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LABOR WATCH

James Hoffa (Both of Them) and the "Central States" Crackup

The Teamsters' pension plan endangers the U.S. agency that backs pensions

By Carl F. Horowitz

Summary: *Jimmy Hoffa, the legendary boss of the Teamsters union, vanished in 1975, presumably meeting his demise at the hands of associates from the world of organized crime. Yet his legacy lives on, in the form of the Central States Pension Fund. Today, the fund pays $3.46 in retirement benefits for each dollar it collects from employers, and it has a long-term shortfall so large that it could bust the nation's pension guarantee system.*

During a 1957 Senate racketeering hearing managed by Senate staffer Robert F. Kennedy, Jimmy Hoffa of the Teamsters union rubs his eye; U.S. Vice President Joseph Biden with the current Teamsters president, James P. Hoffa.

Four decades ago, the International Brotherhood of Teamsters' Central States Pension Fund was a project of organized crime. In the future, it may well be a project of a federal agency, the Pension Benefit Guaranty Corporation—and, as a consequence, the agency itself may need a bailout.

This past September, the Rosemont, Ill.-based pension fund, which currently enrolls more than 400,000 active and retired Teamsters in 37 states, filed a restructuring plan with the U.S. Treasury Department that proposed cutting benefits on average by 23 percent. The action was the first of its type under a law enacted in December 2014, the Multiemployer Pension Reform Act. Central States Executive Director-General Counsel Thomas Nyhan explained the dilemma: "The longer we wait to act, the larger the benefit reductions will have to be."

The union bears a real responsibility for its dilemma. The roots of the problem go back decades. The Central States, Southeast and Southwest Areas Pension Fund, or as it is simply known, the Central States Pension Fund, is a Teamster pension plan with a colorful history.

Hoffa & the Mob

Teamster General President James R. "Jimmy" Hoffa, father of current Teamsters chieftain James P. Hoffa, initiated the fund in 1955. His management style left something to be desired. In 1963, the elder Hoffa and six other individuals were indicted in Chicago federal court for fraudulently arranging $25 million in pension loans and diverting $1.7 million of that sum for their own personal use. The defendants were convicted by a jury the following year. Even after reporting to federal prison in March 1967, Hoffa was implicated in a scandal in which he allegedly received 10 percent kickbacks on highly questionable real estate loans to various Central States "consultants."

Management of the Central States fund nominally was in the hands of a Chicago-based insurance executive and organized-crime associate, Allen Dorfman. The stepson of corrupt Teamster local boss Paul "Red" Dorfman, the younger Dorfman more than once had been indicted, but avoided conviction. Eventually, his good luck streak ended. In February 1972, he was convicted in New York for illegally obtaining a $55,000 kickback from a recipient of a Central States loan. And in February 1974, just two months after his December 1973 release from prison, he was indicted for fleecing the fund out of $1.4 million. Though forced to resign his position of "consultant," he

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continued to run operations from the background—and to steal. The U.S. Labor Department estimated that Dorfman had looted at least $5 million by the early ’80s.

By numerous accounts, especially investigative reporter Dan Moldea’s book, *The Hoffa Wars*, Hoffa’s successor, Frank Fitzsimmons, not only was aware of the corruption, but was very much in the thick of it. A source for an investigative series appearing in the *Oakland Tribune* in the fall of 1969 explained: “Frank [Fitzsimmons] hardly makes a move related to financial matters without consulting Dorfman.” By staying in good graces with the mob, Fitzsimmons not only received a cut of the action, but also positioned himself to keep his job in the event that Jimmy Hoffa, who would be pardoned by President Nixon in December 1971, wanted it again.

Hoffa, of course, did want his old job back. And his effort didn’t end well. He permanently disappeared on July 30, 1975, the day of a scheduled “business luncheon” at a Detroit-area restaurant. Allen Dorfman would be murdered, gangland-style, on the parking lot of a suburban Chicago hotel in January 1983. He had been free on $5 million bond awaiting sentencing for his conviction the previous month for attempting to bribe Sen. Howard Cannon, D-Nev., in return for Cannon’s vote against a trucking deregulation bill. The case also resulted in the convictions of Teamster General President Roy Williams and Chicago mobster Joey “the Clown” Lombardo, along with two other men. Lombardo, in fact, had been indicted with Dorfman in a separate case involving an attempt to extort $800,000 from a Chicago businessman whose home was bombed.

Like Jimmy Hoffa, Allen Dorfman took a lot of secrets to the grave. The Central States Pension Fund faced a premature burial as well, something confirmed in a mid-’70s audit by Price Waterhouse. The report concluded that nearly 90 percent of fund investments were related to real estate, a figure way beyond the norm for comparable union plans. What’s more, over a third of all loans were in default. A July 22, 1975 article in the *Wall Street Journal* summarized the audit: “Through such loans . . . the fund has passed millions of dollars to companies identified with Mafia members and their cronies. It has also lent millions of dollars to employers of Teamsters; and according to . . . rank-and-file Teamsters, the union sometimes deserted members’ interests in favor of the employer-borrowers.” A Justice Department official noted at the time: “The thing that’s absolutely frightening is that through the Central States Pension Fund, the mob, quite literally, has complete access to nearly a billion dollars in union funds.”

The most infamous investment was a $62.7 million loan approved by Midwest crime bosses to buy the Stardust and the Fremont hotel-casinos in Las Vegas. Front man Allen Glick understood his job was to follow Mafia orders, especially the one requiring him to look the other way while Mob functionaries skimmed millions of dollars from count rooms. The corruption and violence in that venture were amply chronicled in Nicholas Pileggi’s book, *Casino: Love and Honor in Las Vegas*, the source material for Martin Scorsese’s classic 1995 movie *Casino*.

The Central States Pension Fund still bears the scars from those Mob days, even though the link between the two worlds formally ended long ago. In 1982, following a federal investigation, the Teamsters entered into a consent decree with the Justice Department to cede control of its retirement funds to a consortium of banks. The arrangement remains in force. Unfortunately, it has not been sufficient to stave off another looming disaster.

The insolvency cascade

Declining union membership, deregulation of the trucking industry, and longer life expectancies have combined to raise expense-to-income ratios to the point where they are not sustainable. The Central States Pension Fund now pays out $3.46 in retirement benefits for each dollar it collects from employers. It’s true that assets have rebounded from $7.6 billion in losses during the 2008 stock market crash at the rate of 13 percent a year. Yet liabilities, if it can be believed, have risen even faster. Indeed, they now exceed assets by more than $17.5 billion. And the gap has been widening by around $2 billion a year. At the current rate, the fund likely will become insolvent in about 10 to 15 years. If that occurs, it could trigger insolvency at a longstanding Washington, D.C. institution: Pension Benefit Guaranty Corporation (PBGC).

Pension Benefit Guaranty Corporation, like Federal Deposit Insurance Corporation, is a government-sponsored insurance agency. Created in 1974 under the Employee Retirement Income Security Act (ERISA), PBGC is authorized to take over pension plans under certain circumstances and compensate beneficiaries up to specified dollar limits.

The Central States Pension Fund is a *multi-employer*, as opposed to single-employer, retirement plan. A multi-employer plan is funded by two or more employers, typically in the same or a related industry. If those companies are unionized, then the union often contrib-

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utes funds. Moreover, like the employer, the union makes appointments to the plan's board of trustees. Of the roughly 41 million active and retired employees (along with eligible family members) now covered by defined-benefit pension plans in this country, about 10 million are enrolled in the multi-employer type.

The agency currently makes payments to more than 800,000 people each month. Another 585,000 workers are scheduled to receive benefits from PBGC when they retire. PBGC is authorized to take over a multi-employer plan only in the event of insolvency. This is in contrast to a single-employer plan, where the sponsor may hand over its responsibilities to PBGC even if it's still solvent.

Payments to beneficiaries are funded by insurance premiums, not congressional or Treasury Department subsidies. The rules for multi-employer and single-employer plans differ. Under a single-employer plan, the current annual benefit per retiree (starting at age 65) can be as high as $60,136, indexed for inflation. Under a multi-employer plan, by contrast, the current maximum annual benefit is only $12,870. What's more, individual eligibility is keyed to years of employment service (in this case, 30 years) as opposed to age. And payments are not indexed for inflation. Yet despite a much smaller maximum benefit and far fewer retirees to cover, multi-employer pensions are the main source of worries for PBGC.

To put this in perspective, let us look at the single-employer situation first. According to Pension Benefit Guaranty Corp.'s 2014 annual report, the single-employer insurance program had a cumulative $19.3 billion deficit as of September 30, 2014 (i.e., the end of Fiscal Year 2014). This actually was an $8.1 billion improvement from the year before. The situation as of September 30, 2015 revealed a rise in the deficit by $4.7 billion to more than $24 billion.

But it's the multi-employer situation that keeps PBGC officials awake at night. As of September 30, 2014, these pensions produced a whopping combined deficit of $42.4 billion, a *more than fivefold increase* from the $8.3 billion gap of a year earlier. By September 30, 2015, the deficit had risen to $52.3 billion. Note that that is an increase of almost $10 billion between 2014 and 2015.

Trustees and managers of the Teamsters' Central States Pension Fund know that the fund could collapse. They also know that a PBGC takeover could endanger the agency itself. Fortunately for the Teamsters—less fortunately for the rest of us—the Central States plan now has an ace in the hole.

Congress makes it better

In December 2014, Congress passed, and President Obama signed, the aforementioned Multiemployer Pension Reform Act. Sponsored by Rep. John Kline (R-Minn.) and the now-retired Rep. George Miller (D-Calif.), the act authorizes pension plans of a "critical and declining" status to reduce benefits, either permanently or temporarily. "Critical" here means that a given plan's assets are less than 65 percent of projected long-term liabilities. "Declining" means that the plan is projected to run out of money in less than 15 years, or under special circumstances, less than 20 years.

The Kline-Miller law stipulates that benefits cannot be reduced to less than 110 percent of the sum guaranteed by PBGC. In addition, retirees aged 80 or older, along with disabled persons, are protected from any reductions. Retirees aged 75-80 are subject to benefit reductions, but to a more limited degree than for retirees younger than 75.

Fiduciaries of a multi-employer pension plan must receive permission from the Treasury Department to cut benefits. And prior to approval, plan trustees must notify participants that such a reduction is in the works and must demonstrate to the satisfaction of the department that all available measures are being taken. If the Treasury Department, after consulting with PBGC and the Labor Department, gives a green light, current and future beneficiaries have the right to vote on whether to accept or reject the proposal. If they vote to reject, the issue still isn't necessarily over. For the Kline-Miller law states that with large-scale pension plans, such as the Central States fund, the Treasury Department must permit some form of reduction. Large-scale ("systematically important") plans are those requiring PBGC aid of over $1 billion.

The Central States Pension Fund, unfortunately, right now is looking at a deficit far higher than $1 billion. And its trustees are in a bind. On one hand, they are loath to tell rank-and-file Teamsters that they should forgo some of their retirement benefits to preserve the plan. On the other hand, they are even more loath to continue on course to the point at which they must inform workers and retirees that their plan is out of money. That's why contributing employers are seeking relief. "I've told politicians many times before, if you really want to know what the 800-pound gorilla in the room is for us, it's our pensions," says John Bryan, chairman of the Illinois Road and Transportation Builders Association. Executive Director Thomas Nyhan emphasizes that there is no room for delay. "What we're asking," he says, "is to let us tap the brakes a little now, and let us avoid insolvency."

The Central States Pension Fund is the first plan to have applied for relief under the Kline-Miller law. Letters from the plan management informed Teamster members they face cuts in benefits of up to 60 percent. Trustees and administrators realize they're not popular with the union, least of all with General President James P. Hoffa. On September 22, 2015, on the eve of the filing of the petition with the Treasury Department, Hoffa wrote to Nyhan:

> I am writing to urge that the Central States Pension Fund Trustees

not vote to file a petition with the United States Department of Treasury seeking to cut the pensions of thousands of Teamster members and retirees who earned them. While the continued viability of the Fund is a concern of all of us, I urge you to focus on the impact that benefit cuts will have on the daily lives our members and retirees.

As you know, I opposed the Multiemployer Pension Reform Act of 2014 (MPRA). I did so because I believed it unfairly shifts the consequences of unfunded pension liabilities to retirees, participants and beneficiaries by reducing their benefits. It also creates the false illusion of participatory democracy by purporting to require a vote of retirees and other participants and beneficiaries that can then be simply ignored if a negative vote would cause significant liability to the Pension Benefit Guaranty Corporation. In other words, participants and beneficiaries get to vote, but their vote only counts if they vote to cut their own pensions. The people who conceived that cynical scheme should be ashamed.

This new law effectively destroys the bedrock principle enacted in 1974 with the passage of ERISA. Instead of protecting pension benefits from impairment, as the statute was originally designed to do, it places them at risk. It literally permits underfunded pension plans to pull the rug out from under the people the statute was originally supposed to protect.

The rich will cover it

A number of left-leaning lawmakers in Congress are angry as well. Sen. Bernie Sanders, I-Vt., and Rep. Marcy Kaptur, D-Ohio, have sponsored legislation, the Keep Our Pension Promises Act (KOPPA), to repeal the Kline-Miller law. KOPPA, strongly supported by Hoffa, makes for effective populist campaign fodder for Senator Sanders, currently seeking the Democratic Party nomination for president. It's also a very expensive form of populism. The Sanders-Kaptur bill, among other things, would create a 10-year, $30 billion legacy fund to be paid for by the cancellation of two tax breaks ostensibly benefiting that familiar bogeyman, "the rich." Intentionally or not, the measure would wind up greatly expanding the costs of maintaining Pension Benefit Guaranty Corporation. By any other name, it would be a federal bailout.

Raising the standard multi-employer premium would not be enough to close the deficit. According to a PBGC report released in January 2013, a doubling of the per-employee insurance premium from $12 to $24 a year would reduce the likelihood of insolvency in 2022 from 37 percent to 22 percent. PBGC slightly obliged the report's authors, by raising the per-person premium to $13, indexing it for good measure. That step proved unnecessary. A provision of the Kline-Miller law raised the premium to $26, starting in 2015. Yet the move will not have much of an effect. The $14 rise, from $12 to $26, multiplied by about 400,000 participants, will generate an extra $5.6 million in annual revenues. That represents roughly one-third of one percent of the current asset-to-liability funding gap.

It wouldn't take too many plan insolvencies to sink PBGC. A report issued in March 2013 by the U.S. Government Accountability Office suggests the agency would have enormous difficulties staying afloat. The study, "Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies," based on an employer questionnaire survey and interviews with officials of more than a dozen multi-employer plans, revealed sharp upswings in the number of cases of PBGC assistance and in the dollar value of per-employer aid. During fiscal years 2001-05, the number of plan takeovers rose from 22 to 29. And the dollar value of agency payouts increased gradually from $4.5 million to $13.8 million. That seemed manageable enough. But during fiscal years 2006-12, the number of takeovers rose from 33 to 49. Far more tellingly, total payouts reached $70.1 million in 2006 and never got lower, reaching $115 million in fiscal 2011 before declining to $95 million the next year. A relatively small number of firms had been driving the escalating costs.

Based on interviews with PBGC officials, the GAO report summarized its findings this way:

> PBGC expects that the pension liabilities associated with current and future plan insolvencies will exhaust the multi-employer insurance fund. Under one projection using conservative (i.e., somewhat pessimistic) assumptions for budgeting purposes, PBGC officials reported that the agency's projected financial assistance payments for plan insolvencies that have already occurred or are considered probable in the next 10 years would exhaust the multi-employer insurance fund in or about 2023.

The authors noted, ominously, that during fiscal year 2012, just two unnamed plans for which insolvency was "reasonably possible" accounted for $26 billion of the combined $27 billion liability of all plans in that category. Should those plans go under, the number of retirees/beneficiaries requiring payouts would increase sixfold.

It is conceivable, then, that PBGC will run out of money and that the insolvency of just one large-scale plan, such as the Teamsters' Central States Pension Fund, will trigger this event. "There could be a complete benefit cut if PBGC has no money," admits Josh Gotbaum, who was PBGC executive director during 2010-14 and is currently a Brookings Institution guest scholar.

Making this scenario even more likely is a 1980 law, the Multiemployer Pen-

sion Plan Amendments Act, one of whose features is a requirement that all remaining institutional participants in a multi-employer plan be jointly and severally liable for the obligations of any departing participants. Usually, if reluctantly, remaining employers cover the cost rather than exit. But this is less likely during an industry or general economic downturn. Moreover, the process, by its nature, is self-perpetuating. Hypothetically, if a plan starts out with 50 member employers, and 49 pull out after paying a withdrawal penalty, the sole remaining employer must cover everyone else's liabilities. This so-called "last man standing" rule can create a bum's rush to the exit door: *No rational employer or investor wants to be the last man standing.*

In the event of a sharp downturn, participating employers in the Central States Pension Fund might well pull out, leaving Pension Benefit Guaranty Corporation to pick up the pieces and make retirees whole. Eight years ago, United Parcel Service paid $6.1 billion into the fund to avail itself of pension obligations to around 44,000 participants. One wonders where all that money went. If PBGC has to assume control of the fund, satisfying all claims might prove difficult without a federal subsidy. The alternative to a bailout would be costly and time-consuming lawsuits.

Bad investments

None of this should absolve the people who have been running the Central States Pension Fund multi-employer program of the responsibility for rising deficits. As of January 2008, the plan was on track to be fully funded (i.e., assets equal to or exceeding liabilities) by 2029. Yet by the end of 2008, its asset portfolio had lost $7.6 billion, the result of disastrous investment decisions. In April of that year, Executive Director Nyhan predicted the funding ratio "should exceed 70 percent and may reach 75 percent if we meet our actuarial assumptions." Granted, 2008 was a bad year for everyone. Yet the stock market has come back, while the fund has managed to fall below the 65 percent "critical" threshold, triggering this past September's filing of a request with the Treasury Department to cut benefits.

The Central States Pension Fund clearly has problems on the liability side of the ledger that James P. Hoffa and other Teamster officials aren't acknowledging. At the same time, these officials have a right to be angry over the prospect of members losing a large chunk of their benefits under the Kline-Miller law. Until that law was passed, ERISA mandated that beneficiaries were entitled to all scheduled benefits. The new law supersedes that guarantee.

[*Editor's note:* Anyone who expects to be protected by government guarantees or hopes to receive government benefits, should keep in mind that Congress can cancel its promises and slash future payments at any time. That applies even to seemingly untouchable "entitlements" like Social Security benefits. If the level of unfunded liabilities continues to skyrockret, many such political promises necessarily will be abrogated.*—SJA*]

As of this writing, the Treasury Department has yet to approve a benefit cut with regard to the Central States Pension Fund. And if the department rejects the request, beneficiaries would get to vote on it this spring. But the law also gives the department the authority to override a "no" vote. Beneficiaries, in other words, are not protected.

Two realistic alternatives come to mind. They will be opposed by Teamsters and AFL-CIO leadership, which makes it all the more imperative that they be considered.

First, the Teamsters could convert the Central States Pension Fund from a defined-benefit plan to a defined-contribution plan (such as a 401k plan) or at least a hybrid of the two. Some employers, especially state and local government agencies, already have made such transitions. These approaches promote participant initiative and flexibility, while minimizing the likelihood of fiduciary corruption.

Second, Congress could phase out Pension Benefit Guaranty Corporation's responsibility for taking over insolvent multi-employer plans. These plans pose a high risk to taxpayers. Participants would have the option of acquiring insurance on their own. Privatization is a workable way around PBGC's possible meltdown.

Such courses of action present potential risks of their own. But what are the alternatives? The Central States Pension Fund is in danger of insolvency. And should that happen, hundreds of thousands of active and retired Teamsters would have to rely on the federal government to receive even a portion of the sum to which they are entitled, much less the whole amount. A pension plan is only as sound as its ability to deliver on its promises. And the outlook for Central States, with or without the mob, isn't very promising.

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Many thanks,
Scott Walter
President

LaborNotes

On January 11, the **U.S. Supreme Court** heard arguments in the case of ***Friedrichs v. California Teachers Association***, which challenges a law that forces teachers to pay union dues even if they oppose the union's agenda or don't belong to the union. As the ***Wall Street Journal*** noted, "a majority [of the Court] seems prepared to rule that it is unconstitutional for governments to coerce workers to pay agency fees to government unions." The **Clintonite** organization **ThinkProgress** commented: "Let's not beat around the bush. Public sector unions just had a simply terrible day in the Supreme Court." **Justice Antonin Scalia**, thought to be sympathetic to the unions' position (based on his belief that patronage is constitutional), turned against the unions, and **Justice Anthony Kennedy**, a swing vote between the Court's radical and mainstream/conservative factions, grew angry with unions as arguments proceeded. A ruling against the unions would have a devastating impact on their ability to coerce public employees to fund their political causes.

Ann Marie Corgill was named **Alabama**'s elementary school Teacher of the Year in 2014; she was named in January 2015 as one of four finalists for National Teacher of the Year. At the time, she taught in the well-off city of **Mountain Brook**, outside **Birmingham**. Last August, she was hired to teach second grade at a low-income school in Birmingham, but, after the school year began, she was shifted to fifth grade. Uh-oh. Corgill, rated "highly qualified" in early childhood education, was told that she wasn't certified to teach fifth grade. She ran into what she called a "wall of bureaucracy." The school, funded under Title I for poor kids, had different rules from the schools at which she had taught earlier—*federal* rules. "After 21 years of teaching in grades 1-6 I have no answers as to why this [certification] is a problem now," she wrote, "so instead of paying more fees, taking more tests, and proving once again that I was qualified to teach, I am resigning." Said Corgill: "It's time to bring joy, professionalism, and pride back to the profession. It's time to speak up so that schools can attract and retain the most highly qualified teachers."

In August, six **Republican** presidential candidates appeared at a forum hosted in **New Hampshire** by **Campbell Brown**, a TV news anchor turned education-reform activist. But when Brown tried to host an event in Iowa featuring the **Democrats**, teachers' unions urged candidates to stay away, and they did. Democrat **Kevin Chavous**, a reform activist and former **Washington, D.C.** city councilman, told ***Politico*** that "It's shameful how my party is being held hostage by the unions," adding that the refusal to discuss reform is "insulting to the Democratic base of black and brown voters." Meanwhile, in response to **Atlanta** being named one of the friendliest cities for school choice, **Verdaillia Turner**, president of the **Georgia Federation of Teachers**, said, "That's like saying **Chicago** is the most murder-friendly city in the nation."

As observed in the November 2015 *Labor Watch*, the powerbrokers of the Old Economy are struggling to prevent changes that benefit consumers and are occurring because of the advance of computer/smartphone/Internet technology. For example, unions and the cartels that control taxi services in big cities are desperately trying to block the spread of ride-share services such as **Uber** and **Lyft**. From **Istanbul** and **Budapest** to **Kochi, India** and **Shenzhen, China**, taxi drivers have blocked traffic to protest the existence of the services. In December, **Seattle** became the first U.S. city to pass anti-Uber legislation promoting the unionization of ride-share drivers. The **AFL-CIO** praised Seattle's action, and **California Assemblywoman Lorena Gonzalez** (D-**San Diego**) announced plans to introduce a similar measure to cover her state.

The organization **Mothers Against Drunk Driving** reports that ride-share services are having a significant impact on deaths caused by drivers who are alcohol-impaired. The services contributed to a 25 percent drop last year in drunk driving deaths in **Nevada**, and a 22 percent drop in **Virginia** (56 percent over two years). According to MADD, "Not too long ago, options were limited for getting home after a night out. Taxi services were often limited, and confined to dense urban landscapes. With ridesharing services like Uber, that is beginning to change. Now, you can tap a button to request a safe, reliable ride home. . . . We estimate that the entrance of Uber in Seattle caused the number of arrests for DUI to decrease by more than 10 percent." The organization's president, **Colleen Sheehey-Church**, said that the availability of ride-sharing might have prevented the death of her 18-year-old son, who was killed riding in a car with a drunk driver.

With time running out for the **Obama** administration, the **Labor Department** has been busy lately, pursuing a host of new regulations, including one that would make it very difficult for small investors—the 45 percent of Americans with less than $25,000 to invest—from getting professional financial advice. (The regulation would effectively ban over-the-phone advice and the commission model for middle-income people.) Meanwhile, the department's **Center for Civil Rights** took time out recently to celebrate its accomplishments with a football-themed tailgate party featuring chili, nachos, and wings and "your favorite sports or club theme gear." Banned from the party: "clothing or other sports memorabilia that promote Washington, D.C.'s professional football team," the **Redskins**, a name that ignorant leftists have declared to be an insult to the **American Indians** whom the team's name was meant to honor.