director and Counselor to the Administrator, joined Rabbi Charles L. Arian, Robert Mack Bell, Maryland's Chief Judge, and the CMS Choir for the 2003 commemoration.

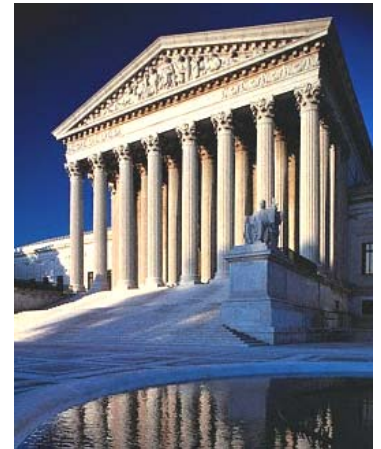
Mr. Scully rearranged his schedule to attend the afternoon event in Baltimore. "After last year, which I thought was the single best event I have been involved in at CMS, it was not a good idea to call [to participate in the program]. I wanted to show up personally to show my support." Commenting on Dr. King's "I Have a Dream Speech," the Administrator said, "It was a pretty amazing world that we lived in—in the early sixties—a pretty rotten world in many ways." *Continues on Page 2*

### Grutter v. Bollinger AN AFFIRMATIVE ACTION BATTLE

Splitting hairs between race as a "plus factor" and illegal numerical quotas, the Supreme Court ruled twenty-five years ago that race can be "a factor" in college admissions. See *Regents of the University of California v. Bakke*. The issue of racial preferences in college admissions has, for the first time since *Bakke*, found its way back to the Supreme Court.

In *Grutter v. Bollinger*, a case involving the University of Michigan, an unsuccessful applicant to the Law school is contesting (on behalf of a class of similarly situated individuals) the University's affirmative action policy. Similar to Mr. Bakke, the applicants claim that they were the victims of reverse discrimination, as their applications were denied in favor of minority applicants under the University of Michigan's admissions policy. In addition to rating applicants academically, the admissions policy assigns points to applicants for nonacademic factors such as being a resident of Michigan, a resident of an underrepresented state, low-income, or even an athlete. Ms. Grutter, however, complained that minority applicants were assigned additional points for being from an "underrepresented minority group."

This case has received attention from a wide spectrum of ideologies. Arguing that the policy violates the Equal Protection Clause of our Constitution, the Court has received an *amicus curiae* brief from the United States Department of Justice asking for the reversal of the Court of Appeals judgment. The Court has also received *amicus curiae* briefs from twenty large corporations supporting the policy. These corporations agree that the country's competitive edge in the world depends upon the ability of its present and future employees to have the ability to function in a diverse environment.



Whichever way the court rules, it will be a close vote. Newsweek magazine (January 27, 2003) reports that the Supreme Court's recent decisions on racial preferences have divided along a 5-4 fault line. In their view, there are possibly two "swing votes" on this highly controversial matter. Keep posted, as more on the subject case will be reported in the Spring edition of CenterPage...

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## 2003 Martin Luther King, Jr.

### Commemoration *(continued)*



Mr. Scully also commented on recent news about the National Football League's lack of Black coaches and how that was "...symbolic of the hiring problems we have in this country." Concluding, Mr. Scully said that "we have lots of room to improve on these issues" and he expressed his hope that they (he, Ruben and Leslie) could make things better during their time at CMS.

Leslie Norwalk was formally introduced to many in the audience for the first time as she temporarily

assumes the duties of the Deputy Administrator, Rubén J. King-Shaw, Jr. Acknowledging the Patterson High School students, who are participating in the mentoring partnership between CMS, the Department of Veteran Affairs and Patterson High School, Ms. Norwalk said that the partnership—known as the Student Career Academy Youth Initiative—is a "very exciting program" and she was glad to see the students.



Ms. Norwalk told the audience, "We have an opportunity to participate in Dr. King's call for justice...everyday at CMS. Whenever you speak with a beneficiary, assist in creating policy, respond to an inquiry, visit a nursing home to ensure quality or simply answer a phone call, you are answering Dr. King's call to act." Concluding she affirmed, "This day we commemorate the life and legacy of Martin Luther King. What better time to rededicate ourselves to the diversity of our workforce from which we draw fully everyday on the creativity and skills of each other."



Judge Robert Bell provided the keynote address. Only six days before his visit to CMS, (January 15, 2003), Judge Bell gave the oath of office to Governor Robert Ehrlich, Jr. and Lt. Governor Michael Steele that day. "A further tribute to that day was that it was also the day Martin Luther King, Jr. was born. An African American assumed, for the first time, a high office in a state where segregation prevailed. Also significant was that there was another African American that swore him in," Judge Bell said, emphasizing the

historic value of that day.

Sharing experiences from his first sit-in to his ascent to the highest judiciary office in Maryland, (where he ironically replaced the judge who was the prosecutor for the trespassing conviction that resulted from his first sit-in), Judge Bell said in a somber tone, "there never will be a time—not in my life time—when the world is free of racism. But this is a nation

whose people believe passionately with the rule of law. And that belief has made possible huge changes in society in only a few generations." "In addition to the rule of law," he continued, "we owe a great deal of the success we've received to the resolve and vision of Martin Luther King, Jr.—the Dreamer."

Rabbi Arian, a Jewish Scholar at the Institute for Christian & Jewish Studies, provided a religious context to the commemoration. He said that one could not understand the work of Dr. King without understanding that he was a reverend and that he shared a "religious vision of the perils of segregation." He reminded the audience that his dream and vision was not just for Blacks. Prompting spontaneous applause, he followed, "Affirmative Action is not a Black issue. Civil rights are not a Black issue. It is a human issue, an American issue."



*Patterson High School students posing with Ramón Suris-Fernández (left), Clara Carter, CMS coordinator for the Student Career Academy Youth Initiative (back row, 5<sup>th</sup> from right), Patterson High School Head Counselor, Diana Ford (3<sup>rd</sup> from right) and Leslie Norwalk (2<sup>nd</sup> from right).*

Ramón Suris-Fernández, Director, Office of Equal Opportunity and Civil Rights, opened the program and later concluded it with a brief video clip of the 1999 Martin Luther King commemoration with Minister Joseph William Clark of St. John Baptist Church in Baltimore. According to many in attendance, the video was a fitting end for a great program.

A copy of the entire program is available at the CMS Library.



*Members of the CMS Choir performing during the 2003 Dr. Martin Luther King, Jr. Commemorative program)*



## 2003 HOLOCAUST MEMORIAL

CMS's eighth annual Holocaust Memorial Program will be held on Wednesday, April 30, 2003, at 1:30 p.m. Eastern Daylight Time in the CMS Auditorium. This program and similar ones at other Federal agencies are presented in response to Public Law 96-388, which calls for an annual, national, civic commemoration of the Holocaust.

The keynote speaker for this year's program is Herman Taube, a poet and author of 20 books, whose writings attempt to communicate the incomprehensible savagery of the Holocaust. In his poetry, Mr. Taube chronicles the stories of a decimated culture and people, to bear witness to a tragic and horrific period in modern history, to make the world remember.

Orphaned as a small child and raised by a grandfather later killed in Lodz, Mr. Taube knew too well the cruelties of loss and death. As a soldier in the Polish Army and as a Red Cross medic in Poland during World War II, he witnessed and felt the fear, pain, and suffering of his fellow Jews. In "My Girlfriend", a poem in his latest book, Looking Backward, Going Forward, he imagines the death of a childhood girlfriend while in the showers at the Majdanek concentration camp:

*Entering the shower chamber  
I imagined that you were there with me.  
My lungs burst, I suffocated.*

In "California Condors", Mr. Taube compares Holocaust survivors to that endangered bird:

*We are an extinct, scarce tribe,  
like the California Condor, few  
of us are left in this world.  
No one cares about our survival,  
some would prefer if we vanish.*

The program will also feature a special documentary film, produced by Diane Hall of the CMS Division of Graphics Services, that profiles the life of Mr. Taube and provides background for our speaker's keynote remarks.

In addition, Rabbi Elan Adler of Moses Montefiore Anshe Emunah Hebrew Congregation will return to deliver the invocation for this year's program. The children's choir from the Krieger Schechter Day School will once again conclude the program with songs of hope.

All CMS staff are invited to attend this moving program about courage and survival. Regional Office staff can view a live broadcast of the program via videoconference.

## OVERCOMING RESISTANCE TO MEDIATION<sup>1</sup>



Mediation is an effective way to resolve workplace disputes, but before mediation can take place, all parties to the dispute must be willing to participate. Sometimes employees are hesitant to mediate. Why are employees reluctant to mediate, and can these barriers be overcome? Below, is some information

that explores the reasons and some possible responses:

### 1. *I'm not sure what mediation is or how it works.*

Mediation is a process by which a neutral person helps people in conflict negotiate a mutually acceptable agreement. The parties control the outcome. If no agreement is reached, the dispute remains.

### 2. *What are the advantages of mediation for me?*

The parties determine the outcome, instead of having it decided by someone else. The solutions reached in mediation can be more creative than what a judge can order. Mediation is cheaper, faster, and less adversarial than an investigation or hearing. Mediation is confidential and private. Feelings can be expressed and communication improved.

### 3. *The other side is too uncooperative or too unreasonable.*

A neutral mediator can test both parties levels of cooperation and reasonableness in an unthreatening way and encourage both sides to be more cooperative and reasonable.

### 4. *I don't trust the other side.*

Any agreement reached is binding and enforceable. Mediation can create an environment whereby the parties do develop a trust for each other.

### 5. *We have already tried to settle this dispute.*

A neutral person without any vested interest in the outcome can help the parties brainstorm and find mutually agreeable solutions.

### 6. *We are in the middle of the hearing process.*

Mediation can be done at any stage of the process. The sooner the better, but no rights are lost by electing to mediate later in the process.

### 7. *I don't want to compromise.*

Mediation does not always mean compromise. The mediator may be able to help the parties reach an outcome that provides benefits to all involved.

### 8. *If I suggest mediation, won't the other side interpret this as a sign of weakness?*

Today, with mandatory mediation guidelines, mediation is seen as a willingness to be realistic not weak.

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Written by David Greenberg, Holocaust Memorial Program Planning Committee

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<sup>1</sup> <http://www.mnadr.state.mn.us/workplace/pdf/12compnt.pdf>  
Source: Mobbing: Emotional Abuse in the American Workplace, Noa Davenport, Ruth Distler Schwartz, Gail Pursell Elliott, 1999, Civil Society Publishing, Ames, Iowa, ISBN 0-9671803-0-9

**9. *I cannot communicate well with the other party.***

The mediator can help the parties open the lines of communication and constructively talk about the issues in dispute. The mediator can keep the conversation going and focused.

**10. *I am not a good negotiator.***

The mediator can help level the playing field and ensure that neither party takes advantage of the other.

**11. *Mediation is just free discovery.***

All parties will learn more about each other. With present-day rules for disclosure, the facts will come out at some point. The sooner the facts are learned by all, the sooner the dispute will likely be resolved.

**12. *What if the mediation process is not working?***

Mediation is voluntary, and either party can end the process at any time.

**13. *I want to have my story heard.***

A hearing may give you an opportunity to have your story heard, but it will not guarantee that the other party is listening. The mediator tries to make sure that the other side is listening and understanding, even if s/he does not agree with what is being said.

**14. *I want a judge to decide.***

The vast majority of cases end without a hearing. Only a very small percentage of cases actually receive a full hearing and decision.

**15. *I am going forward because I know that I am right and I am going to win.***

No outcome is guaranteed. Hearings are unpredictable, expensive, and emotional.

**16. *The conflict will go away.***

In reality, ignoring it usually causes the conflict to grow with the result that the destructive effects increase.

**17. *I had a prior bad experience with mediation.***

Mediation is not always successful. That should not stop you from trying. Each case is different.

**18. *If mediation fails, we have wasted our time and money.***

Even when resolution is not reached, the parties are often better able to focus on the real issues after attempting mediation and this can reduce the time and cost of the process in the long run.

More and more people are turning to mediation to resolve differences. Instead of asking, "Why should I mediate?" ask yourself "What do I have to lose by mediating?"

## **PROVIDING FALSE INFORMATION IN THE EEO PROCESS<sup>2</sup>**

On July 19, 2002, a former employee of the Department of Energy (DOE) was convicted in Federal court on four counts of making a false statement to DOE, one count of perjury, and two counts of filing a false claim for money with DOE. The indictment and conviction stemmed from an EEO complaint filed by the employee against DOE on January 28, 1999, alleging that her manager sexually harassed her on multiple occasions. According to the indictment, the employee "knowingly and willfully made a materially false,

fictitious, and fraudulent statement and representation about being sexually harassed."

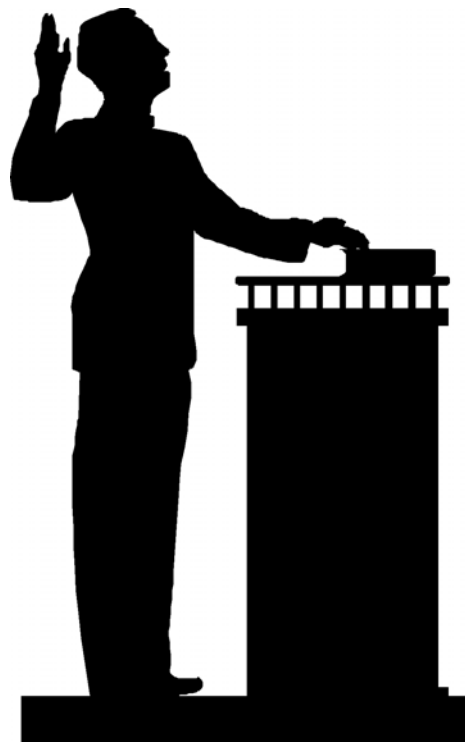
The above case is unique because it represents the first time a Federal employee has been indicted and convicted for making false statements during the EEO process. This was an extraordinary case with unique circumstances; *i.e.*, the employee demonstrated a pattern of lies and provided false information to numerous EEO officials on many occasions, including under oath, and the false allegations included things as serious as rape.

No one should ever feel fearful of bringing forth an EEO complaint, and no one should be "chilled" from providing testimony, information and cooperating in the EEO process. Filing an EEO complaint is a protected activity in the Federal government. Even if the allegations are wrong or unproven, the complainant cannot be retaliated against for filing the complaint. However, the importance of telling the truth, being candid, and credible cannot be underscored as seen from the case above. Engaging in protected activity does not allow a Federal worker to knowingly lie under oath or to knowingly provide false information.

The intent of this article is not to deter people from the EEO process but to remind those who engage it of the importance of providing truthful, accurate, and complete information. As with other administrative forums, the EEO process does not give complainants or witnesses immunity in the above-described situations.

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<sup>2</sup> This is an excerpt from an article that appeared in the January 2003, Federal EEO Advisor.



## OEOCR Staff Update



Nancy Lafferty, EEO Specialist and Disability Program Manager retires after 23 years of Federal service. She began her career in the Health Standards Quality Bureau of HCFA as a clerk typist.

A long time Woodlawn (Hebbville) resident, and a member of St. Luke's United Methodist Church in Woodlawn for over 30 years, she plans to serve as a Patient Advocate at Kernan Hospital, work with the Special Olympics, coordinate a variety of community events and spend quality time with her three grandchildren, TJ, Claire and Bradley.

Ms. Lafferty's retirement will have a short respite. She is planning a large community health fair for March 25, 2003. Taking the lead on this event brings out the best in her. "I have learned so much working for this Agency. We have wonderful programs that do a lot for people. I don't think many of us know the impact we have on the lives of so many people," she said in a tone reminiscent of a schoolteacher. "I also feel strongly about helping people with disabilities and I hope our Agency will be the leader in helping them."

Ms. Lafferty has worked in the Office of Equal Opportunity and Civil Rights for 7 years.

## 2003 NATIONAL AFRICAN AMERICAN HISTORY MONTH PROGRAM



Two Maryland leaders are the featured speakers at this year's program. Lt. Governor Michael S. Steele was sworn into office as the first Black Lt. Governor in the state of Maryland.

Dr. Carla Hayden is the Director of the Enoch Pratt Free Library, one of the oldest library systems in the country. She is also the current President of the American Library Association.

The program, under the theme, "**The Souls of Black Folk**," will be held in the CMS Auditorium on Thursday, February 27 at 2:00 PM.

### CALENDAR OF EVENTS

#### BLACK HISTORY MONTH PROGRAM

CMS AUDITORIUM

SPEAKERS: MARYLAND LT. GOVERNOR MICHAEL S. STEELE &

DR. CARLA HAYDEN,

DIRECTOR ENOCH PRATT FREE LIBRARY

THURSDAY, FEBRUARY 27, 2003, 2:00 PM

#### WOMEN'S HISTORY MONTH PROGRAM

CMS AUDITORIUM

THURSDAY, MARCH 13, 2003, 1:30 PM

#### FEB FEDERAL WOMEN'S CONFERENCE

MARTIN'S WEST

THURSDAY, MARCH 27, 2003, 8:30 AM

#### TAKE OUR CHILDREN TO WORK DAY

CMS

THURSDAY, APRIL 24, 2003, 1:30 PM

#### HOLOCAUST MEMORIAL PROGRAM

CMS AUDITORIUM

WEDNESDAY, APRIL 30, 2003, 1:30 PM



Lt. Governor Michael S. Steele



Dr. Carla Hayden

### CenterPage

Office of Equal Opportunity and Civil Rights  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, N2-22-16  
Baltimore, Maryland 21244-1850

**Editor** Editorial Assistant Researcher  
Glenn Smith Bettie T. Spencer Brian Sutherland

#### Contributing Writers

Tracey Therit Michele Lenkiewicz Lynn Strange  
Gloria Potocek Tana Hicks Joanne Davis  
Glenn Locklear Annia S. Feliciano Flores Richard Torres-Estrada

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