AFFIRMATIVE ACTION

NIH Settles, NSF Sued in Student Cases

Opponents of affirmative action won an out-of-court victory last month against a federal program aimed at attracting more minority students into biomedicine and health careers. The settlement, on behalf of a white teen-age Texas girl excluded from a summer science camp funded partly by the National Institutes of Health (NIH) and the Department of Agriculture (USDA), is part of a highly visible legal campaign spearheaded by the Washington, D.C.–based Center for Individual Rights (CIR). One day after that settlement was reached, the CIR lent its support to a suit by a white male graduate student at Clemson University in South Carolina against the National Science Foundation (NSF) for denying him a chance to apply to a minority-only component of its prestigious graduate research fellowships program.

These cases are the latest in a spate of attacks on affirmative action policies in higher education, which have now broadened from college and graduate school admissions to federally supported training programs. "It's difficult to win a broad-based injunction against such programs, so we have to attack on a case-by-case basis," says Michael Rosman of the CIR, which won a similar case in 1996 against NSF. "We're trying to convince the government that those programs will be a target if they persist in implementing them."

The plaintiff in the NIH-USDA case, now a 17-year-old high school senior whose identity has been kept secret because of her age, sued in February 1997 after being told 2 years earlier that she was not eligible for a summer program for minority students at Texas A&M University. Under the 11 December settlement, NIH and USDA agreed to abandon all criteria based on race or ethnicity and to pay CIR $25,000 in legal fees. The settlement does permit the two agencies to run programs tailored to "socially, economically, or educationally" disadvantaged students. But USDA no longer runs such a program, and in October NIH announced it would not accept new applicants from institutions for the summer program, pending a decision on how to restructure it. Last year, the program, which was begun in 1980, served more than 1300 students and 300 teachers at 114 institutions.

It's not the first time the teen-ager has taken a federal agency to court alleging racial discrimination. In April 1996, she won an out-of-court settlement against NSF for excluding her from a similar summer camp at the same university in 1994, winning $5000 in legal fees for CIR and $15,000 in damages. NSF terminated the summer science camp program shortly after the settlement as part of a general reorganization of its programs to aid minority students.

That case is not completely over, however. The teen-ager also sued the state of Texas, several individuals, and other nonfederal partners connected to the program, including the Howard Hughes Medical Institute. Texas declined to join the settlement because state officials argued that the issue was rendered moot by a federal appellate court ruling, *Hopwood* v. *Texas*, issued a week before the settlement. The court ordered an end to any programs in the state that are restricted to certain racial groups (*Science*, 29 March 1996, p. 1801). The suit is scheduled to go to trial on 2 February in federal court in Corpus Christi, Texas, if an agreement is not reached with the remaining defendants.

The plaintiff in the new suit against NSF, filed on 12 December, is Travis Kidd, a graduate student in mathematics from Anderson, South Carolina. Kidd says he was denied the opportunity to apply for one of approximately 400 slots in the fellowship program that are reserved for members of groups traditionally underrepresented in science and engineering—blacks, Hispanics, Native Americans, and Pacific Islanders. His 1996 application for one of 2250 other slots in the program had been rejected. Kidd is being represented by the Washington, D.C., law firm of Brown and Frye, which took the case on a referral from CIR.

A hearing for a preliminary injunction against NSF is scheduled for 9 January in federal district court in Alexandria, Virginia, near NSF's headquarters in Arlington. NSF plans to argue that its mandate for the graduate fellowship program comes directly from its founding mission to strengthen U.S. science and from more recent legislation ordering it to take steps to increase the number of minorities in science. "Congress has broader latitude to address issues of diversity" than do state legislatures and universities, says Larry Rudolph, NSF general counsel. "That's an important distinction between this case and previous cases" involving those entities.

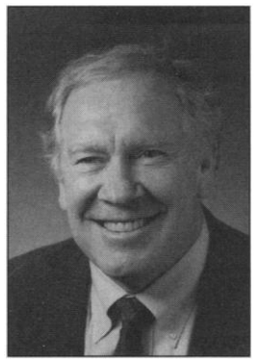
The suit, however, asks NSF to exclude race or ethnicity in making decisions on applicants for this and future classes on the grounds that such criteria are unconstitutional. Rudolph says that the selection process will remain unchanged pending a decision by the court.

–Jeffrey Mervis

SCIENTIFIC COMMUNITY

Astrophysicist Dies in Plane Crash

David Schramm, a leading authority on the birth of the universe, died on 19 December, after the private airplane he was piloting crashed outside Denver. Schramm, a 52-year-old astrophysicist and the vice president for research at the University of Chicago, was flying from Chicago to his second home in Aspen, Colorado. At press time, the cause of the accident was under investigation.



ARGONNE NATIONAL LAB

From particles to the cosmos. David Schramm.

Schramm made his greatest scientific mark by weaving work on subatomic particles into the field of cosmology, the study of the universe's origin and structure. He helped explain the process by which the three lightest elements—hydrogen, helium, and lithium—were created immediately after the big bang. He and his collaborators also calculated the amount of ordinary matter in the universe, which helped demonstrate that the universe is dominated by invisible "dark matter." Schramm "was one of the major architects of our present model of the creation of the universe," says Nobel laureate Leon Lederman, a former director of the Fermi National Accelerator Laboratory, in Batavia, Illinois.

Schramm's most fundamental contribution to physics, perhaps, was a calculation in which he and other colleagues predicted that there are only three or four families of fundamental particles. Many physicists had expected that far more would be discovered. "We got a lot of flak from a lot of people" for that prediction, Schramm later said in a book about cosmologists by Alan Lightman and Roberta Brower. But accelerator experiments bore out the prediction, showing in 1989 that a massive particle called the Z boson decayed into only three kinds of neutrinos.

"He was excited about the latest results in theory or in experiment, and he always jumped to the next level of insight," says physicist John Bahcall of the Institute for Advanced Study in Princeton, New Jersey. "His death is a huge loss," adds Lederman. "He was everywhere and very active, and thought very broadly about science and its role in society. He was ... always a leader."

–David Ehrenstein